

THE
IN AND EMPIRE DIGEST
WITH
COMPLETE AND EXHAUSTIVE
ANNOTATIONS.

VOLUME II.

THE ENGLISH AND EMPIRE DIGEST

WITH
COMPLETE AND EXHAUSTIVE
ANNOTATIONS

BEING

A COMPLETE DIGEST OF EVERY ENGLISH CASE REPORTED
FROM EARLY TIMES TO THE PRESENT DAY, WITH ADDITIONAL
CASES FROM THE COURTS OF SCOTLAND, IRELAND, THE EMPIRE
OF INDIA, AND THE DOMINIONS BEYOND THE SEAS,

AND INCLUDING

COMPLETE AND EXHAUSTIVE ANNOTATIONS GIVING ALL THE
SUBSEQUENT CASES IN WHICH JUDICIAL OPINIONS HAVE BEEN
GIVEN CONCERNING THE ENGLISH CASES DIGESTED.

VOLUME IX.

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In this Volume English Cases reported up to 1st January, 1924, are included, and other cases are included so far as the Volumes of Reports of the same were available in London on that date.

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A. C. (preceded by date)	Law Reports, Appeal Cases, House of Lords, since 1890 (<i>e.g.</i> , [1891] A. C.)	Eng.
A. Jur. Rep.	Australian Jurist Reports	Aus.
A. L. T.	Australian Law Times	Aus.
A. R.	Ontario Appeals	Can.
Ad. & El.	Acton's Reports, Prize Causes, 2 vols., 1809—1841	Eng.
Adam	Adolphus and Ellis's Reports, King's Bench and Queen's Bench, 12 vols., 1834—1842	Eng.
Add.	Adam's Justiciary Reports (Scotland), 1893—(current)	Scot.
Agra	Addams' Ecclesiastical Reports, 3 vols., 1822—1826	Eng.
Agra F. B.	Agra High Court	Ind.
Alc. & N.	Agra High Court, Full Bench	Ind.
Alc. Reg. Cas.	Alcock and Napier's Reports, King's Bench (Ireland), 1 vol., 1813—1833	Ir.
Aleyn	Alcock's Registry Cases (Ireland), 1 vol., 1832—1841	Ir.
All.	Aleyn's Reports, King's Bench, fol., 1 vol., 1646—1649	Eng.
Alta. L. R.	New Brunswick Reports (Allen)	Can.
Amb.	Alberta Law Reports	Can.
And.	Ambler's Reports, Chancery, 1 vol., 1716—1783	Eng.
Andr.	Anderson's Reports, Common Pleas, fol., 2 parts in one vol.,	Eng.
Anst.	Andrews' Reports, King's Bench, fol., 1 vol., 1737—1740	Eng.
App. Cas.	Anstruther's Reports, Exchequer, 3 vols, 1792—1797	Eng.
App. Ct. Rep.	Law Reports, Appeal Cases, House of Lords, 15 vols., 1875—1890	Eng.
App. D.	Appeal Court Reports	N.Z.
Architects' L. R.	South African Law Reports, Appellate Division	S. Af.
Argus L. R.	Architects' Law Reports, 4 vols., 1904—1909	Eng.
Arkley	Argus Law Reports	Aus.
Arm. M. & O.	Arkley's Justiciary Reports (Scotland), 1 vol., 1846—1848	Scot.
Arn. & H.	Armstrong, Macartney, and Ogle's Civil and Criminal Reports (Ireland), 1840—1842	Ir.
Ashb.	Arnold's Reports, Common Pleas, 2 vols., 1838—1839	Eng.
Asp. M. L. C.	Arnold and Hodges' Reports, Queen's Bench, 1 vol., 1840—1841	Eng.
Atk.	Ashburner's Principles of Equity, 1902	Eng.
Ayl. Pan.	Aspinall's Maritime Law Cases, 1870—(current)	Eng.
Ayl. Par.	Atkins' Reports, Chancery, 3 vols., 1736—1754	Eng.
B.	Ayliffe's New Pandect of Roman Civil Law	Eng.
B.	Ayliffe's Parergon Juris Canonici Anglicani	Eng.
B. & Ald.	Barber's Gold Law	S. Af.
B. & C.	Barnewall and Adolphus' Reports, King's Bench, 5 vols., 1830—1822	Eng.
B. & C. R. (preceded by date)	Barnewall and Alderson's Reports, King's Bench, 5 vols., 1817—1822	Eng.
B. & S.	Barnewall and Cresswell's Reports, King's Bench, 10 vols., 1822	Eng.
B. C. R.	Reports of Bankruptcy and Companies Winding up Cases, 1918—(current) (<i>e.g.</i> , [1918—19] B. & C. R.)	Eng.
B. Dig.	Best and Smith's Reports, Queen's Bench, 10 vols., 1861—1870	Eng.
B. L. R.	British Columbia Reports	Can.
B. L. R. A. C.	Bose's Digest	Ind.
B. L. R. P. C.	Bengal Law Reports	Ind.
B. L. R. Sup. Vol.	Bengal Law Reports, Appeal Cases	Ind.
B. W. C. C.	Bengal Law Reports, Privy Council	Ind.
Bac. Abr.	Bengal Law Reports, Supp. Vol.	Ind.
Bail Ct. Cas.	Butterworths' Workmen's Compensation Cases, 1907—(current)	Eng.
Ball & B.	Bacon's Abridgment	Eng.
	Bail Court Cases (Lowndes and Maxwell), 1 vol., 1852—1854	Eng.
	Baildon's Select Cases in Chancery (Selden Society, Vol. X.)	Eng.
	Ball and Beatty's Reports, Chancery (Ireland), 2 vols., 1807—1814	Ir.

Cl. & Sc. Dr. Cas.	Clark and Scully's Drainage Cases	...	...	...	...	Can.
Clay.	Clayton's Reports and Pleas of Assizes at Yorke, 1 vol., 1631—1650	...	...	...	...	Eng.
Clif. & Rick.	Clifford and Rickards' Locus Standi Reports, 3 vols., 1873—1884	...	...	...	...	Eng.
Clif. & Steph.	Clifford and Stephens' Locus Standi Reports, 2 vols., 1867—1872	...	...	...	...	Eng.
Co. A.	Cook's Lower Canada Admiralty Court Cases	...	...	...	...	Can.
Co. Ent.	Coke's Entries	...	...	...	...	Eng.
Co. Inst.	Coke's Institutes	...	...	...	...	Eng.
Co. L. J.	Colonial Law Journal	...	...	...	...	N.Z.
Co. Litt.	Coke on Littleton (1 Inst.)	...	...	...	...	Eng.
Co. Rep.	Coke's Reports, 13 parts, 1572—1616	...	...	...	...	Eng.
Coch.	Nova Scotia Reports (Cochran)	...	...	...	...	Can.
Cockb. & Rowe	Cockburn and Rowe's Election Cases, 1 vol., 1833	...	...	...	...	Eng.
Coll.	Collyer's Reports, Chancery, 2 vols., 1844—1846	...	...	...	...	Eng.
Coll. Jurid.	Collectanea Juridica, 2 vols.	...	...	...	...	Eng.
Colles	Colles' Cases in Parliament, 1 vol., 1697—1713	...	...	...	...	Eng.
Colt.	Coltman's Registration Cases, 1 vol., 1879—1885	...	...	...	...	Eng.
Com.	Comyns' Reports, King's Bench, Common Pleas, and Exchequer, fol., 2 vols., 1695—1740	...	...	...	...	Eng.
Com. Cas.	Commercial Cases, 1895—(current)	...	...	...	...	Eng.
Com. Dig.	Comyns' Digest	...	...	...	...	Eng.
Comb.	Comberbach's Reports, King's Bench, fol., 1 vol., 1685—1698	...	...	...	...	Eng.
Con. & Law.	Connor and Lawson's Reports, Chancery (Ireland), 2 vols.,	...	...	...	...	Ir.
Cong. Dig.	Congdon's Digest	...	...	...	...	Can.
Cooke & Al.	Cooke and Alcock's Reports, King's Bench (Ireland), 1 vol., 1833—1834	...	...	...	...	Ir.
Cooke, Pr. Cas.	Cooke's Practice Reports, Common Pleas, 1 vol., 1706—1747	...	...	...	...	Eng.
Cooke, Pr. Reg.	Cooke's Practical Register of the Common Pleas, 1 vol., 1702—1742	...	...	...	...	Eng.
Coop. G.	G. Cooper's Reports, Chancery, 1 vol., 1792—1815	...	...	...	...	Eng.
Coop. Pr. Cas.	C. P. Cooper's Reports, Chancery Practice, 1 vol., 1837—1838	...	...	...	...	Eng.
Coop. temp. Brough.	C. P. Cooper's Cases temp. Brougham, Chancery, 1 vol., 1833—1834	...	...	...	...	Eng.
Coop. temp. Cott.	C. P. Cooper's Cases temp. Cottenham, Chancery, 2 vols., 1846—1848 (and miscellaneous earlier cases)	...	...	...	...	Eng.
Cor.	Coryton's Reports	...	...	...	...	Ind.
Corb. & D.	Corbett and Daniell's Election Cases, 1 vol., 1819	...	...	...	...	Eng.
Correspondances Jud.	Correspondances Judiciaires	...	...	...	...	Can.
Couper	Couper's Justiciary Reports (Scotland), 5 vols., 1868—1885	...	...	...	...	Scot.
Cout.	Coutlees' Unreported Cases	...	...	...	...	Can.
Cout. Dig.	Coutlees' Digest	...	...	...	...	Can.
Cowp.	Cowper's Reports, King's Bench, 2 vols., 1774—1778	...	...	...	...	Eng.
Cox & Atk.	Cox and Atkinson's Registration Appeal Cases, 1 vol., 1843—1846	...	...	...	...	Eng.
Cox, C. C.	E. W. Cox's Criminal Law Cases, 1843—(current)	...	...	...	...	Eng.
Cox, Eq. Cas.	S. C. Cox's Equity Cases, 2 vols., 1745—1797	...	...	...	...	Eng.
Cox, M. & H.	Cox, Macrae, and Hertslet's County Courts Cases and Appeals, 1 vol., 1846—1852	...	...	...	...	Eng.
Cr. & J.	Crompton and Jervis's Reports, Exchequer, 2 vols., 1830—1832	...	...	...	...	Eng.
Cr. & M.	Crompton and Meeson's Reports, Exchequer, 2 vols., 1832—1834	...	...	...	...	Eng.
Cr. & Ph.	Craig and Phillips' Reports, Chancery, 1 vol., 1840—1841	...	...	...	...	Eng.
Cr. App. Rep.	Cohen's Criminal Appeal Reports, 1908—(current)	...	...	...	...	Eng.
Cr. M. & R.	Crompton, Meeson, and Roscoe's Reports, Exchequer, 2 vols., 1835—1835	...	...	...	...	Eng.
Craw. & D.	Crawford and Dix's Circuit Cases (Ireland), 3 vols., 1838—1846	...	...	...	...	Ir.
Craw. & D. Abr. C.	Crawford and Dix's Abridged Cases (Ireland), 1 vol., 1837—1838	...	...	...	...	Ir.
Cress. Insolv. Cas.	Cresswell's Insolvency Cases, 1 vol., 1827—1829	...	...	...	...	Eng.
Cripps' Church Cas.	Cripps' Church and Clergy Cases, 2 parts, 1847—1850	...	...	...	...	Eng.
Cro. Car.	Croke's Reports temp. Charles I., King's Bench and Common Pleas, 1 vol., 1625—1641	...	...	...	...	Eng.
Cro. Eliz.	Croke's Reports temp. Elizabeth, King's Bench and Common Pleas, 1 vol., 1582—1603	...	...	...	...	Eng.
Cro. Jac.	Croke's Reports temp. James I., King's Bench and Common Pleas, 1 vol., 1603—1625	...	...	...	...	Eng.
Cru. Dig.	Cruise's Digest of the Law of Real Property, 7 vols.	...	...	...	...	Eng.
Cunn.	Cunningham's Reports, King's Bench, fol., 1 vol., 1734—1735	...	...	...	...	Eng.
Curt.	Curteis' Ecclesiastical Reports, 3 vols., 1834—1844	...	...	...	...	Eng.
	Duxbury's Reports of the High Court of the South African Republic	...	...	...	...	S. Af.
D. C. A.	Dorion's Queen's Bench Reports	...	...	...	...	Can.
D. L. R.	Dominion Law Reports	...	...	...	...	Can.
Dalr.	Dalison's Reports, Common Pleas, fol., 1 vol., 1546—1574	...	...	...	...	Eng.
	Dalrymple's Decisions, Court of Session (Scotland), fol., 1 vol., 1698—1720	Scot.

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Dan. ...	Daniell's Reports, Exchequer in Equity, 1 vol., 1817—1823 ...	Eng.
Dan. & Ll. ...	Danson and Lloyd's Mercantile Cases, 1 vol., 1828—1829 ...	Eng.
Dav. & Mer. ...	Davison and Merivale's Reports, Queen's Bench, 1 vol., 1843—1844 ...	Eng.
Dav. Ir. ...	Davys' (or Davis' or Davy's) Reports (Ireland), 1 vol., 1604—1611 ...	Ir.
Dav. Pat. Cas. ...	Davies' Patent Cases, 1 vol., 1785—1816 ...	Eng.
Day ...	Day's Election Cases, 1 vol., 1892—1893 ...	Eng.
Dea. & Sw. ...	Deane and Swabey's Ecclesiastical Reports, 1 vol., 1855—1857 ...	Eng.
Deac. ...	Deacon's Reports, Bankruptcy, 4 vols., 1834—1840 ...	Eng.
Deac. & Ch. ...	Deacon and Chitty's Reports, Bankruptcy, 4 vols., 1832—1835 ...	Eng.
Dears. & B. ...	Dearsley and Bell's Crown Cases Reserved, 1 vol., 1856—1858 ...	Eng.
Dears. C. C. ...	Dearsley's Crown Cases Reserved, 1 vol., 1852—1856 ...	Eng.
Deas & And. ...	Deas and Anderson's Decisions (Scotland), 5 vols., 1829—1832 ...	Scot.
De G.	De Gex's Reports, Bankruptcy, 2 vols., 1844—1848 ...	Eng.
De G. & J. ...	De Gex and Jones's Reports, Chancery, 4 vols., 1857—1859 ...	Eng.
De G. & Sm. ...	De Gex and Smale's Reports, Chancery, 5 vols., 1846—1852 ...	Eng.
De G. F. & J. ...	De Gex, Fisher and Jones's Reports, Chancery, 4 vols., 1859—1865 ...	Eng.
De G. J. & Sm. ...	De Gex, Jones, and Smith's Reports, Chancery, 4 vols., 1862—1865 ...	Eng.
De G. M. & G. ...	De Gex, Macnaghten and Gordon's Reports, Chancery, 8 vols., 1832—1835 ...	Eng.
Delane ...	Delane's Decisions, Revision Courts, 1 vol., 1832—1835 ...	Eng.
Den. ...	Denison's Crown Cases Reserved, 2 vols., 1844—1852 ...	Eng.
Dick. ...	Dickens' Reports, Chancery, 2 vols., 1559—1798 ...	Eng.
Dirl. ...	Dirleton's Decisions, Court of Session (Scotland), fol., 1 vol., 1811—1822 ...	Scot.
Dods. ...	Dodson's Reports, Admiralty, 2 vols., 1811—1822 ...	Eng.
Donnelly ...	Donnelly's Reports, Chancery, 1 vol., 1836—1837 ...	Eng.
Doug. El. Cas. ...	Douglas' Election Cases, 4 vols., 1774—1776 ...	Eng.
Doug. K. B. ...	Douglas' Reports, King's Bench, 4 vols., 1778—1785 ...	Eng.
Dow ...	Dow's Reports, House of Lords, 6 vols., 1812—1818 ...	Eng.
Dow & Cl. ...	Dow and Clark's Reports, House of Lords, 2 vols., 1827—1832 ...	Eng.
Dow. & L. ...	Dowling and Lowndes' Practice Reports, 7 vols., 1843—1849 ...	Eng.
Dow. & Ry. K. B. ...	Dowling and Ryland's Reports, King's Bench, 9 vols., 1822—1827 ...	Eng.
Dow. & Ry. M. C. ...	Dowling and Ryland's Magistrates' Cases, 4 vols., 1822—1827 ...	Eng.
Dow & Ry. N. P. ...	Dowling and Ryland's Reports, Nisi Prius, 1 part, 1822—1823 ...	Eng.
Dowl. ...	Dowling's Practice Reports, 9 vols., 1830—1841 ...	Eng.
Dowl. N. S. ...	Dowling's Practice Reports, New Series, 2 vols., 1841—1843 ...	Eng.
Dr. & Wal. ...	Drury and Walsh's Reports, Chancery (Ireland), 2 vols., 1837—1841 ...	Ir.
Dr. & War. ...	Drury and Warren's Reports, Chancery (Ireland), 4 vols., 1841—1843 ...	Ir.
Drew. ...	Draper's King's Bench Reports ...	Can.
Drew. & Sm. ...	Drewry's Reports, Chancery, 4 vols., 1852—1859 ...	Eng.
Drinkwater ...	Drewry and Smale's Reports, Chancery, 2 vols., 1859—1865 ...	Eng.
Drury temp. Nap. ...	Drinkwater's Reports, Common Pleas, 1 vol., 1840—1841 ...	Eng.
Drury temp. Sug. ...	Drury's Reports temp. Napier, Chancery (Ireland), 1 vol., 1858—1859 ...	Ir.
Dugd. Orig. ...	Drury's Reports temp. Sugden, Chancery (Ireland), 1 vol., 1841—1844 ...	Ir.
Dunl. (Ct. of Sess.) ...	Dugdale's Origines Juridiciales ...	Eng.
Dunning ...	Dunlop, Court of Session Cases (Scotland), 2nd Series, 24 vols., 1753—1754 ...	Scot.
Durie ...	Dunning's Reports, King's Bench, 1 vol., 1753—1754 ...	Eng.
Dyer ...	Durie's Decisions, Court of Session (Scotland), fol., 1 vol., 1621—1642 ...	Scot.
E. & A. ...	Dyer's Reports, King's Bench, 3 vols., 1513—1581 ...	Eng.
E. & B. ...	Upper Canada Error and Appeal ...	Can.
E. & E. ...	Ellis and Blackburn's Reports, Queen's Bench, 8 vols., 1852—1858 ...	Eng.
E. B. & E. ...	Ellis and Ellis's Reports, Queen's Bench, 3 vols., 1858—1861 ...	Eng.
E. D. C. ...	Ellis, Blackburn, and Ellis's Reports, Queen's Bench, 1 vol., 1858—1860 ...	Eng.
E. D. L. ...	Reports of the Eastern Districts Court (Cape) from 1880 ...	S. Af.
E. L. R. ...	South African Law Reports, Eastern Districts Local Division ...	S. Af.
E. R. (or Eng. Rep.) ...	Eastern Law Reporter ...	Can.
J. & Y. ...	English Reports ...	Eng.
East ...	Ontario Election Reports ...	Can.
East, P. C. ...	Eagle and Younge's Tithe Cases, 4 vols., 1204—1825 ...	Eng.
Ecc. & Ad. ...	East's Reports, King's Bench, 16 vols., 1800—1812 ...	Eng.
	East's Pleas of the Crown ...	Eng.
	Spinks' Ecclesiastical and Admiralty Reports, 2 vols., 1853—1855 ...	Eng.

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Eden	Eden's Reports, Chancery, 2 vols., 1757—1766	Eng.
Edgar	Edgar's Decisions, Court of Session (Scotland), fol., 1724—1725	Scot.
Edw.	...	...	Edwards' Reports, Admiralty, 1 vol., 1808—1812	...	...	Eng.
Elchies	...	...	Elchies' Decisions, Court of Session (Scotland), 2 vols., 1733—1754	...	...	Scot.
Emden's B. C.	..	...	Emden's Building Contracts, Building Leases and Building Statutes	...	...	Eng.
Eng. Pr. Cas.	..	...	Roscoe's English Prize Cases, 2 vols., 1745—1858	...	...	Eng.
Eq. Cas. Abr.	.	...	Abridgment of Cases in Equity, fol., 2 vols., 1667—1744	...	...	Eng.
Eq. Rep.	.	...	Equity Reports, 3 vols., 1853—1855	...	...	Eng.
Esp.	...	...	Espinasse's Reports, Nisi Prius, 6 vols., 1793—1810	...	...	Eng.
Ex. D.	...	...	Law Reports, Exchequer Division, 5 vols., 1875—1880	...	...	Eng.
Exch.	...	...	Exchequer Reports (Welsby, Hurlstone, and Gordon), 11 vols., 1847—1856	...	...	Eng.
Exch. C. R.	...	...	Exchequer Court Reports	...	...	Can.
F. (Ct. of Sess.)			Fraser, Court of Session Cases (Scotland), 5th series, 1898—1906			Scot.
F.	...		Foord's Reports of the Supreme Court of the Cape of Good Hope, 1879—1880	...	...	S. Af.
F. & F.	...		Foster and Finlason's Reports, Nisi Prius, 4 vols., 1856—1867	...	...	Eng.
F. N. D.			Finnemore's Notes and Digest of Natal Cases, 1863—1867	...	...	S. Af.
Fac. Coll.			Faculty of Advocates, Collection of Decisions, Court of Session (Scotland), 38 vols., 1752—1841	...	...	Scot.
Falc.	...		Falconer's Decisions, Court of Session (Scotland), 2 vols., fol. 1744—1751	...	...	Scot.
Falc. & Fitz.	.		Falconer and Fitzherbert's Election Cases, 1 vol., 1835—1838	...	...	Eng.
Fenton	...		Fenton, Important Judgments	...	...	N.Z.
Ferg.	...		Ferguson's Consistorial Decisions (Scotland), 1 vol., 1811—1817	...	...	Scot.
Fitz. Nat. Brev.			Fitzherbert's Natura Brevium	...	...	Eng.
Fitz-G.	...		Fitz-Gibbons' Reports, King's Bench, fol., 1 vol., 1727—1731	...	...	Eng.
Fl. & K.	...		Flanagan and Kelly's Reports, Rolls Court (Ireland), 1 vol.,			Ir.
Fonbl.	...		Fonblanque's Reports, Bankruptcy, 2 parts, 1849—1852	...	...	Eng.
For.	...		Forrest's Reports, Exchequer, 1 vol., 1800—1801	...	...	Eng.
Forb.	...		Forbes' Decisions, Court of Session (Scotland), fol., 1 vol., 1705—1713	...	...	Scot.
Fort. De Laud.			Fortesque, De Laudibus Legum Angliæ	...	...	Eng.
Fortes. Rep.	.		Fortescue's Reports, fol., 1 vol., 1692—1736	...	...	Eng.
Fost.	...		Foster's Crown Cases, 1 vol., 1708—1760	...	...	Eng.
Fount.	...		Fountainhall's Decisions, Court of Session (Scotland), fol., 2 vols., 1678—1712	...	...	Scot.
Fox & S. Ir.	.		M. C. Fox and T. B. C. Smith's Reports, King's Bench (Ireland), 2 vols., 1822—1825	...	...	Ir.
Fox & S. Reg.	..		J. S. Fox and C. L. Smith's Registration Cases, 1 vol., 1886—1895	...	...	Eng.
Fras.	...		Fraser (Simon), Election Cases, 2 vols., 1793	...	...	Eng.
Freem. Ch.	..		Freeman's Reports, Chancery, 1 vol., 1660—1706	...	...	Eng.
Freem. K. B.	..		Freeman's Reports, King's Bench and Common Pleas, 1 vol., —1704	...	...	Eng.
G.	...		Gregorowski's Reports of the High Court of the Orange Free State from 1883	...	...	S. Af.
G. & R.			Nova Scotia Reports (Geldert & Russell)	...	...	Can.
G. I. Dig.			General Index Digest	...	...	Can.
Gal. & Dav.			Gale and Davison's Reports, Queen's Bench, 3 vols., 1841—1843	...	...	Eng.
Gale	...		Gale's Reports, Exchequer, 2 vols., 1835—1836	...	...	Eng.
Gaz. L. R.			New Zealand Gazette Law Reports	...	...	N.Z.
Geld. Dig.			Geldert's Digest	...	...	Can.
Gib. Cod.			Gibson's Codex Juris Ecclesiastici Anglicani	...	...	Eng.
Giff.	...		Giffard's Reports, Chancery, 5 vols., 1857—1865	...	...	Eng.
Gilb.	...		Gilbert's Cases in Law and Equity, 1 vol., 1713—1714	...	...	Eng.
Gilb. C. P.			Gilbert's History and Practice of the Court of Common Pleas	...	...	Eng.
Gilb. Ch.			Gilbert's Reports, Chancery and Exchequer, fol., 1 vol., 1706—1726	...	...	Eng.
Gilm. & F.			Gilmour and Falconer's Decisions, Court of Session (Scotland), 2 parts, Part I. (Gilmour) 1661—1666, Part II. (Falconer) 1681—1686	...	...	Scot.
Gl. & J.	...		Glyn and Jameson's Reports, Bankruptcy, 2 vols., 1819—1828	...	...	Eng.
Glanv.	...		Glanville, De Legibus et Consuetudinibus Regni Angliæ	...	...	Eng.
Glanv. El. Cas.	...		Glanville's Election Cases, 1 vol., 1623—1624	...	...	Eng.
Glascok	...		Glascok's Reports (Ireland), 1 vol., 1831—1832	...	...	Ir.
Godb.	...		Godbolt's Reports, King's Bench, Common Pleas, and Exchequer, 1 vol., 1574—1637	...	...	Eng.
Gouldsb.	...		Gouldsborough's Reports, Queen's Bench and King's Bench, 1 vol., 1586—1601	...	...	Eng.
Gow	...		Gow's Reports, Nisi Prius, 1 vol., 1818—1820	...	...	Eng.

Griffin's Patent Cases ...	Upper Canada Chancery (Grant) ...	Can.
Gwill. ...	Griffin's Patent Cases, 1884—1887 ...	Eng.
	Gwillim's Tithe Cases, 4 vols., 1224—1824 ...	Eng.
	Hertzog's Reports of the High Court of the South African Republic, 1893 ...	S. Af.
H. & C. ...	Hurlstone and Coltman's Reports, Exchequer, 4 vols., 1862—	Eng.
H. & N. ...	Hurlstone and Norman's Reports, Exchequer, 7 vols., 1856—	Eng.
H. & Tw. ...	Hall and Twells' Reports, Chancery, 2 vols., 1848—1850 ...	Eng.
H. & W. ...	Hurlstone and Walmsley's Reports, Exchequer, 1 vol., 1840—1841 ...	Eng.
H. B. R. (preceded by date)	Hansell's Reports of Bankruptcy and Companies' Winding Up Cases, 3 vols., 1915—1917 (<i>e.g.</i> , [1915] H. B. R.) ...	Eng.
H. C. ...	Reports of the High Court of Griqualand West ...	S. Af.
H. E. C. ...	Hodgin's Election Reports ...	Can.
H. L. Cas. ...	Clark's Reports, House of Lords, 11 vols., 1847—1866 ...	Eng.
Hag. Adm. ...	Haggard's Reports, Admiralty, 3 vols., 1822—1838 ...	Eng.
Hag. Con. ...	Haggard's Consistorial Reports, 2 vols., 1789—1821 ...	Eng.
Hag. Ecc. ...	Haggard's Ecclesiastical Reports, 4 vols., 1827—1833 ...	Eng.
Hailes ...	Hailes's Decisions, Court of Session (Scotland), 2 vols., 1766—1791 ...	Scot.
Hale, C. L. ...	Hale's Common Law ...	Eng.
Hale, P. C. ...	Hale's Pleas of the Crown, 2 vols. ...	Eng.
Han. ...	New Brunswick Reports (Hannay) ...	Can.
Har. & Ruth. ...	Harrison and Rutherford's Reports, Common Pleas, 1 vol., 1865—1866 ...	Eng.
Har. & W. ...	Harrison and Wollaston's Reports, King's Bench and Bail Court, 2 vols., 1835—1836 ...	Eng.
	Harcarse's Decisions, Court of Session (Scotland), fol., 1 vol., 1681—1691 ...	Scot.
Hard. ...	Hardres' Reports, Exchequer, fol., 1 vol., 1655—1669 ...	Eng.
Hare ...	Hare's Reports, Chancery, 11 vols., 1841—1853 ...	Eng.
Hawk. P. C. ...	Hawkins's Pleas of the Crown, 2 vols. ...	Eng.
Hay ...	Hay's Reports ...	Ind.
Hay & Marr. ...	Hay & Marriott's Decisions, Admiralty, 1 vol., 1776—1779 ...	Eng.
Hayes ...	Hayes's Reports, Exchequer (Ireland), 1 vol., 1830—1832 ...	Ir.
Hayes & Jo. ...	Hayes and Jones's Reports, Exchequer (Ireland), 1 vol., 1832—1834 ...	Ir.
Hem. & M. ...	Hemming and Miller's Reports, Chancery, 2 vols., 1862—1865 ...	Eng.
	Hetley's Reports, Common Pleas, fol., 1 vol., 1627—1631 ...	Eng.
Hob. ...	Hobart's Reports, Common Pleas, fol., 1 vol., 1613—1625 ...	Eng.
Hodg. ...	Hodges' Reports, Common Pleas, 3 vols., 1835—1837 ...	Eng.
Hog. ...	Hogan's Reports, Rolls Court (Ireland), 2 vols., 1816—1834 ...	Ir.
Holt, Adm. ...	W. Holt's Rule of the Road Cases, Admiralty, 1 vol., 1863—1867 ...	Eng.
Holt, Eq. ...	W. Holt's Equity Reports, 2 vols., 1845 ...	Eng.
Holt, K. B. ...	Sir John Holt's Reports, King's Bench, fol., 1 vol., 1688—1710 ...	Eng.
Holt, N. P. ...	F. Holt's Reports, Nisi Prius, 1 vol., 1815—1817 ...	Eng.
Home, Ct. of Sess. ...	Home's Decisions, Court of Session (Scotland), fol., 1 vol., 1735—1744 ...	Scot.
Hong Kong L. R. ...	Hong Kong Reports ...	Hong Kong
Hop. & Colt. ...	Hopwood and Coltman's Registration Cases, 2 vols., 1868—1878 ...	Eng.
Hop. & Ph. ...	Hopwood and Philbrick's Registration Cases, 1 vol., 1863—1867 ...	Eng.
Horn & H. ...	Horn and Hurlstone's Reports, Exchequer, 2 vols., 1838—1839 ...	Eng.
Hov. Supp. ...	Hovenden's Supplement to Vesey Jun.'s Reports, Chancery, 2 vols., 1753—1817 ...	Eng.
How. C. ...	Howard's Chancery Practice ...	Ir.
How. C. S. ...	Howard's Supplement to Rules, etc., of the High Court of Chancery in Ireland ...	Ir.
How. E. E. ...	Howard's Equity Exchequer ...	Ir.
How. P. L. ...	Howard on the Popery Laws ...	Ir.
Hud. & B. ...	Hudson and Brooke's Reports, King's Bench and Exchequer (Ireland), 2 vols., 1827—1831 ...	Ir.
Hudson's B. C. ...	Hudson on Building Contracts, 2 vols. ...	Eng.
Hume ...	Hume's Decisions, Court of Session (Scotland), 1 vol., 1781—1822 ...	Scot.
Hut. ...	Hutton's Reports, Common Pleas, fol., 1 vol., 1617—1638 ...	Eng.
Hy. Bl. ...	Henry Blackstone's Reports, Common Pleas, 2 vols., 1788—1796 ...	Eng.
Hyde ...	Hyde's Reports ...	Ind.
I. C. L. R. ...	Irish Common Law Reports, 17 vols., 1849—1866 ...	Ir.
I. Ch. R. ...	Irish Chancery Reports, 17 vols., 1850—1867 ...	Ir.
I. Eq. R. ...	Irish Equity Reports, 13 vols., 1838—1851 ...	Ir.
I. L. R. ...	Irish Law Reports, 13 vols., 1838—1851 ...	Ir.
I. L. R. (Vol.) All. ...	Indian Law Reports, Allahabad ...	Ind.

xx REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

I. L. R. (Vol.) Bom.	...	Indian Law Reports, Bombay	...	...	...	...	Ind.
I. L. R. (Vol.) Calc.	...	Indian Law Reports, Calcutta	...	...	...	...	Ind.
I. L. R. (Vol.) Lah.	...	Indian Law Reports, Lahore	...	...	...	...	Ind.
I. L. R. (Vol.) Mad.	...	Indian Law Reports, Madras	...	...	...	...	Ind.
I. L. T. ...	...	Irish Law Times, 1867—(current)	...	...	...	...	Ir.
I. L. T. Jo.	...	Irish Law Times Journal, 1867—(current)	...	...	...	...	Ir.
I. R. (preceded by date)	...	Irish Reports, since 1893 (<i>e.g.</i> [1894] 1 I. R.)	...	...	...	...	Ir.
I. R. (Vol.) C. L.	...	Irish Reports, Common Law, 11 vols., 1866—1877	...	...	...	...	Ir.
I. R. Eq.	...	Irish Reports, Equity, 11 vols., 1866—1877	...	...	...	...	Ir.
Ind. Awards	...	Industrial Awards Recommendations	...	...	...	...	N.Z.
Ind. Jur. N. S.	...	Indian Jurist, New Series	...	...	...	...	Ind.
Ind. Jur. O. S.	...	Indian Jurist, Old Series	...	...	...	...	Ind.
Ir. Cir. Rep.	...	Reports of Irish Circuit Cases, 1 vol., 1841—1843	...	...	...	...	Ir.
Ir. Jur.	...	Irish Jurist, 18 vols., 1849—1866	...	...	...	...	Ir.
Ir. L. Rec. 1st ser.	...	Law Recorder (Ireland), 1st series, 4 vols., 1827—1831	...	...	...	...	Ir.
Ir. L. Rec. N. S.	...	Law Recorder (Ireland), New Series, 6 vols., 1833—1838	...	...	...	...	Ir.
Irv.	...	Irvine's Justiciary Reports (Scotland), 5 vols., 1852—1867	...	...	...	...	Scot.
J. Bridg.	...	Sir John Bridgman's Reports, Common Pleas, fol., 1 vol., 1613—1621	...	...	...	...	Eng.
J. D. R.	...	Juta's Daily Reporter, reporting Cases in the Cape Provincial Division	...	...	...	...	S. Af.
J. P.	...	Justice of the Peace, 1837—(current)	...	...	...	...	Eng.
J. P. Jo.	...	Justice of the Peace (Weekly Notes of Cases)	...	...	...	...	Eng.
J. R.	...	Jurist Reports	...	...	...	...	N.Z.
J. R. N. S.	...	Jurist Reports, New Series	...	...	...	...	N.Z.
J. Shaw, Just.	...	J. Shaw's Justiciary Reports (Scotland), 1 vol., 1848—1852	...	...	...	...	Scot.
Jac.	...	Jacob's Reports, Chancery, 1 vol., 1821—1823	...	...	...	...	Eng.
Jac. & W.	...	Jacob and Walker's Reports, Chancery, 2 vols., 1819—1821	...	...	...	...	Eng.
James	...	Nova Scotia Reports (James)	...	...	...	...	Can.
Jebb & B.	...	Jebb and Bourke's Reports, Queen's Bench (Ireland), 1 vol., 1841—1842	...	...	...	...	Ir.
Jebb & S.	...	Jebb and Symes' Reports, Queen's Bench (Ireland), 2 vols., 1838—1841	...	...	...	...	Ir.
Jebb, C. C.	...	Jebb's Crown Cases Reserved (Ireland), 1 vol., 1822—1840	...	...	...	...	Ir.
Jebb, Cr. & Pr. Cas.	...	Jebb's Crown and Presentment Cases	...	...	...	...	Ir.
Jenk.	...	Jenkins' Reports, 1 vol., 1220—1623	...	...	...	...	Eng.
Jo. & Car.	...	Jones and Carey's Reports, Exchequer (Ireland), 1 vol., 1838—1839	...	...	...	...	Eng.
Jo. & Lat.	...	Jones and La Touche's Reports, Chancery (Ireland), 3 vols., 1844—1846	...	...	...	...	Ir.
Jo. Ex. Ir.	...	T. Jones' Reports, Exchequer (Ireland), 2 vols., 1834—1838	...	...	...	...	Ir.
John.	...	Johnson's Reports, Chancery, 1 vol., 1858—1860	...	...	...	...	Eng.
John. & H.	...	Johnson and Hemming's Reports, Chancery, 2 vols., 1859—1862	...	...	...	...	Eng.
Jur.	...	Jurist Reports, 18 vols., 1837—1854	...	...	...	...	Eng.
Jur. N. S.	...	Jurist Reports, New Series, 12 vols., 1855—1867	...	...	...	...	Eng.
K.	...	Kotze's Reports of the High Court of the Transvaal Province, 1877—1881	...	...	...	...	S. Af.
K. & G.	...	Keane and Grant's Registration Cases, 1 vol., 1854—1862	...	...	...	...	Eng.
K. & J.	...	Kay and Johnson's Reports, Chancery, 4 vols., 1854—1858	...	...	...	...	Eng.
K. B. (preceded by date)	...	Law Reports, King's Bench Division, since 1900 (<i>e.g.</i> , [1901] 2 K. B.)	...	...	...	...	Eng.
Kames, Dict. Dec.	...	Kames, Dictionary of Decisions, Court of Session (Scotland), fol., 2 vols., 1540—1741	...	...	...	...	Scot.
Kames, Rem. Dec.	...	Kames, Remarkable Decisions, Court of Session (Scotland), 2 vols., 1716—1752	...	...	...	...	Scot.
Kames, Sel. Dec.	...	Kames, Select Decisions, Court of Session (Scotland), 1 vol., 1752—1768	...	...	...	...	Scot.
Kay	...	Kay's Reports, Chancery, 1 vol., 1853—1854	...	...	...	...	Eng.
Keb.	...	Keble's Reports, fol., 3 vols., 1661—1677	...	...	...	...	Eng.
Keen	...	Keen's Reports, Rolls Court, 2 vols., 1836—1838	...	...	...	...	Eng.
Keil.	...	Keilwey's Reports, King's Bench, fol., 1 vol., 1327—1578	...	...	...	...	Eng.
Kel.	...	Sir John Kelyng's Reports, Crown Cases, fol., 1 vol., 1662—1707	...	...	...	...	Eng.
Kel. W.	...	W. Kelynge's Reports, fol., 1 vol., Chancery, 1730—1732 ; King's Bench, fol., 1731—1734	...	...	...	...	Eng.
Keny.	...	Kenyon's Notes of Cases, King's Bench, 2 vols., 1753—1759	...	...	...	...	Eng.
Keny. Ch.	...	Chancery Cases in Vol. II. of Kenyon's Notes of Cases, 1753—1754	...	...	...	...	Eng.
Kerr	...	New Brunswick Reports (Kerr)	...	...	...	...	Can.
Kilkerran	...	Kilkerran's Decisions, Court of Session (Scotland), fol., 1 vol., 1738—1752	...	...	...	...	Scot.
Kn. & Omb.	...	Knapp and Ombler's Election Cases, 1 vol., 1834—1835	...	...	...	...	Eng.
Knapp	...	Knapp's Reports, Privy Council, 3 vols., 1829—1836	...	...	...	...	Eng.
Knox	...	Knox's Reports	...	...	...	...	Aus.
Konst. & W. Rat. App.	...	Konstam and Ward's Reports of Rating Appeals, 1 vol., 1909—1912	Eng.
Konst. Rat. App.	...	Konstam's Reports of Rating Appeals, 2 vols., 1904—1908	Eng.

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L. & G. temp. Plunk.	...	Lloyd and Goold's Reports temp. Plunkett, Chancery (Ireland), 1 vol., 1834—1839	I.
L. & G. temp. Sugd.	...	Lloyd and Goold's Reports temp. Sugden, Chancery (Ireland), 1 vol., 1835	I.
L. & Welsb.	...	Lloyd and Welsby's Commercial and Mercantile Cases, 1 vol., 1829—1830	Eng.
L. C. & M. Gaz.	...	Local Courts and Municipal Gazette	Can.
L. C. J.	...	Lower Canada Jurist	Can.
L. O. L. J.	...	Lower Canada Law Journal	Can.
L. C. R.	...	Lower Canada Reports	Can.
L. G. R.	...	Local Government Reports, 1902—(current)	Eng.
L. J. Adm.	...	Law Journal, Admiralty, 1865—1875	Eng.
L. J. Bcy.	...	Law Journal, Bankruptcy, 1832—1880	Eng.
L. J. C. C.	...	Law Journal (County Courts Reporter), 1912—(current)	Eng.
L. J. C. P.	...	Law Journal, Common Pleas, 1831—1875	Eng.
L. J. Ch.	...	Law Journal, Chancery, 1831—(current)	Eng.
L. J. Eccl.	...	Law Journal, Ecclesiastical Cases, 1866—1875	Eng.
L. J. Ex.	...	Law Journal, Exchequer, 1831—1875	Eng.
L. J. Ex. Eq.	...	Law Journal, Exchequer in Equity, 1835—1841	Eng.
L. J. K. B. or Q. B.	...	Law Journal, King's Bench or Queen's Bench, 1831—(current)	Eng.
L. J. M. C.	...	Law Journal, Magistrates' Cases, 1831—1896	Eng.
L. J. N. C.	...	Law Journal, Notes of Cases, 1866—1892 (from 1893, see Law Journal)	Eng.
L. J. O. S.	...	Law Journal, Old Series, 10 vols., 1822—1831	Eng.
L. J. P.	...	Law Journal, Probate, Divorce and Admiralty, 1875—(current)	Eng.
L. J. P. & M.	...	Law Journal, Probate and Matrimonial Cases, 1858—1859, 1866—1875	Eng.
L. J. P. C.	...	Law Journal, Privy Council, 1865—(current)	Eng.
L. J. P. M. & A.	...	Law Journal, Probate, Matrimonial and Admiralty, 1860—1865	Eng.
L. Jo.	...	Law Journal Newspaper, 1866—(current)	Eng.
L. L. R.	...	Leader Law Reports	S. Af.
L. M. & P.	...	Lowndes, Maxwell, and Pollock's Reports, Bail Court and Practice, 2 vols., 1850—1851	Eng.
L. N.	...	Legal News	Can.
L. R. A. & E.	...	Law Reports, Admiralty and Ecclesiastical Cases, 4 vols., 1865 —1875	Eng.
L. R. C. C. R.	...	Law Reports, Crown Cases Reserved, 2 vols., 1865—1875	Eng.
L. R. C. P.	...	Law Reports, Common Pleas, 10 vols., 1865—1875	Eng.
L. R. Eq.	...	Law Reports, Equity Cases, 20 vols., 1865—1875	Eng.
L. R. Exch.	...	Law Reports, Exchequer, 10 vols., 1865—1875	Eng.
L. R. H. L.	...	Law Reports, English and Irish Appeals and Peerage Claims, House of Lords, 7 vols., 1866—1875	Eng.
L. R. Ind. App.	...	Law Reports, Indian Appeals, Privy Council, 1873—(current)	Eng.
L. R. Ind. App. Supp. Vol.	...	Law Reports, India Appeals, Privy Council, Supplementary Volume, 1872—1873	Eng.
L. R. Ir.	...	Law Reports (Ireland), Chancery and Common Law, 32 vols., 1877—1893	Ir.
L. R. P. & D.	...	Law Reports, Probate and Divorce, 3 vols., 1865—1875	Eng.
L. R. P. C.	...	Law Reports, Privy Council, 6 vols., 1865—1875	Eng.
L. R. Q. B.	...	Law Reports, Queen's Bench, 10 vols., 1865—1875	Eng.
L. R. Q. B.	...	Quebec Reports, Queen's Bench	Can.
L. R. Sc. & Div.	...	Law Reports, Scotch and Divorce Appeals, House of Lords, 2 vols., 1866—1875	Eng.
L. T.	...	Law Times Reports, 1859—(current)	Eng.
L. T. Jo.	...	Law Times Newspaper, 1843—(current)	Eng.
L. T. O. S.	...	Law Times Reports, Old Series, 34 vols., 1843—1860	Eng.
L. Th.	...	La Themis	Can.
Lane	...	Lane's Reports, Exchequer, fol., 1 vol., 1605—1611	Eng.
Lat.	...	Latch's Reports, King's Bench, fol., 1 vol., 1625—1628	Eng.
Laws. Reg. Cas.	...	Lawson's Registration Cases, 1895—(current)	Eng.
Ld. Raym.	...	Lord Raymond's Reports, King's Bench and Common Pleas, 3 vols., 1694—1732	Eng.
Le. & Ca.	...	Leigh and Cave's Crown Cases Reserved, 1 vol., 1861—1865	Eng.
Leach	...	Leach's Crown Cases, 2 vols., 1730—1814	Eng.
Lee	...	Sir G. Lee's Ecclesiastical Judgments, 2 vols., 1752—1758	Eng.
Lee temp. Hard.	...	T. Lee's Cases temp. Hardwicke, King's Bench, 1 vol., 1733— 1738	Eng.
Leg. Rep.	...	Legal Reporter	Ir.
Legge	...	Legge's Reports	Aus.
Leon.	...	Leonard's Reports, King's Bench, Common Pleas and Exche- quer, fol., 4 parts, 1552—1615	Eng.
Lev.	...	Levinz's Reports, King's Bench and Common Pleas, fol., 3 vols., 1660—1696	Eng.
Lew. C. C.	...	Lewin's Crown Cases on the Northern Circuit, 2 vols., 1822— 1838	Eng.
Ley	...	Ley's Reports, King's Bench, fol., 1 vol., 1608—1629	Eng.

J—VOL. IX.

Lib. Ass.	...	...	Liber Assisarum, Year Books, 1—51 Edw. III.	...	...	Eng.
Lilly	...	...	Lilly's Reports and Pleadings of Cases in Assize, fol., 1 vol.	...	...	Eng.
Litt.	...	...	Littleton's Reports, Common Pleas, fol., 1 vol., 1627—1631	...	...	Eng.
Lloyd, L. R.	...	...	Lloyd's List Law Reports, 1919—(current)	...	...	Eng.
Lloyd, Pr. Cas.	...	...	Lloyd's Reports of Prize Cases, 5 vols., 1914—1918	...	...	Eng.
Lofft	...	...	Lofft's Reports, King's Bench, fol., 1 vol., 1772—1774	...	...	Eng.
Long. & T.	...	...	Longfield and Townsend's Reports, Exchequer (Ireland), 1 vol., 1841—1842	...	...	Ir.
Lords Journals	...	...	Journals of the House of Lords	...	...	Eng.
Lud. E. C.	...	...	Luder's Election Cases, 3 vols., 1784—1787	...	...	Eng.
Lumley, P. L. C.	...	...	Lumley's Poor Law Cases, 2 vols., 1834—1842	...	...	Eng.
Lush.	...	...	Lushington's Reports, Admiralty, 1 vol., 1859—1862	...	...	Eng.
Lut.	...	...	Sir E. Lutwyche's Entries and Reports, Common Pleas, 2 vols., 1682—1704	...	...	Eng.
Lut. Reg. Cas.	...	...	A. J. Lutwyche's Registration Cases, 2 vols., 1843—1853	...	...	Eng.
Lynd.	...	...	Lyndwood, Provinciale, fol., 1 vol.	...	...	Eng.
M.	...	...	Menzie's Reports of the Supreme Court of the Cape of Good Hope, 1828—1850	...	...	S. Af.
M. & S.	...	...	Maule and Selwyn's Reports, King's Bench, 6 vols., 1813—1817	...	...	Eng.
M. & W.	...	...	Meeson and Welsby's Reports, Exchequer, 16 vols., 1836—1847	...	...	Eng.
M. C. R.	...	...	Montreal Condensed Reports	...	...	Can.
M. H. C. R.	...	...	Madras High Court Reports	...	...	Ind.
M. L. R. (Vol.) K. B. or Q. B.	...	...	Montreal Law Reports, King's Bench or Queen's Bench	...	...	Can.
M. L. R. (Vol.) S. C.	...	...	Montreal Law Reports, Superior Court	...	...	Can.
M. M. Cas.	...	...	Martin's Reports of Mining Cases	...	...	Can.
Mac.	...	...	Macassey's New Zealand Reports	...	...	N.Z.
Mac. & G.	...	...	Macnaghten and Gordon's Reports, Chancery, 3 vols., 1849—1852	...	...	Eng.
Mac. & H.	...	...	Macrae and Hertslet's Insolvency Cases, 1 vol., 1847—1852	...	...	Eng.
M'Cle.	...	...	M'Cleland's Reports, Exchequer, 1 vol., 1824	...	...	Eng.
M'Cle. & Yo.	...	...	M'Cleland and Younge's Reports, Exchequer, 1 vol., 1824—1825	...	...	Eng.
Macfarlane	...	...	Macfarlane's Jury Trials, Court of Session (Scotland), 3 parts, 1838—1839	...	...	Scot.
Macf. & Rob.	...	...	Maclean and Robinson's Scotch Appeals (House of Lords), 1 vol., 1839	...	...	Scot.
Macph. (Ct. of Sess.)	...	...	Macpherson, Court of Session (Scotland), 3rd series, 11 vols., 1862—1873	...	...	Scot.
Macq.	...	...	Macqueen's Scotch Appeals, House of Lords, 4 vols., 1849—1865	...	...	Scot.
Macr.	...	...	Macrory's Patent Cases, 2 parts, 1847—1856	...	...	Eng.
Mad.	...	...	Madras High Court Reports	...	...	Ind.
Madd.	...	...	Maddock's Reports, Chancery, 6 vols., 1815—1821	...	...	Eng.
Madd. & G.	...	...	Maddock and Geldart's Reports, Chancery, 1 vol., 1819—1822 (Vol. VI. of Madd.)	...	...	Eng.
Madox	...	...	Madox's Formulæ Anglicanum	...	...	Eng.
Madox, Exch.	...	...	Madox's History and Antiquities of the Exchequer, 2 vols.	...	...	Eng.
Mag.	...	...	Magistrate and Municipal and Parochial Lawyer, London, 5 vols., 1848—1852	...	...	Eng.
Man. & G.	...	...	Manning and Granger's Reports, Common Pleas, 7 vols., 1840—1845	...	...	Eng.
Man. & Ry. K. B.	...	...	Manning and Ryland's Reports, King's Bench, 5 vols., 1827—1830	...	...	Eng.
Man. & Ry. M. C.	...	...	Manning and Ryland's Magistrates' Cases, 3 vols., 1827—1830	...	...	Eng.
Man. L. J.	...	...	Manitoba Law Journal	...	...	Can.
Man. L. R.	...	...	Manitoba Law Reports	...	...	Can.
Man. R. temp. Wood	...	...	Manitoba Reports temp. Wood	...	...	Can.
Mans.	...	...	Manson's Bankruptcy and Company Cases, 21 vols., 1893—1914	...	...	Eng.
Mar. L. C.	...	...	Maritime Law Reports (Crockford), 3 vols., 1860—1871	...	...	Eng.
March	...	...	March's Reports, King's Bench and Common Pleas, 1 vol., 1639—1642	...	...	Eng.
Marr.	...	...	Hay & Marriott's Decisions, Admiralty, 1 vol., 1776—1779	...	...	Eng.
Marsh.	...	...	Marshall's Reports, Common Pleas, 2 vols., 1813—1816	...	...	Eng.
Marsh.	...	...	Marshall's Reports	...	...	Ind.
Mayn.	...	...	Maynard's Reports, Exchequer Memoranda of Edw. I. and Year Books of Edw. II., Year Books, Part I., 1273—1326	...	...	Eng.
Meg.	...	...	Megone's Companies Acts Cases, 2 vols., 1889—1891	...	...	Eng.
Men.	...	...	Menzie's Reports of the Supreme Court of the Cape of Good Hope, 1828—1850	...	...	S. Af.
Mer.	...	...	Merivale's Reports, Chancery, 3 vols., 1815—1817	...	...	Eng.
Milw.	...	...	Milward's Ecclesiastical Reports (Ireland), 1 vol., 1819—1843	...	...	Ir.
Mod. Rep.	...	...	Modern Reports, 12 vols., 1669—1755	...	...	Eng.
Mol.	...	...	Molloy's Reports, Chancery (Ireland), 3 vols., 1808—1831	...	...	Ir.
Mont.	...	...	Montagu's Reports, Bankruptcy, 1 vol., 1829—1832	...	...	Eng.
Mont. & A.	...	...	Montagu and Ayrton's Reports, Bankruptcy, 3 vols., 1832—1838	...	...	Eng.

Mont. & B. ...	Montagu and Bligh's Reports, Bankruptcy, 1 vol., 1832—1833	Eng
Mont. & Ch. ...	Montagu and Chitty's Reports, Bankruptcy, 1 vol., 1838—1840	Eng
Mont. & M. ...	Montagu and Macarthur's Reports, Bankruptcy, 1 vol., 1826—1830	Eng
Mont. D. & De G. ...	Montagu, Deacon, and De Gex's Reports, Bankruptcy, 3 vols., 1840—1844	Eng
Moo. & P. ...	Moore and Payne's Reports, Common Pleas, 5 vols., 1827—1831	Eng
Moo. & S. ...	Moore and Scott's Reports, Common Pleas, 4 vols., 1831—1834	Eng
Moo. Ind. App. ...	Moore's Indian Appeal Cases, Privy Council, 14 vols., 1836—1872	Eng
Moo. P. C. C. ...	Moore's Privy Council Cases, 15 vols., 1836—1863	Eng
Moo. P. C. C. N. S. ...	Moore's Privy Council Cases, New Series, 9 vols., 1862—1873	Eng
Mood. & M. ...	Moody and Malkin's Reports, Nisi Prius, 1 vol., 1826—1830	Eng
Mood. & R. ...	Moody and Robinson's Reports, Nisi Prius, 2 vols., 1830—1844	Eng
Mood. C. C. ...	Moody's Crown Cases Reserved, 2 vols., 1824—1844	Eng
Moore, C. P. ...	J. B. Moore's Reports, Common Pleas, 12 vols., 1817—1827	Eng
Moore, K. B. ...	Sir F. Moore's Reports, King's Bench, fol., 1 vol., 1485—1620	Eng
Mor. Dict. ...	Morison's Dictionary of Decisions, Court of Session (Scotland), 43 vols., 1532—1808	Scot
Morr. ...	Morrell's Reports, Bankruptcy, 10 vols., 1884—1893	Eng
Mos. ...	Moseley's Reports, Chancery, fol., 1 vol., 1726—1730	Eng
Mun. Rep. ...	Municipal Reports	Can
Murd. Epit. ...	Murdoch's Epitome	Can
Murp. & H. ...	Murphy and Hurlstone's Reports, Exchequer, 1 vol., 1837	Eng
Murr. ...	Murray's Reports, Jury Court (Scotland), 5 vols., 1816—1830	Scot
My. & Cr. ...	Mylne and Craig's Reports, Chancery, 5 vols., 1835—1841	Eng
My. & K. ...	Mylne and Keen's Reports, Chancery, 3 vols., 1832—1835	Eng
N. A. C. ...	Native Appeal Cases	S. Af.
N. & S. ...	Nichols and Stop's Reports (Tasmania)	Tasmania.
N. B. Dig. ...	New Brunswick Digest (Stevens)	Can.
N. B. Eq. Rep. ...	New Brunswick Equity Reports	Can.
N. B. R. ...	New Brunswick Reports	Can.
N. B. R. (All.) ...	New Brunswick Reports (Allen)	Can.
N. B. R. (Ber.) ...	New Brunswick Reports (Berton)	Can.
N. B. R. (Carl.) ...	New Brunswick Reports (Carleton)	Can.
N. B. R. (Chip.) ...	New Brunswick Reports (Chipman)	Can.
N. B. R. (Han.) ...	New Brunswick Reports (Hannay)	Can.
N. B. R. (Kerr) ...	New Brunswick Reports (Kerr)	Can.
N. B. R. (P. & B.) ...	New Brunswick Reports (Pugsley and Burbidge)	Can.
N. B. R. (P. & T.) ...	New Brunswick Reports (Pugsley and Trueman)	Can.
N. B. R. (Pug.) ...	New Brunswick Reports (Pugsley)	Can.
N. B. R. (Tru.) ...	New Brunswick Reports (Trueman)	Can.
N. L. R. ...	Natal Law Reports	S. Af.
N. S. R. ...	Nova Scotia Reports	Can.
N. S. R. (Coch.) ...	Nova Scotia Reports (Cochran)	Can.
N. S. R. (G. & R.) ...	Nova Scotia Reports (Geldert & Russell)	Can.
N. S. R. (James) ...	Nova Scotia Reports (James)	Can.
N. S. R. (Old.) ...	Nova Scotia Reports (Oldrights)	Can.
N. S. R. (R. & C.) ...	Nova Scotia Reports (Russell and Chesley)	Can.
N. S. R. (R. & G.) ...	Nova Scotia Reports (Russell and Geldert)	Can.
N. S. R. (Thom.) ...	Nova Scotia Reports (Thomson)	Can.
N. S. W. Adm. or Ad. ...	New South Wales Reports, Admiralty	Aus.
N. S. W. B. ...	New South Wales Reports, Bankruptcy	Aus.
N. S. W. Bkpty. Cas. ...	New South Wales Bankruptcy Cases	Aus.
N. S. W. Eq. ...	New South Wales Reports, Equity	Aus.
N. S. W. Ind. Arbtrn. Cas. ...	New South Wales Industrial Arbitration Cases	Aus.
N. S. W. L. R. ...	New South Wales Law Reports	Aus.
N. S. W. Land App. Cts. ...	New South Wales Land Appeal Courts	Aus.
N. S. W. S. C. R. ...	New South Wales Supreme Court Reports	Aus.
N. S. W. S. C. R. N. S. ...	New South Wales Supreme Court Reports, New Series	Aus.
N. S. W. W. N. ...	New South Wales Weekly Notes	Aus.
N. W. ...	North-Western Provinces High Court Reports	Ind.
N. W. T. R. ...	North-West Territories Reports	Can.
N. Z. Jur. ...	New Zealand Jurist	N.Z.
N. Z. Jur. Mining Law ...	New Zealand Jurist Mining Law	N.Z.
N. Z. Jur. N. S. ...	New Zealand Jurist, New Series	N.Z.
N. Z. L. R. ...	New Zealand Law Reports, 1883—(current)	N.Z.
N. Z. L. R. C. A. ...	New Zealand Law Reports, Court of Appeal, 5 vols., 1883—1887	N.Z.
Nels. ...	Nelson's Reports, Chancery, 1 vol., 1625—1693	Eng.
Nev. & M. K. B. ...	Neville and Manning's Reports, King's Bench, 6 vols., 1832—1836	Eng.
Nev. & M. M. C. ...	Neville and Manning's Magistrates' Cases, 3 vols., 1832—1836	Eng.
Nev. & P. K. B. ...	Neville and Perry's Reports, King's Bench, 3 vols., 1836—1838	Eng.
Nev. & P. M. C. ...	Neville and Perry's Magistrates' Cases, 1 vol., 1836—1837	Eng.
New Mag. Cas. ...	New Magistrates' Cases (Bittleston, Wise and Parnell), 5 vols., 1844—1850	Eng.
New Pract. Cas. ...	New Practice Cases (Bittleston and others), 3 vols., 1844—1848	Eng.

xxiv REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

New Rep. ...	...	New Reports, 6 vols., 1862—1865	...	...	...	...	Eng.
New Sess. Cas. ...	...	New Sessions Magistrates' Cases (Carrow, Hamerton, Allen, etc.), 4 vols., 1844—1851	...	...	...	...	Eng.
Nfld. L. R. ...	...	Newfoundland Reports	...	...	...	...	Nfld.
Nolan ...	...	Nolan's Magistrates' Cases, 1 vol., 1791—1793	...	...	...	...	Eng.
Notes of Cases ...	...	Notes of Cases in the Ecclesiastical and Maritime Courts, 7 vols., 1841—1850	...	...	...	...	Eng.
Noy ...	...	Noy's Reports, King's Bench, fol., 1 vol., 1558—1649	...	...	...	...	Eng.
O. B. & F. ...	...	Ollivier Bell and Fitzgerald's Reports	...	...	...	...	N.Z.
O. B. S. P. ...	...	Old Bailey Session Papers	...	...	...	...	Eng.
O. Bridg. ...	...	Sir Orlando Bridgman's Reports, Common Pleas, 1 vol., 1660—1666	...	...	...	...	Eng.
O. F. S. ...	...	Reports of the High Court of the Orange Free State, 1879—1883	...	...	...	...	S. Af.
O. L. R. ...	...	Ontario Law Reports	...	...	...	...	Can.
O'M. & H. ...	...	O'Malley and Hardcastle's Election Cases, 1869—(current)	...	...	...	...	Eng.
O. P. D. ...	...	South African Law Reports, Orange Free State Provincial Division	...	...	...	...	S. Af.
O. R. ...	...	Ontario Reports	...	...	...	...	Can.
O. R. ...	...	Official Reports of the South African Republic, 1894—1899	...	...	...	...	S. Af.
O. R. C. ...	...	Reports of the High Court of the Orange River Colony	...	...	...	...	S. Af.
O. S. ...	...	Upper Canada Queen's Bench, Old Series	...	...	...	...	Can.
O. W. N. ...	...	Ontario Weekly Notes	...	...	...	...	Can.
O. W. R. ...	...	Ontario Weekly Reporter	...	...	...	...	Can.
Old. ...	...	Nova Scotia Reports (Oldrights)	...	...	...	...	Can.
Ont. Dig. ...	...	Digest of Ontario Case Law, 4 vols., 1823—1900	...	...	...	...	Can.
Owen ...	...	Owen's Reports, King's Bench and Common Pleas, fol., 1 vol., 1557—1614	...	...	...	...	Eng.
P. (preceded by date) ...	...	Law Reports, Probate, Divorce, and Admiralty Division, since 1890 (<i>e.g.</i> , [1891] P.)	...	...	...	...	Eng.
P. & B. ...	...	New Brunswick Reports (Pugsley and Burbidge)	...	...	...	...	Can.
P. & T. ...	...	New Brunswick Law Reports (Pugsley and Trueman)	...	...	...	...	Can.
P. Cas. ...	...	Prize Cases Heard and Decided in the Prize Court During the Great War, 3 vols., 1914—1922	...	...	...	...	Eng. & Col.
P. D. ...	...	Law Reports, Probate, Divorce, and Admiralty Division, 15 vols., 1875—1890	...	...	...	...	Eng.
P. E. I. ...	...	Prince Edward Island Reports	...	...	...	...	Can.
P. R. ...	...	Ontario Practice	...	...	...	...	Can.
P. Wms. ...	...	Peere Williams' Reports, Chancery and King's Bench, 3 vols., 1695—1735	...	...	...	...	Eng.
Palm. ...	...	Palmer's Reports, King's Bench, fol., 1 vol., 1619—1629	...	...	...	...	Eng.
Park. ...	...	Parker's Reports, Exchequer, fol., 1 vol., 1743—1767; App. 1678—1717	...	...	...	...	Eng.
Pat. App. ...	...	Paton's Scotch Appeals, House of Lords, 6 vols., 1726—1822	...	...	...	...	Eng.
Pater. App. ...	...	Paterson's Scotch Appeals, House of Lords, 2 vols., 1851—1873	...	...	...	...	Scot.
Peake ...	...	Peake's Reports, Nisi Prius, 1 vol., 1790—1794	...	...	...	...	Eng.
Peake, Add. Cas. ...	...	Peake's Additional Cases, Nisi Prius, 1 vol., 1795—1812	...	...	...	...	Eng.
Peck. ...	...	Peckwell's Election Cases, 2 vols., 1803—1806	...	...	...	...	Eng.
Pelham ...	...	Pelham (S. A.) Reports	...	...	...	...	Aus.
Per. & Dav. ...	...	Perry and Davison's Reports, Queen's Bench, 4 vols., 1838—1841	...	...	...	...	Eng.
Per. & Kn. ...	...	Perry and Knapp's Election Cases, 1 vol., 1833	...	...	...	...	Eng.
Per. C. S. ...	...	Perrault's Conseil Supérieur	...	...	...	...	Can.
Per. P. ...	...	Perrault's Prévosté de Quebec, 1726—1756	...	...	...	...	Can.
Ph. ...	...	Phillips' Reports, Chancery, 2 vols., 1841—1849	...	...	...	...	Eng.
Phil. El. Cas. ...	...	Philipps' Election Cases, 1 vol., 1780	...	...	...	...	Eng.
Phillim. ...	...	J. Phillimore's Ecclesiastical Reports, 3 vols., 1809—1821	...	...	...	...	Eng.
Phillim. Eccl. Jud. ...	...	Sir R. Phillimore's Ecclesiastical Judgments, 1 vol., 1867—1875	...	...	...	...	Eng.
Phip. ...	...	Phipson's Digest of Natal Reports, 1858—1859	...	...	...	...	S. Af.
Pig. & R. ...	...	Pigott and Rodwell's Registration Cases, 1 vol., 1843—1845	...	...	...	...	Eng.
Pitc. ...	...	Pitcairn's Criminal Trials (Scotland), 3 vols., 1488—1624	...	...	...	...	Scot.
Plowd. ...	...	Plowden's Reports, fol., 2 vols., 1550—1580, and Plowden's Queries, Vol. I.	...	...	...	...	Eng.
Poll. ...	...	Pollexfen's Reports, King's Bench, fol., 1 vol., 1670—1682	...	...	...	...	Eng.
Poph. ...	...	Popham's Reports, King's Bench, fol., 1 vol., 1591—1627	...	...	...	...	Eng.
Pow. R. & D. ...	...	Power, Rodwell, and Dew's Election Cases, 2 vols., 1848—1856	...	...	...	...	Eng.
Prec. Ch. ...	...	Precedents in Chancery, fol., 1 vol., 1689—1722	...	...	...	...	Eng.
Price ...	...	Price's Reports, Exchequer, 13 vols., 1814—1824	...	...	...	...	Eng.
Price ...	...	Price's Mining Commissioners' Cases	...	...	...	...	Can.
Pug. ...	...	New Brunswick Reports (Pugsley)	...	...	...	...	Can.
Py. R. ...	...	Pykes' Lower Canada Reports	...	...	...	...	Can.
Q. B. ...	...	Queen's Bench Reports (Adolphus and Ellis, New Series), 18 vols., 1841—1852	...	...	...	...	Eng.
Q. B. (preceded by date)	Law Reports, Queen's Bench Division, 1891—1901 (<i>e.g.</i> , [1891] 1 Q. B.)	Eng.

REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

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Q. B. D.	Law Reports, Queen's Bench Division, 25 vols., 1875—1890	...	Eng.
Q. J. P.	Queensland Justice of Peace Reports	...	Aus.
Q. L. J.	...	...	Queensland Law Journal and Reports, 11 vols., 1879—1901	...	Aus.
Q. L. R.	...	...	Quebec Law Reports	...	Can.
Q. L. R. (Beor)	...	...	Queensland Law Reports by Beor, 1876—1878	...	Aus.
Q. P. R.	...	...	Quebec Practice Reports	...	Can.
Q. R. (Vol.) K. B. or Q. B.	...	...	Rapports Judiciaires de Québec, Cour du Banc du Roi, 1892—	...	Can.
	...	...	(current)	...	Can.
Q. R. (Vol.) S. C.	...	...	Rapports Judiciaires de Québec, Cour Supérieure, 1892—	...	Can.
	...	...	(current)	...	Aus.
Q. S. C. R.	...	...	Queensland Supreme Court Reports, 5 vols., 1860—1881	...	Aus.
Q. S. R.	...	...	Queensland State Reports	...	Aus.
Q. W. N.	...	...	Weekly Notes, Queensland	...	Aus.
R.	...	...	The Reports, 15 vols., 1893—1895	...	Eng.
R.	...	...	Roscoe's Reports of the Supreme Court of the Cape of Good	...	S. Af.
	...	...	Hope, 1861—1867, 1871—1872, 1877—1878	...	Scot.
R. (Ct. of Sess.)	...	...	Rettie, Court of Session Cases (Scotland), 4th series, 25 vols.,	...	Can.
	...	...	1873—1898	...	Can.
R. A. C.	...	...	Ramsay, Appeal Cases	...	Can.
R. & C.	...	...	Nova Scotia Reports (Russell & Chesley)	...	Can.
R. & G.	...	...	Nova Scotia Reports (Russell and Geldert)	...	Can.
R. C.	...	...	La Revue Critique de Législation et de Jurisprudence de Canada	...	Can.
R. de J.	...	...	Revue de Jurisprudence	...	Can.
R. de L.	...	...	Revue de Législation et de Jurisprudence, 3 vols., 1845—1848	...	Aus.
R. E. D.	...	...	New South Wales, Reserved and Equity Decisions	...	Can.
R. E. D.	...	...	Ritchie's Equity Decisions (Russell)	...	Can.
R. J. R. Q.	...	...	Quebec Revised Reports	...	Can.
R. L. N. S.	...	...	Revue Légale, New Series, 1895—(current)	...	Can.
R. L. O. S.	...	...	Revue Légale, Old Series, 21 vols., 1869—1892	...	Eng.
R. P. C.	...	...	Reports of Patent Cases, 1884—(current)	...	Eng.
R. R.	...	...	Revised Reports	...	Eng.
Rast.	...	...	Rastell's Entries	...	Eng.
Rayn.	...	...	Rayner's Tithe Cases, 3 vols., 1575—1782	...	Eng.
Real Prop. Cas.	...	...	Real Property Cases, 2 vols., 1843—1847	...	Eng.
Rep. Ch.	...	...	Reports in Chancery, fol., 3 vols., 1615—1710	...	Eng.
Rep. in C. of A.	...	...	Reports in Courts of Appeal	...	N.Z.
Res. & Eq. Jud.	...	...	New South Wales Reserved and Equity Judgments	...	Aus.
Reserv. Cas.	...	...	Reserved Cases	...	Ir.
Rick. & M.	...	...	Rickards and Michael's Locus Standi Reports, 1 vol., 1885—1889	...	Eng.
Rick. & S.	...	...	Rickards and Saunders' Locus Standi Reports, 1 vol., 1890—	...	Eng.
	...	...	1894	...	Ir.
Ridg. L. & S.	...	...	Ridgeway, Lapp, and Schoales' Reports (Ireland), 1 vol., 1793—	...	Ir.
	...	...	1795	...	Ir.
Ridg. Parl. Rep.	...	...	Ridgeway's Parliamentary Reports (Ireland), 3 vols., 1784—	...	Eng.
	...	...	1796	...	Can.
Ridg. temp. H.	...	...	Ridgeway's Reports temp. Hardwicke, 1 vol., King's Bench,	...	Eng.
	...	...	1733—1736; Chancery, 1741—1746	...	Eng.
Ritch. Eq. Rep.	...	...	Ritchie's Equity Reports	...	Eng.
Rob. Eccl.	...	...	Robertson's Ecclesiastical Reports, 2 vols., 1844—1853	...	Eng.
Rob. L. & W.	...	...	Roberts, Leeming, and Wallis' New County Court Cases, 1 vol.,	...	Eng.
	...	...	1849—1851	...	Scot.
Robert. App.	...	...	Robertson's Scotch Appeals, House of Lords, 1 vol., 1709—1727	...	Scot.
Robin. App.	...	...	Robinson's Scotch Appeals, House of Lords, 2 vols., 1840—1841	...	Eng.
Roll. Abr.	...	...	Rolle's Abridgment of the Common Law, fol., 2 vols.	...	Eng.
Roll. Rep.	...	...	Rolle's Reports, King's Bench, fol., 2 vols., 1614—1625	...	Eng.
Rom.	...	...	Romilly's Notes of Cases in Equity, 1 part, 1772—1787	...	Eng.
Roscoe's B. C.	...	...	Roscoe, Digest of Building Cases	...	Eng.
Rose	...	...	Rose's Reports, Bankruptcy, 2 vols., 1810—1816	...	Eng.
Ross, L. C.	...	...	Ross's Leading Cases in Commercial Law (England and Scot-	...	Eng.
	...	...	land), 3 vols.	...	Eng.
Rowe	...	...	Rowe's Reports (England and Ireland), 1 vol., 1798—1823	...	Eng.
Rul. Cas.	...	...	Campbell's Ruling Cases, 25 vols.	...	Eng.
Russ.	...	...	Russell's Reports, Chancery, 5 vols., 1824—1829	...	Eng.
Russ. & M.	...	...	Russell and Mylne's Reports, Chancery, 2 vols., 1829—1833	...	Eng.
Russ. & Ry.	...	...	Russell and Ryan's Crown Cases Reserved, 1 vol., 1800—1823	...	Can.
Rus. E. R.	...	...	Russell's Election Reports	...	Eng.
Ry. & Can. Cas.	...	...	Railway and Canal Cases, 7 vols., 1835—1854	...	Eng.
Ry. & Can. Tr. Cas.	...	...	Railway and Canal Traffic Cases, 1855—(current)	...	Eng.
Ry. & M.	...	...	Ryan and Moody's Reports, Nisi Prius, 1 vol., 1823—1826	...	Eng.
Ryde & K. Rat. App.	...	...	Ryde and Konstam's Reports of Rating Appeals, 1 vol., 1894—	...	Eng.
	...	...	1904	...	Eng.
Ryde, Rat. App.	...	...	Ryde's Rating Appeals, 3 vols., 1871—1893	...	S. Af.
S.	...	...	Searle's Reports of the Supreme Court of the Cape of Good Hope	...	S. Af.
S. A. L. J.	...	...	South African Law Journal	...	

xxvi REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

S. A. L. R.	...	...	South Australian Law Reports	...	...	...	...	Aus
S. A. L. R.	...	...	South African Law Reports	...	...	...	...	S. Af
S. A. R.	...	...	Reports of the High Court of the South African Republic, 1881—1892	...	...	...	...	S. Af
S. A. S. R.	...	...	South Australian State Reports, since 1921 (<i>e.g.</i> , [1921] S. A. S. R.)	...	...	...	...	Aus
S. C.	...	...	Reports of the Supreme Court of the Cape of Good Hope from 1880	...	...	...	...	S. Af
S. C. (preceded by date)	...	...	Court of Session Cases (Scotland), since 1906 (<i>e.g.</i> , [1906] S. C.)	...	...	...	...	Scot.
S. C. (H. L.) (preceded by date).	...	...	Court of Session Cases (Scotland) (House of Lords), since 1906 (<i>e.g.</i> , [1906] S. C. (H. L.))	...	...	...	...	Scot.
S. C. (J.) (preceded by date).	...	...	Court of Justiciary Cases (Scotland), since 1906 (<i>e.g.</i> , [1906] S. C. (J.))	...	...	...	...	Scot.
S. C. R.	...	...	Canada, Supreme Court Reports	...	...	...	...	Can.
S. L. T.	...	...	Scots Law Times, 1893 (current)	...	...	...	...	Scot.
S. Q. R.	...	...	Queensland State Reports	...	...	...	...	Aus.
S. R.	...	...	Reports of the High Court of Southern Rhodesia	...	...	...	...	S. Af.
S. R. C.	...	...	Stuart's Lower Canada Reports	...	...	...	...	Can.
S. R. N. S. W.	...	...	New South Wales, State Reports	...	...	...	...	Aus.
S. R. Q.	...	...	Queensland Reports, Supreme Court	...	...	...	...	Aus.
S. V. A. R.	...	...	Stuart's Vice-Admiralty Reports	...	...	...	...	Can.
Saint	...	...	Saint's Digest of Registration Cases, 1843—1906, 1 vol.	...	...	...	...	Eng.
Salk.	...	...	Salkeld's Reports, King's Bench, 3 vols., 1689—1712	...	...	...	...	Eng.
Sask. L. R.	...	...	Saskatchewan Law Reports	...	...	...	...	Can.
Sau. & Sc.	...	...	Sausee and Scully's Reports, Rolls Court (Ireland), 1 vol., 1837—1840	...	...	...	...	Ir.
Saund.	...	...	Saunders's Reports, King's Bench, 2 vols., 1666—1672	...	...	...	...	Eng.
Saund. & A.	...	...	Saunders and Austin's Locus Standi Reports, 2 vols., 1895—1904	...	...	...	...	Eng.
Saund. & B.	...	...	Saunders and Bidder's Locus Standi Reports, 1905—(current)	...	...	...	...	Eng.
Saund. & C.	...	...	Saunders and Cole's Reports, Bail Court, 2 vols., 1846—1848	...	...	...	...	Eng.
Saund. & M.	...	...	Saunders and Macrae's County Courts and Insolvency Cases (County Courts Cases and Appeals, Vols. II. and III.), 2 vols., 1852—1858	...	...	...	...	Eng.
Sav.	...	...	Savile's Reports, Common Pleas, fol., 1 vol., 1580—1591	...	...	...	...	Eng.
Say.	...	...	Sayer's Reports, King's Bench, fol., 1 vol., 1751—1756	...	...	...	...	Eng.
Sc. Jur.	...	...	Scottish Jurist, 46 vols., 1829—1873	...	...	...	...	Scot.
Sc. L. R.	...	...	Scottish Law Reporter, 1865—(current)	...	...	...	...	Scot.
Sc. R. R.	...	...	Scots Revised Reports	...	...	...	...	Scot.
Sch. & Lef.	...	...	Schoales and Lefroy's Reports, Chancery (Ireland), 2 vols., 1802—1806	...	...	...	...	Ir.
Scott	...	...	Scott's Reports, Common Pleas, 8 vols., 1834—1840	...	...	...	...	Eng.
Scott, N. R.	...	...	Scott's New Reports, Common Pleas, 8 vols., 1840—1845	...	...	...	...	Eng.
Sea. & Sm.	...	...	Searle and Smith's Reports, Probate and Divorce, 1 vol., 1859—1860	...	...	...	...	Eng.
Sel. Cas. Ch.	...	...	Select Cases in Chancery, fol., 1 vol., 1685—1698 (Pt. III. of Cas. in Ch.)	...	...	...	...	Eng.
Selwyn's N. P.	...	...	Selwyn's Abridgement of the Law of Nisi Prius	...	...	...	...	Eng.
Sess. Cas. K. B.	...	...	Sessions Settlement Cases, King's Bench, 2 vols., 1710—1747	...	...	...	...	Eng.
Sett. & Rem.	...	...	Cases adjudged in K. B. concerning Settlements & Removals, 1 vol., 1710—1742	...	...	...	...	Eng.
Sh. (Ct. of Sess.)	...	...	Shaw, Court of Session Cases (Scotland), 1st series, 16 vols., 1821—1838	...	...	...	...	Scot.
Sh. & MacL.	...	...	Shaw and Maclean's Scotch Appeals, House of Lords, 3 vols., 1835—1838	...	...	...	...	Scot.
Sh. Dig.	...	...	P. Shaw's Digest of Decisions (Scotland), ed. by Bell and Lamond, 3 vols., 1726—1868	...	...	...	...	Scot.
Sh. Just.	...	...	P. Shaw's Justiciary Decisions (Scotland), 1 vol., 1819—1831	...	...	...	...	Scot.
Sh. Sc. App.	...	...	P. Shaw's Scotch Appeals, House of Lords, 2 vols., 1821—1824	...	...	...	...	Scot.
Sh. Teind Ct.	...	...	P. Shaw's Teind Court Decisions (Scotland), 1 vol., 1821—1831	...	...	...	...	Scot.
Shep. Touch.	...	...	Sheppard's Touchstone of Common Assurances	...	...	...	...	Eng.
Show.	...	...	Shower's Reports, King's Bench, 2 vols., 1678—1695	...	...	...	...	Eng.
Show. Parl. Cas.	...	...	Shower's Cases in Parliament, fol., 1 vol., 1694—1699	...	...	...	...	Eng.
Sid.	...	...	Siderfin's Reports, King's Bench, Common Pleas and Exchequer, fol., 2 vols., 1657—1670	...	...	...	...	Eng.
Sim.	...	...	Simons' Reports, Chancery, 17 vols., 1826—1852	...	...	...	...	Eng.
Sim. & St.	...	...	Simons and Stuart's Reports, Chancery, 2 vols., 1822—1826	...	...	...	...	Eng.
Sim. N. S.	...	...	Simons' Reports, Chancery, New Series, 2 vols., 1850—1852	...	...	...	...	Eng.
Skin.	...	...	Skinner's Reports, King's Bench, fol., 1 vol., 1681—1697	...	...	...	...	Eng.
Sm. & Bat.	...	...	Smith and Batty's Reports, King's Bench (Ireland), 1 vol., 1824—1825	...	...	...	...	Ir.
Sm. & G.	...	...	Smale and Giffard's Reports, Chancery, 3 vols., 1852—1857	...	...	...	...	Eng.
Smith, K. B.	...	...	J. P. Smith's Reports, King's Bench, 3 vols., 1803—1906	...	...	...	...	Eng.
Smith, L. C.	...	...	Smith's Leading Cases, 2 vols.	...	...	...	...	Eng.
Smith, Reg. Cas.	...	...	C. L. Smith's Registration Cases, 1895—(current)	...	...	...	...	Eng.
Smythe	...	...	Smythe's Reports, Common Pleas (Ireland), 1 vol., 1839—1840	...	...	...	...	Ir.
Sol. Jo.	Solicitors' Journal, 1856—(current)	Eng.

REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

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Spence	Spence's Equitable Jurisdiction of the Court of Chancery ...	Eng.
Spinks	Spinks' Prize Court Cases, 2 parts, 1854—1856 ...	Eng.
St. R. Qd. (preceded by date)	Queensland State Reports, since 1902 (<i>e.g.</i> , [1902] St. R. Qd.)	Aus.
Stair Rep.	Stair's Decisions, Court of Session (Scotland), fol., 2 vols., 1661—1681 ...	Scot.
Stark.	Starkie's Reports, Nisi Prius, 3 vols., 1814—1823 ...	Eng.
State Tr.	State Trials, 34 vols., 1463—1820 ...	Eng.
State Tr. N. S.	State Trials, New Series, 8 vols., 1820—1858 ...	Eng.
Stewart	Stewart's Nova Scotia Admiralty Reports, 1803—1813 ...	Can.
Stockton	Stockton's Vice-Admiralty Report and Digest ...	Can.
Story	Story's Commentaries on Equity Jurisprudence ...	Eng.
Stra.	Strange's Reports, 2 vols., 1716—1747 ...	Eng.
Stu. M. & P.	Stuart, Milne, and Peddie's Reports (Scotland), 2 vols., 1851—1853 ...	Scot.
Stuart	Sessions Cases (Stuart) ...	Scot.
Stuart, Adm.	Stuart's Vice-Admiralty (Lower Canada) Cases, 1836—1856 ...	Can.
Stuart, Adm. N. S.	Stuart's Vice-Admiralty (Lower Canada) Cases, 2nd series, 1859—1874 ...	Can.
Stuart, K. B.	Stuart's Reports of Cases in King's Bench, etc. (Lower Canada), 1810—1835 ...	Can.
Sty.	Style's Reports, King's Bench, fol., 1 vol., 1646—1655 ...	Eng.
Sw.	Swabey's Reports, Admiralty, 1 vol., 1855—1859 ...	Eng.
Sw. & Tr.	Swabey and Tristram's Reports, Probate and Divorce, 4 vols., 1858—1865 ...	Eng.
Swan.	Swanston's Reports, Chancery, 3 vols., 1818—1821 ...	Eng.
Swin.	Swinton's Justiciary Reports (Scotland), 2 vols., 1835—1841 ...	Scot.
Syme	Syme's Justiciary Reports (Scotland), 1 vol., 1826—1829 ...	Scot.
T. & M.	Temple and Mew's Criminal Appeal Cases, 1 vol., 1848—1851 ...	Eng.
T. H.	Reports of the Witwatersrand High Court (Transvaal Colony), 1902—1909 ...	S. Af.
T. Jo.	Sir T. Jones's Reports, King's Bench and Common Pleas, fol., 1 vol., 1667—1685 ...	Eng.
T. L.	Reports of the Witwatersrand High Court (Transvaal Colony), 1910—(current) ...	S. Af.
T. L. R.	The Times Law Reports, 1884—(current) ...	Eng.
T. P.	Reports of the Supreme Court of the Transvaal, 1910—(current)	S. Af.
T. P. D.	South African Law reports, Transvaal Provincial Division ...	S. Af.
T. Raym.	Sir T. Raymond's Reports, King's Bench, fol., 1 vol., 1660—1683 ...	Eng.
T. S.	Reports of the Supreme Court of the Transvaal, 1902—1909 ...	S. Af.
Taml.	Tamlyn's Reports, Rolls Court, 1 vol., 1829—1830 ...	Eng.
Tas. L. R.	Tasmanian Law Reports ...	Aus.
Taunt.	Taunton's Reports, Common Pleas, 8 vols., 1807—1819 ...	Eng.
Tax Cas.	Tax Cases, 1875—(current) ...	Eng.
Tay.	Taylor's King's Bench Reports ...	Can.
Temp. Wood	Manitoba Reports <i>temp.</i> Wood ...	Can.
Term Rep.	Term Reports (Durnford and East), fol., 8 vols., 1785—1800 ...	Eng.
Terr. L. R.	Territories Law Reports ...	Can.
Thom.	Nova Scotia Reports (Thomson) ...	Can.
Toth.	Tothill's Transactions in Chancery, 1 vol., 1559—1646 ...	Eng.
Town. St. Tr.	Townsend, Modern State Trials ...	Eng.
Trem. P. C.	Tremaine Pleas of the Crown, 1 vol., 1667 ...	Eng.
Trist.	Tristram's Consistory Judgments, 1 vol., 1872—1890 ...	Eng.
Tru.	New Brunswick Reports (Trueman) ...	Can.
Tudor, L. C. Merc. Law.	Tudor's Leading Cases on Mercantile and Maritime Law ...	Eng.
Tudor, L. C. Real. Prop.	Tudor's Leading Cases on Real Property ...	Eng.
Turn. & R.	Turner and Russell's Reports, Chancery, 1 vol., 1822—1825 ...	Eng.
Tyr.	Tyrwhitt's Reports, Exchequer, 5 vols., 1830—1835 ...	Eng.
Tyr. & Gr.	Tyrwhitt and Granger's Reports, Exchequer, 1 vol., 1835—1836 ...	Eng.
U. C. Jur.	Upper Canada Jurist ...	Can.
U. C. L. J. N. S.	Canada Law Journal, New Series, 1865—(current) ...	Can.
U. C. L. J. O. S.	Canada Law Journal, Old Series, 10 vols., 1855—1864 ...	Can.
U. C. R.	Upper Canada Reports, Queen's Bench ...	Can.
Udal	Fiji Law Reports (Udal) ...	Fiji.
V. L. R.	Victorian Law Reports ...	Aus.
V. R.	Victorian Reports ...	Aus.
V. R. (Adm.)	Victorian Reports (Admiralty) ...	Aus.
V. R. (Eq.)	Victorian Reports (Equity) ...	Aus.
V. R. (Law)	Victorian Reports (Law) ...	Aus.
Vaugh.	Vaughan's Reports, Common Pleas, fol., 1 vol., 1666—1673 ...	Eng.
Vent.	Ventris' Reports (Vol. I., King's Bench; Vol. 11., Common Pleas), fol., 2 vols., 1668—1691 ...	Eng.

xxviii REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

Vern. ...	...	Vernon's Reports, Chancery, 2 vols., 1680—1719	...	Eng.
Vern. & Scr. ...	...	Vernon and Scriven's Reports, King's Bench (Ireland), 1 vol., 1786—1788	...	Ir.
Ves. ...	...	Vesey Jun.'s Reports, Chancery, 19 vols., 1789—1817	...	Eng.
Ves. & B. ...	...	Vesey and Beames's Reports, Chancery, 3 vols., 1812—1814	...	Eng.
Ves. Sen. ...	...	Vesey Sen.'s Reports, 2 vols., 1747—1756	...	Eng.
Vin. Abr. ...	...	Viner's Abridgment of Law and Equity, fol., 22 vols.	...	Eng.
Vin. Supp. ...	...	Supplement to Viner's Abridgment of Law and Equity, 6 vols.	...	Eng.
W. ...	...	Watermeyer's Reports of the Supreme Court of the Cape of Good Hope, 1857	...	S. Af.
W. A. L. R. ...	...	West Australian Law Reports	...	Aus.
W. A'B. & W. ...	...	Webb, A'Beckett and Williams' Victorian Reports	...	Aus.
W. & W. ...	...	Wyatt and Webb	...	Aus.
W. C. C. ...	...	Workmen's Compensation Cases (Minton-Senhouse), 9 vols., 1898—1907	...	Eng.
W. H. C. ...	...	South African Law Reports, Witwatersrand High Court	...	S. Af.
W. Jo. ...	...	Sir W. Jones's Reports, King's Bench and Common Pleas, fol., 1 vol., 1620—1640	...	Eng.
W. L. D. ...	...	South African Law Reports, Witwatersrand Local Division	...	S. Af.
W. L. R. ...	...	Western Law Reporter	...	Can.
W. L. T. ...	...	Western Law Times	...	Can.
W. N. (preceded by date)	...	Law Reports, Weekly notes, 1866—(current) (<i>e.g.</i> , [1866] W. N.)	...	Eng.
W. N. ...	...	Calcutta Weekly Notes	...	Ind.
W. R. ...	...	Weekly Reporter, 54 vols., 1852—1906	...	Eng.
W. R. ...	...	Sutherland's Weekly Reporter	...	Ind.
W. R. ...	...	Weekly Reporter, reporting cases in the Cape Provincial Division	...	S. Af.
W. W. & A'B. ...	...	Wyatt, Webb and A'Beckett	...	Aus.
W. W. R. ...	...	Western Weekly Reports	...	Can.
Wallis by Lyne ...	...	Wallis' Reports, Chancery (Ireland), 1 vol., 1766—1791	...	Ir.
Web. Pat. Cas. ...	...	Webster's Patent Cases, 2 vols., 1602—1855	...	Eng.
Welsh, Reg. Cas. ...	...	Welsh's Registry Cases (Ireland), 1 vol., 1832—1840	...	Ir.
Went. Off. Ex. ...	...	Wentworth's Office and Duty of Executors	...	Eng.
West ...	...	West's Reports, House of Lords, 1 vol., 1839—1841	...	Eng.
West <i>temp.</i> Hard. ...	...	West's Reports <i>temp.</i> Hardwicke, Chancery, 1 vol., 1736—1740	...	Eng.
West. Tithe Cas. ...	...	Western's London Tithe Cases, 1 vol., 1592—1822	...	Eng.
White ...	...	White's Justiciary Reports (Scotland), 3 vols., 1886—1893	...	Scot.
White & Tud. I. C. ...	...	White and Tudor's Leading Cases in Equity, 2 vols.	...	Eng.
Wight. ...	...	Wightwick's Reports, Exchequer, 1 vol., 1810—1811	...	Eng.
Will. Woll. & Dav. ...	...	Willmore, Wollaston, and Davison's Reports, Queen's Bench and Bail Court, 1 vol., 1837	...	Eng.
Will. Woll. & H. ...	...	Willmore, Wollaston, and Hodges' Reports, Queen's Bench and Bail Court, 2 vols., 1838—1839	...	Eng.
Willes ...	...	Willes' Reports, Common Pleas, 1 vol., 1737—1758	...	Eng.
Wilm. ...	...	Wilmot's Notes of Opinions and Judgments, 1 vol., 1757—1770	...	Eng.
Wils. ...	...	G. Wilson's Reports, King's Bench and Common Pleas, fol., 3 vols., 1742—1774	...	Eng.
Wils. & S. ...	...	Wilson and Shaw's Scotch Appeals, House of Lords, 7 vols., 1825—1835	...	Scot.
Wils. Ch. ...	...	J. Wilson's Reports, Chancery, 2 vols., 1818—1819	...	Eng.
Wils. Ex. ...	...	J. Wilson's Reports, Exchequer in Equity, 1 part, 1817	...	Eng.
Win. ...	...	Winch's Reports, Common Pleas, fol., 1 vol., 1621—1625	...	Eng.
Wm. Bl. ...	...	William Blackstone's Reports, King's Bench and Common Pleas, fol., 2 vols., 1746—1779	...	Eng.
Wm. Rob. ...	...	William Robinson's Reports, Admiralty, 3 vols., 1838—1850	...	Eng.
Wms. Saund. ...	...	Williams' Notes to Saunders' Reports, 2 vols.	...	Eng.
Wolf. & B. ...	...	Wolferstan and Bristowe's Election Cases, 1 vol., 1859—1864	...	Eng.
Wolf. & D. ...	...	Wolferstan and Dew's Election Cases, 1 vol., 1857—1858	...	Eng.
Woll. ...	...	Wollaston's Reports, Bail Court and Practice, 1 vol., 1840—1841	...	Eng.
Wood ...	...	Wood's Tithe Cases, Exchequer, 4 vols., 1650—1798	...	Eng.
Y. A. D. ...	...	Young's Vice-Admiralty Reports	...	Can.
Y. & C. Ch. Cas. ...	...	Younge and Collyer's Reports, Chancery Cases, 2 vols., 1841—1843	...	Eng.
Y. & C. Ex. ...	...	Younge and Collyer's Reports, Exchequer in Equity, 4 vols., 1833—1841	...	Eng.
Y. & J. ...	...	Younge and Jervis' Reports, Exchequer, 3 vols., 1826—1830	...	Eng.
Y. B. ...	...	Year Books	...	Eng.
Yelv. ...	...	Yelverton's Reports, King's Bench, fol., 1 vol., 1602—1613	...	Eng.
You. ...	...	Younge's Reports, Exchequer in Equity, 1 vol., 1830—1832	...	Eng.

ABBREVIATIONS

USED IN THIS WORK.

(For Abbreviations used in citing Reports, see pp. xiii.—xxviii., *ante*.)

A.-G.	.	.	.	.	for Attorney-General.
Act.	.	.	.	.	„ Actiengesellschaft.
Admlty.	.	.	.	.	„ Admiralty.
Affd.	.	.	.	.	„ Affirmed.
Affg.	.	.	.	.	„ Affirming.
Akt.	.	.	.	.	„ Aktiengesellschaft ; Aktiebolaget ; Aktieselskabet.
Anon.	.	.	.	.	„ Anonymous.
Apld.	.	.	.	.	„ Applied.
Appct.	.	.	.	.	„ Applicant.
Appln.	.	.	.	.	„ Application.
Appln.	.	.	.	.	„ Application to Register a Trade Mark.
Applt.	.	.	.	.	„ Appellant.
Apprvd.	.	.	.	.	„ Approved.
Arbn.	.	.	.	.	„ Arbitration.
Archbp.	.	.	.	.	„ Archbishop.
Art.	.	.	.	.	„ Article.
Assce.	.	.	.	.	„ Assurance.
Assocn.	.	.	.	.	„ Association.
B. C.	.	.	.	.	„ Borough Council.
Bkpcy.	.	.	.	.	„ Bankruptcy.
Bkpt.	.	.	.	.	„ Bankrupt.
Bldg. Soc.	.	.	.	.	„ Building Society.
Bp.	.	.	.	.	„ Bishop.
C. A.	.	.	.	.	„ Court of Appeal.
C. & S. L. Ry. Co.	.	.	.	.	„ City & South London Railway Co.
C. C. A.	.	.	.	.	„ Court of Criminal Appeal.
C. C. R.	.	.	.	.	„ County Court Rules.
C. C. R.	.	.	.	.	„ Court of Crown Cases Reserved.
C. L. P. Act.	.	.	.	.	„ Common Law Procedure Act.
C. L. Ry. Co.	.	.	.	.	„ Central London Railway Co.
C. O. R.	.	.	.	.	„ Crown Office Rules.
C. S. U. C.	.	.	.	.	„ Consolidated Statutes of Upper Canada.
Ca. sa.	.	.	.	.	„ <i>Capias ad satisfaciendum</i> .
Cale. Ry. Co.	.	.	.	.	„ Caledonian Railway Co.
Ch.	.	.	.	.	„ Chancery.
Ch. Div.	.	.	.	.	„ Chancery Division.
Co.	.	.	.	.	„ Company.
Co-op. Assocn.	.	.	.	.	„ Co-operative Supply Association.
Comrs.	.	.	.	.	„ Commissioners.
Consd.	.	.	.	.	„ Considered.
Corpn.	.	.	.	.	„ Corporation.
Ct.	.	.	.	.	„ Court.
Ct. of Ch.	.	.	.	.	„ Court of Chancery.
Ct. of Eq.	.	.	.	.	„ Court of Equity.
Ct. of R.	.	.	.	.	„ Court of Review.
D. C.	.	.	.	.	„ Divisional Court.
Dbtd.	.	.	.	.	„ Doubted.
Deft.	.	.	.	.	„ Defendant.

Distd.	for Distinguished.
Div. Ct.	„ Divisional Court.
Eccl. Comrs.	„ Ecclesiastical Commissioners.
Eccl. Ct.	„ Ecclesiastical Court.
Ex. Ch.	„ Exchequer Chamber.
<i>Ex p.</i>	„ <i>Ex parte</i> .
Exch.	„ Exchequer.
Exor.	„ Executor.
Exorship.	„ Executorship.
Expld.	„ Explained.
Extd.	„ Extended.
Extrix.	„ Executrix.
<i>Fi. fa.</i>	„ <i>Fieri facias</i> .
Folld.	„ Followed.
G. & S. W. Ry. Co.	„ Glasgow & South Western Railway Co.
G. C. Ry. Co.	„ Great Central Railway Co.
G. E. Ry. Co.	„ Great Eastern Railway Co.
G. N. of Scotland Ry. Co.	„ Great North of Scotland Railway Co.
G. N. Picc. & Brompton Ry. Co.	„ Great Northern, Piccadilly & Brompton Railway Co.
G. N. Ry. Co.	„ Great Northern Railway Co.
G. S. & W. Ry. Co. of Ireland	„ Great Southern & Western Railway Co. of Ireland.
G. W. Ry. Co.	„ Great Western Railway Co.
Govt.	„ Government.
Grdns.	„ Guardians or Guardians of the Poor.
H. C. of A.	„ High Court of Australia.
H. L.	„ House of Lords.
I. R. Comrs.	„ Inland Revenue Commissioners.
Insce.	„ Insurance.
JJ.	„ Justices.
Jud. Act	„ Judicature Act.
K. B. Div.	„ King's Bench Division.
L. & B. Ry. Co.	„ London & Brighton Railway Co.
L. & N. E. Ry. Co.	„ London & North Eastern Railway Co.
L. & N. W. Ry. Co.	„ London & North Western Railway Co.
L. & S. W. Ry. Co.	„ London & South Western Railway Co.
L. & Y. Ry. Co.	„ Lancashire & Yorkshire Railway Co.
L. B.	„ Local Board.
L. B. & S. C. Ry. Co.	„ London, Brighton & South Coast Railway Co.
L. C.	„ Lord Chancellor.
L. C. & D. Ry. Co.	„ London, Chatham & Dover Railway Co.
L. C. C.	„ London County Council.
L. Elec. Ry. Co.	„ London Electric Railway Co.
L. G. Board	„ Local Government Board.
L.J.	„ Lord Justice.
L.JJ.	„ Lords Justices.
L. M. & S. Ry. Co.	„ London, Midland & Scottish Railway Co.
L. T. & S. Ry. Co.	„ London, Tilbury & Southend Railway Co.
M. S. Act	„ Merchant Shipping Act.
M. S. & L. Ry. Co.	„ Manchester, Sheffield & Lincolnshire Railway Co.
Mags.	„ Magistrates.
Mentd.	„ Mentioned.
Met. Dist. Ry. Co.	„ Metropolitan District Railway Co.
Met. Ry. Co.	„ Metropolitan Railway Co.
Mid. G. W. Ry. Co.	„ Midland Great Western Railway Co.
Mid. Ry. Co.	„ Midland Railway Co.
Mtge.	„ Mortgage.
Mtgee.	„ Mortgagee.
Mtgor.	„ Mortgagor.
N. B. Ry. Co.	„ North British Railway Co.
N. E. Ry. Co.	„ North Eastern Railway Co.
N. F.	„ Not Followed.
N. P.	„ Nisi Prius.
Ord.	„ Order.
Overd.	„ Overruled.

ABBREVIATIONS.

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P. C.	for Privy Council.
Petn.	„ Petition or Election Petition.
Pltf.	„ Plaintiff.
Q. B. Div.	„ Queen's Bench Division.
Qu.	.	.	.	.	.	„ <i>Quære</i> .
R. C.	.	.	.	.	.	„ Rural Council.
R. D. C.	.	.	.	.	.	„ Rural District Council.
R. S. A.	.	.	.	.	.	„ Rural Sanitary Authority.
R. S. C.	.	.	.	.	.	„ Revised Statutes of Canada.
R. S. C.	.	.	.	.	.	„ Rules of the Supreme Court, 1883.
Refd.	.	.	.	.	.	„ Referred.
Regn. of Trade Mk.	.	.	.	.	.	„ Registration of Trade Mark.
Regr. of Trade Mks.	.	.	.	.	.	„ Registrar of Trade Marks.
Resp.	.	.	.	.	.	„ Respondent.
Restg.	.	.	.	.	.	„ Restoring.
Revsd.	.	.	.	.	.	„ Reversed.
Revsg.	.	.	.	.	.	„ Reversing.
Ry. Co.	.	.	.	.	.	„ Rail. Co. or Railway Co.
S. C.	.	.	.	.	.	„ Same Case.
S. C. (name of colony following)	.	.	.	.	.	„ Supreme Court of a Colony.
S. E.	.	.	.	.	.	„ Settled Estates.
S. E. & C. Ry. Co.	.	.	.	.	.	„ South Eastern & Chatham Railway Co.
S. E. Ry. Co.	.	.	.	.	.	„ South Eastern Railway Co.
S. P.	.	.	.	.	.	„ Same Point.
S.S.	.	.	.	.	.	„ Steamship.
Sched.	.	.	.	.	.	„ Schedule.
<i>Sci. fa.</i>	.	.	.	.	.	„ <i>Scire facias</i> .
Sect.	.	.	.	.	.	„ Section.
Set. Land Act	.	.	.	.	.	„ Settled Land Act.
Settlmt.	.	.	.	.	.	„ Settlement.
Soc.	.	.	.	.	.	„ Society.
Soc. Anon.	.	.	.	.	.	„ Société Anonyme, etc.
Solr.	.	.	.	.	.	„ Solicitor.
Trade Mk.	.	.	.	.	.	„ Trade Mark.
Tram. Co.	.	.	.	.	.	„ Tramways Company.
U. C.	.	.	.	.	.	„ Urban Council.
U. D. C.	.	.	.	.	.	„ Urban District Council.
U. S. A.	.	.	.	.	.	„ United States of America.
Union Assmt. Com.	.	.	.	.	.	„ Union Assessment Committee.
Urban S. A.	.	.	.	.	.	„ Urban Sanitary Authority.
V.-C.	.	.	.	.	.	„ Vice-Chancellor.
Workmen's Comp. Act	.	.	.	.	.	„ Workmen's Compensation Act.

MEANING OF TERMS

USED IN CLASSIFYING ANNOTATING CASES.

THE different expressions used to describe the effect of the annotating cases have the following meanings, and the classification of the annotating cases has been done strictly in accordance with these meanings. The annotating cases, except such as are classified as "Mentioned," are grouped according to the points in the case which they annotate: within these groups they are listed chronologically, except such as are classified as "Referred to," which come at the end of the group and are arranged *inter se* in chronological order. Cases which annotate the annotated case generally are grouped together after cases which annotate specific points, similarly arranged, and are followed by cases classified as "Mentioned" arranged chronologically *inter se*. The terms used in classifying the annotating cases are as follows:—

- "APPLIED" (Apld.).—This expression is used to denote the fact that the principle of law enunciated in the annotated case has been applied to a new set of facts and circumstances in the annotating case.
- "APPROVED" (Apprvd.).—This expression is used to denote the fact that the annotated case has been considered to be good law in the annotating case where the latter is in a higher court than the former.
- "CONSIDERED" (Consd.).—This expression is used where the remarks in the annotating case are devoid of adverse criticism and merely denote the giving of more or less careful consideration to the annotated case.
- "DISTINGUISHED" (Distd.).—This expression is used where the earlier case is not necessarily doubted, but where some essential difference (either on the facts or in law) between it and the annotated case is pointed out.
- "DOUBTED" (Dbtd.).—This expression is used where the court in the annotating case without definitely going to the length of saying that the annotated case is wrong, adduces reasons which seem to show that it is not accurate.
- "EXPLAINED" (Expld.).—This expression is used where the earlier case is not necessarily doubted, but the decision arrived at is justified or accounted for by calling attention to some point of fact or of law which is usually, but not necessarily, one not obvious on the face of the report.
- "EXTENDED" (Extd.).—Compare "APPLIED," *supra*.
- "FOLLOWED" (Folld.).—This expression is used to denote that the same principles of law are applied in the two cases. It does not necessarily imply that the facts are substantially identical in the two cases.
- "NOT FOLLOWED" (N.F.).—Compare "FOLLOWED," *supra*, to which it is the adverse.
- "OVERRULED" (Overd.).—This expression is used where the annotating case is on substantially identical facts with the annotated case and in a higher court and the rule in the latter case is held to be wrong.
- "REFERRED" (Refd.).—This expression is used only where the annotating case deals with the point of the Digest paragraph and is without comment of any definite character on the case annotated, and where there is no delicate shade of approval or disapproval which would justify the use of any of the foregoing words.
- "MENTIONED" (Mentd.).—This expression is used only where none of the foregoing terms apply. In other words, it is used only where the case annotated is cited on a point having nothing to do with the point in the Digest paragraph.

TABLE OF CASES.

NOTE.—A FULL TABLE OF CASES CONTAINING ALL CASES APPEARING IN BOTH VOLUMES IX. AND X. WILL BE FOUND AT THE COMMENCEMENT OF VOLUME X.

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Building Societies . See BUILDING SOCIETIES.
Canal Companies generally RAILWAYS AND CANALS.
Cemetery Companies BURIAL AND CREMATION.
Corporations generally CORPORATIONS.
Electrical Companies generally ELECTRIC LIGHTING AND POWER.
Friendly Societies FRIENDLY SOCIETIES.
Gas Companies generally GAS.
Industrial, Provident and similar Societies INDUSTRIAL, PROVIDENT AND SIMILAR SOCIETIES.

Light Railway Companies See TRAMWAYS AND LIGHT RAILWAYS.
Loan Societies LOAN SOCIETIES.
Partnership PARTNERSHIP.
Railway Companies generally RAILWAYS AND CANALS.
Telegraph and Telephone Companies generally TELEGRAPHS AND TELEPHONES.
Trade Unions TRADE AND TRADE UNIONS.
Tramway Companies generally TRAMWAYS AND LIGHT RAILWAYS.
Water Companies generally WATER SUPPLY.

Part I.—Nature, Characteristics, Definitions and Classification.

SECT. 1.—NATURE AND CHARACTERISTICS.

1. Apart from statute—No existence apart from members.]—(1) Where a person has been, by the fraudulent misrepresentation of directors, or by their fraudulent concealment of facts, drawn into a contract to purchase shares in a co., the directors cannot enforce the contract against him, but he may rescind it, but he must do so within a reasonable time.

(2) Limited Liability Acts previous to 1862 do not destroy, but only restrict, the liability of a shareholder in a co. formed under their provision, & change the form of enforcing it.

(3) The direct remedy of a creditor of an incorporated co. is solely against the co., & not against its individual members as upon a contract with them. But though, as between the co. & the member, the member might have a good legal or equitable defence to a call upon himself, he may be liable to contribute to the assets of the co. required for the payment of the co.'s creditors.

(4) A member of a limited liability co. which is wound up, resembles, with respect to creditors, a member of a co. under 1844 Acts, or a partner in a partnership which has become bkpt. The only difference is as to the extent of the liability.

Where a memorandum of assocn., which was registered, differed from the prospectus on which

it professed to be founded & on which, as setting forth the true objects of the assocn., A. had become a shareholder, though he, on discovering the difference, might have repudiated his shares, he could not after the failure of the co. relieve himself from liability to contribute to the debts of the assocn., on the ground that he had been ignorant of something, which, with proper diligence, he might have known.

(5) It is the duty of a person taking shares in a co. to use reasonable diligence in making himself acquainted with the provisions of the memorandum of assocn. He must take the consequences of neglect.

(6) The certificate of the registrar under 1862 Act, is conclusive that all previous requisites have been complied with.

A. applied, on the faith of statement in a prospectus, for shares in a limited liability co. They were allotted. His name was put on the register of shareholders. At the end of nine months the co. failed. It was ordered to be wound up. A. then applied to have his name removed from the list of contributories:—*Held*: (7) it was properly placed there.

(8) A variance between a prospectus & the memorandum of assocn. of a co. will not, necessarily & as of course, relieve a member of the co. from his liability as a contributory.

PART I. SECT. 1.

a. *Under statute—As person.*]—At a meeting of ratepayers held pursuant to 34 Vict. c. 54, the president of an in-

corporated co. was present, & tendered the vote of the co., which was refused, on the ground that above Act only gave "persons" the right to vote, & not corps.:—*Held*: the co.'s vote

was improperly rejected, & the proceedings were quashed.—*R. v. REID* (1873), 2 Pug. 26.—CAN.

b. ———.]—ROYAL CANADIAN

(9) The genius of the law of England regarded with disfavour the notion of an incorporated co. having a *persona* distinguishable from its component members (LORD COLONSAY).

(10) I think it would be contrary to the tendency & scope of all the statutes to hold that cos. [under the Cos. Acts] are stripped of all the characteristics of mercantile partnerships & clothed with all the attributes of perfect corpns., without qualification (LORD COLONSAY).—OAKES v. TURQUAND & HARDING, PEEK v. TURQUAND & HARDING, *Re* OVEREND, GURNEY & Co. (1867), L. R. 2 H. L. 325; 36 L. J. Ch. 949; 16 L. T. 808; 15 W. R. 1201, H. L.; *affg.* S. C. *sub nom.* *Re* OVEREND, GURNEY & Co., *Ex p.* OAKES & PEEK, L. R. 3 Eq. 576.

Annotations:—As to (1) *Consd.* Ogilvie v. Currie (1868), 37 L. J. Ch. 541; Tennent v. City of Glasgow Bank (1879), 4 App. Cas. 615. *Refd.* *Re* Estates Investment Co., Pawle's Case (1869), 4 Ch. App. 497; Peek v. Gurney (1871), L. R. 13 Eq. 79; *Re* London & Leeds Bank, *Ex p.* Carling, Carling v. London & Leeds Bank (1887), 56 L. J. Ch. 321; *Re* British Burmah Land Co. (1888), 4 T. L. R. 631; Cocksedge v. Metropolitan Coal Consumers Assocn. (1891), 64 L. T. 826; *Re* Hemp, Yarn & Cordage Co., Hindley's Case, [1896] 2 Ch. 121; First National Reinsurance v. Greenfield, [1921] 2 K. B. 260. *As to* (4) *Refd.* *Re* Blakely Ordnance Co., Brett's Case, *Re* Oriental Commercial Bank, Morris' Case (1873), 8 Ch. App. 800. *As to* (6) *Consd.* *Re* National Debenture & Assets Corpn., [1891] 2 Ch. 505. *Refd.* *Re* Nassau Phosphate Co. (1876), 2 Ch. D. 610; *Re* Yolland, Husson & Birkett, Leicester v. Yolland, Husson & Birkett (1907), 77 L. J. Ch. 43; Moosa Goolam Ariff v. Ebrahim Goolam Ariff (1912), 28 T. L. R. 505. *As to* (7) *Appld.* *Re* Cleveland Iron Co., *Ex p.* Stevenson (1867), 16 W. R. 95. *Folld.* Kent v. Freehold Land & Brickmaking Co. (1868), 3 Ch. App. 493; *Re* London & County General Agency Assocn., Hare's Case (1869), 4 Ch. App. 503. *Distd.* Reese River Silver Mining Co. v. Smith (1869), L. R. 4 H. L. 64; *Re* Warren's Blacking Co., Pentelow's Case (1869), 4 Ch. App. 178; Waterhouse v. Jamieson (1870), L. R. 2 Sc. & Div. 29. *Consd.* *Re* London & Mediterranean Bank, Wright's Case (1871), 7 Ch. App. 55. *Appld.* *Re* Empire Assce. Corpn., Challis's Case, Somerville's Case (1871), 6 Ch. App. 266; Stone v. City & County Bank, Collins v. City & County Bank (1877), 3 C. P. D. 282; Cree v. Somervall (1879), 4 App. Cas. 648. *Consd.* Tennent v. City of Glasgow Bank (1879), 4 App. Cas. 615; *Re* Hull & County Bank, Burgess's Case (1880), 15 Ch. D. 507. *Folld.* *Re* Lennox Publishing Co., *Ex p.* Storey (1890), 62 L. T. 791; Westmoreland Green & Blue Slate Co. v. Feilden (1891), 7 T. L. R. 585. *Refd.* Henderson v. Lacon (1867), L. R. 5 Eq. 249; *Re* Overend, Gurney, *Ex p.* Musgrave (1867), 37 L. J. Ch. 161; *Re* Universal Banking Corpn., Gunn's Case (1867), 3 Ch. App. 40; *Re* Oriental Commercial Bank, Alabaster's Case (1868), L. R. 7 Eq. 273; *Re* Aberaman Ironworks, Peek's Case (1869), 4 Ch. App. 532; *Re* London & Northern Insee. Corpn., Stace & Worth's Case (1869), 4 Ch. App. 682; *Re* Imperial Land Co. of Marseilles, *Ex p.* Jeaffreson (1870), L. R. 11 Eq. 109; McEuen v. West London Wharves & Warehouses Co. (1871), 6 Ch. App. 655; *Re* Hercules Insee., Pugh & Charman's Case (1872), L. R. 13 Eq. 566; *Re* Paraguassu Steam Tramroad Co., Black's Case (1872), 8 Ch. App. 254; *Re* Scottish Petroleum Co. (1883), 23 Ch. D. 413; *Re* Ystalyfera Co. (1886), 2 T. L. R. 900; *Re* London Celluloid Co., Bayley & Hanbury's Case (1888), 36 W. R. 673; East Broken Hill Consols v. Mallaby-Doeley (1895), 11 T. L. R. 465. *As to* (8) *Refd.* Downes v. Ship (1868), L. R. 3 H. L. 313. *Generally, Refd.* Abram S.S. Co. v. Westville Shipping Co., [1923] A. C. 773. *Mentd.* *Re* Overend, Gurney, Barrow's Case (1868), 3 Ch. App. 784; Overend, Gurney v. Gurney (1869), 4 Ch. App. 701; *Re* General Provincial Life Assce., *Ex p.* Daintree (1870), 18 W. R. 396; *Re* Contract Corpn., Hudson's Case (1871), L. R. 12 Eq. 1; *Re* Welsh Flannel & Tweed Co. (1875), L. R. 20 Eq. 360; Boaler v. Brodhurst (1892), 8 T. L. R. 398; *Re* Laxon (No. 2), [1892] 3 Ch. 555; *Re* Kent Coalfields Syndicate, [1898] 1 Q. B. 754; Ladies' Dress Assocn. v. Pulbrook (1899), 68 L. J. Q. B. 871; *Re* Trench & Tubeless Tyre Co., Bethell v. Trench & Tubeless Tyre Co. (1899), 69 L. J. Ch. 97.

2. Under statute—As partnership.]—OAKES v. TURQUAND & HARDING, PEEK v. TURQUAND & HARDING, *Re* OVEREND, GURNEY & Co., No. 1, *inte.*

3. ———.]—SMITH v. ANDERSON, No. 255, *post.*

4. ——— Transferability of shares.]—The power to transfer shares in a joint-stock co. under 1844 Act, without the consent of all the co-partners, is one of the leading differences between an ordinary partnership, in which no member can sell his shares without the consent of all the rest, & a co. (NORTH, J.).—*Re* RUSSELL INSTITUTION, FIGGINS v. BAGHINO, No. 20, *post.*

5. ——— As corporation.]—R. v. FRANKLAND, No. 295, *post.*

6. ———.]—(1) The rights of a co. under 1862 Act are not in all respects such as are by common law inherent in corpns. created otherwise than under that Act, but are limited by reference to the objects & purposes specified in the memorandum of assocn. as those for which the co. was established.

(2) The objects of a co. proposed to be incorporated under that Act, as stated in the memorandum of assocn. required by sect. 8 of the Act, cannot be departed from except so far as sect. 12 permits the change. The memorandum is the charter of the co. Consequently a contract made by the directors of such a co. upon a matter not included in the memorandum of assocn. is *ultra vires* of the directors, & is not binding on the co.

(3) A co. was registered under 1862 Act. Its objects, as stated in the memorandum of assocn., were to make, & sell, or lend on hire, railway carriages, & waggons, & all kinds of railway plant, fittings, machinery, & rolling-stock; to carry on the business of mechanical engineers & general contractors; to purchase, lease, work, & sell mines, minerals, lands, & buildings; to purchase & sell, as merchants, timber, coal, metals, or other materials, & to buy & sell any such materials on commission or as agents. The directors agreed to purchase a concession for making a railway in a foreign country, & afterwards, on account of difficulties existing by the law of that country, agreed to assign the concession to a *Société Anonyme* formed in that country, which *société* was to supply the materials for the construction of the railway, & to receive periodical payments from the English co.:—*Held*: this contract, being of a nature not included in the memorandum of assocn., was *ultra vires* not only of the directors but of the whole co. so that even the subsequent assent of the whole body of shareholders would have no power to ratify it.—ASHBURY RAILWAY CARRIAGE & IRON CO. v. RICHE (1875), L. R. 7 H. L. 653; 44 L. J. Ex. 185; 33 L. T. 450; 24 W. R. 794, H. L.; *reversg.* S. C. *sub nom.* RICHE v. ASHBURY RAILWAY CARRIAGE CO. (1874), L. R. 9 Exch. 224, Ex Ch.

Annotations:—As to (1) *Appld.* Wenlock v. River Dee Co. (1885), 10 App. Cas. 354. The law there laid down applies to all cos. created by any statute for a particular purpose (LORD BLACKBURN). *Consd.* *Re* Kingsbury Collieries & Moore's Contract, [1907] 2 Ch. 259; British South Africa Co. v. De Beers Consolidated Mines, [1910] 1 Ch. 354; Bonanza Creek Gold Mining Co. v. R., [1916] 1 A. C. 566. *Refd.* Cree v. Somervall (1879), 4 App. Cas. 648; *Re* German Date Coffee Co. (1882), 20 Ch. D. 169; *Re* London Celluloid Co., Bayley & Hanbury's Cases (1888), 59 L. T. 109; *Re* Patent Ivory Manufacturing Co., Howard v. Patent Ivory Manufacturing Co. (1888), 38 Ch. D. 156; Southwark & Vauxhall Water Co. v. Dickenson (1889), 5 T. L. R. 251; Foster v. L. C. & D. Ry. [1895], 1 Q. B. 711; A.-G. v. West Gloucestershire Water Co. (1909), 25 T. L. R. 650; Amalgamated Soc. of Railway Servants v. Osborne, [1910] A. C. 87; *Re* Doccham Gloves, [1913] 1 Ch. 226; *Re* Woking U. D. C. (Basingstoke Canal) Act, 1911, [1914] 1 Ch. 300; Dundee

BANK v. GRAND TRUNK RY. CO. (1873), 3 C. P. 225.—CAN.

o. Incorporated company—Meaning J.—VOL. IX.

of—Foreign company.]—The term "incorporated co." in 55 Vict. No. 7, does not include a foreign co.—TRANS-

PORT TRADING & AGENCY CO. OF WESTERN AUSTRALIA, LTD. v. SMITH (1906), 8 W. A. L. R. 33.—AUS.

Sect. 1.—Nature and characteristics.]

Harbour Trustees v. Nicol, [1915] A. C. 550; Bowman v. Secular Soc., [1917] A. C. 406; A.-G. v. Fulham Corp., [1921] 1 Ch. 440; Jenkin v. Pharmaceutical Soc. of Great Britain, [1921] 1 Ch. 392. *As to (2) Expld. A.-G. v. G. E. Ry.* (1880), 5 App. Cas. 473. *Consd. Guinness v. Land Corp. of Ireland* (1882), 22 Ch. D. 349. *Apld. Re Walker & Hacking* (1887), 57 L. T. 763; L. C. C. v. A.-G., [1902] A. C. 165. *Consd. A.-G. v. Mersey Ry.*, [1907] 1 Ch. 81. *Reid. Hope v. International Financial Soc.* (1876), 4 Ch. D. 327; *Re Dronfield Silkstone Coal Co.* (1880), 17 Ch. D. 76; L. & N. W. Ry. v. Price (1883), 11 Q. B. D. 485; *Ashbury v. Watson* (1885), 30 Ch. D. 376; *Re South Durham Brewery Co.* (1885), 31 Ch. D. 261; *Trevor v. Whitworth* (1887), 12 App. Cas. 409; *Ooregum Gold Mining Co. of India v. Roper*, Wallroth v. Roper, [1892] A. C. 125; *Andrews v. Gas Meter Co.*, [1897] 1 Ch. 361; *Re Borax Co., Foster v. Borax Co.*, [1901] 1 Ch. 326; *Corbett v. S. E. & C. Ry.'s Managing Committee*, [1906] 2 Ch. 12; *A.-G. v. Leicester Corp.* (1910), 103 L. T. 214; *County Hotel & Wine Co. v. L. & N. W. Ry.*, [1918] 2 K. B. 251. *As to (3) Consd. London Financial Assocn. v. Kelk* (1884), 26 Ch. D. 107. *Reid. Re West of England Bank, Ex p. Booker* (1880), 14 Ch. D. 317; *Re Railway Time Tables Publishing Co., Sandys' Case* (1889), 61 L. T. 94. *Generally, Mentd. Gibson v. Barton* (1875), L. R. 10 Q. B. 329; *Re Norwich Provident Insee. Soc.* (1877), 37 L. T. 272; *Re Albion Life Assee. Soc., Winstone's Case* (1879), 27 W. R. 752; *Chapleo v. Brunswick Permanent Bldg. Soc.* (1881), 6 Q. B. D. 696; *Re Coltman, Coltman v. Coltman* (1881), 19 Ch. D. 64; *Murray v. Scott, Brimelow v. Murray, Agnew v. Murray* (1884), 53 L. J. Ch. 745; *Melliss v. Shirley & Freemantle L. B. of Heath* (1885), 54 L. J. Q. B. 408; *Putney Overseers v. L. & S. W. Ry.*, [1891] 1 Q. B. 440; *Mann & Beattie v. Edinburgh Northern Tram. Co.* (1892), 1 R. 86; *Balkis Consolidated Co. v. Tomkinson*, [1893] A. C. 396; *Ho Tung v. Manon Insee.*, [1902] A. C. 232; *Re Walker & Smith* (1903), 72 L. J. Ch. 572; *Sinclair v. Brougham*, [1914] A. C. 398; *Re Layard, Layard v. Bessborough* (1916), 85 L. J. Ch. 505; *Kensington & Knightsbridge Electric Lighting Co. v. Notting Hill Electric Lighting Co.* (1918), 87 L. J. K. B. 565.

7. ———.] — **OAKES v. TURQUAND & HARDING, PEEK v. TURQUAND & HARDING, Re OVEREND, GURNEY & Co., No. 1, ante.**

—— **As person.]—See CORPORATIONS, Vol. XIII., pp. 351–353.**

8. ——— **Existence apart from members—Servant employed by members before formation of company.]—Where pltf. was engaged by defts., who afterwards formed themselves into a limited co., & pltf., after the expiration of his first engagement, continued in the service of the co.:—Held: defts. could only be liable as a co., & not as individuals.—SEQUELIN v. TERRELL (1867), 16 L. T. 537.**

9. ——— **Sale by member to company.]—Three mtgees. in possession, of whom F. was one, & who acted as their solr. in the transaction, sold, under the powers of sale in their mtge. deed, to a co. formed for the purpose of purchasing the property. The co. was to some extent promoted by F., who became the solr. to the co. & had a substantial interest as a shareholder:—Held: the sale could not be set aside on the simple ground that F. was a shareholder in the co., for that a sale by a person to a corp. of which he is a member is not either in form or substance a sale by him to himself along with other people.—FARRAR v. FARRARS, LTD. (1888), 40 Ch. D. 395; 58 L. J. Ch. 185; 60 L. T. 121; 37 W. R. 196; 5 T. L. R. 164, C. A.**

Annotations:—Mentd. Colson v. Williams (1889), 58 L. J. Ch. 539; *Tomlin v. Luce* (1889), 41 Ch. D. 573; *Re Hurst, Addison v. Topp* (1890), 63 L. T. 665; *Bailey v. Barnes*, [1894] 1 Ch. 25; *Field v. Debenture Corp.* (1896), 12 T. L. R. 469; *Kennedy v. De Trafford*, [1896] 1 Ch. 762; *Nutt v. Easton*, [1899] 1 Ch. 873; *Hodson v. Deans*, [1903] 2 Ch. 647; *Bath v. Standard Land Co.*, [1911] 1 Ch. 618; *Belton v. Bass, Ratcliffe & Gretton*, [1922] 2 Ch. 442.

10. ——— **Members nominees of vendors.]—When certain persons as vendors make an agreement with themselves & their nominees in the character of a limited co. it is an agreement between independent legal entities & valid.—Re**

WRAGG, LTD., [1897] 1 Ch. 796; 66 L. J. Ch. 419; 76 L. T. 397; 45 W. R. 557; 13 T. L. R. 302; 41 Sol. Jo. 385; 4 Mans. 179, C. A.

Annotations:—Reid. Re London Health Electrical Institute (1896), 75 L. T. 658; *Gardner v. Iredale*, [1912] 1 Ch. 700; *Hong-Kong & China Gas Co. v. Glen*, [1914] 1 Ch. 527. **Mentd. Kharaskhoma Exploring & Prospecting Syndicate, Pyke & Gibson's Case (1897), 77 L. T. 82; *Mosely v. Koffyfontein Mines*, [1904] 2 Ch. 108; *I. R. Comrs. v. Blott, I. R. Comrs. v. Greenwood*, [1921] 2 A. C. 171.**

11. ——— **Though virtually all shares owned by one member.]—Where a trader, who is solvent, converts his business into a limited liability co., & all the statutory requirements for the constitution of the co. are fulfilled, the ct. is not entitled to go behind the register & memorandum, & upon a speculative analysis of motives & the exorbitance of the price paid, to decide that the co. is not validly constituted on account of the non-fulfilment of conditions which are not found in the Cos. Acts.**

The mere facts that the trader is virtually sole owner of the concern, the other shareholders having only a nominal interest & being members of his own family, & that he has received debentures secured on the business as part of the purchase-money, do not constitute the co. his agent or trustee, so as to entitle the company to an indemnity, or authorise the ct. to rescind the agreement for the sale of the business to the co. or to deprive the founder of his security so as to postpone his claim on the assets to that of the unsecured creditors.

When the memorandum is duly signed & registered, though there be only seven shares taken, the subscribers are a body corporate, "capable forthwith" to use the words of the enactment, "of exercising all the functions of an incorporate co." I cannot understand how a body corporate thus made capable by statute can lose its individuality by issuing the bulk of its capital to one person, whether he be a subscriber to the memorandum or not. The co. is at law a different person altogether from the subscribers to the memorandum (LORD MACNAGHTEN).—**SALOMON v. SALOMON & Co., SALOMON & Co. v. SALOMON**, [1897] A. C. 22; 66 L. J. Ch. 35; 75 L. T. 426; 45 W. R. 193; 13 T. L. R. 46; 41 Sol. Jo. 63; 4 Mans. 89, H. L.; *reusg. S. C. sub nom. BRODERIP v. SALOMON*, [1895] 2 Ch. 323, C. A.

Annotations:—Consd. Re Wragg, [1897] 1 Ch. 796; *Re Hirth, Ex p. Trustee*, [1899] 1 Q. B. 612; *Lagunas Nitrate Co. v. Lagunas Syndicate*, [1899] 2 Ch. 392; *Gramophone & Typewriter v. Stanley*, [1906] 2 K. B. 856; *A.-G. for Dominion of Canada v. Standard Trust Co. of New York*, [1911] A. C. 498. **Apld. Booth v. Helliwell**, [1914] 3 K. B. 252. **Reid. Seligman v. Prince**, [1895] 2 Ch. 617; *Munkittrick v. Perryman & Hands* (1896), 74 L. T. 149; *Hadley v. Hadley* (1897), 77 L. T. 131; *R. v. Grubb*, [1915] 2 K. B. 683; *Daimler Co. v. Continental Tyre & Rubber Co. (Great Britain)*, [1916] 2 A. C. 307; *Re Express Engineering Works*, [1920] 1 Ch. 466; *I. R. Comrs. v. Sansom*, [1921] 2 K. B. 492; *Re Facey, Ex p. Trustees*, [1923] 2 Ch. 1. **Mentd. Re London Health Electrical Institute** (1896), 75 L. T. 658; *Re Olympia*, [1898] 2 Ch. 153; *Apthorpe v. Peter Schoenhofen Brewery Co.* (1899), 80 L. T. 393; *Re Raphael, Ex p. Salomon*, [1899] 1 Ch. 853; *Yeatman v. Homberger* (1912), 107 L. T. 43; *The Tommi, The Rothersand* (1914), 112 L. T. 257; *R. v. Bloomsbury Income Tax Comrs.*, [1915] 3 K. B. 768; *Blair v. Haycock Cadle Co.* (1917), 34 T. L. R. 39; *Radcliffe v. I. R. Comrs.* (1921), 90 L. J. K. B. 568; *Rainham Chemical Works v. Belvedere Fish Guano Co.*, [1921] 2 A. C. 465.

12. ——— **Two men company.]—The use of Cos. Acts for the purpose of enabling two partners to carry on business with limited liability is an abuse of those Acts; but, nevertheless, a co. created by registration under those Acts is an effectual co., though it be formed for this purpose; & the contracts of such a co. are not**

the contracts of the partners, & the partners cannot be sued personally on them, though possibly if the partners & the co. were both before the ct., the creditors under the co.'s contracts might be held entitled to an indemnity from the partners personally.—*MUNKITTRICK v. PERRYMAN & HANDS* (1896), 74 L. T. 149; 12 T. L. R. 232, D. C.

13. ——— **Club.**—The members of a club were formed into a joint stock co. incorporated under Cos. Acts for the purpose of carrying on the club. There was no rule in the memorandum or arts. of assocn. or constitution of the club which prevented other than members of the club from holding shares in the co., & in time, owing to the deaths of some members & the resignation of others who were shareholders, a few shares became the property of persons who were not members.

The co. in carrying on the club, among other things, sold by retail intoxicating liquors & tobacco to members of the club:—*Held*: the co. was a separate legal entity from the members of the club, & the sale of the intoxicating liquors & tobacco to members was not in law or in fact a distribution of the common property of the members among themselves, but the sale by retail of these articles by the co. to the members.—*NATIONAL SPORTING CLUB, LTD. v. COPE* (1900), 82 L. T. 352; 64 J. P. 310; 48 W. R. 446; 16 T. L. R. 158; 19 Cox, C. C. 485, D. C.

14. ———.—According to English law it is not possible for an individual corporator to be the legal owner of the whole of the stock of a co. so as legally to be the sole shareholder, inasmuch as the co. would by English law cease to exist if the number of corporators fell below a certain standard (*FLETCHER MOULTON, L.J.*).

The acquisition of the whole of the shares of a corpn. by one individual does not of itself alter the nature of his relationship to the corpn. His *de facto* control when he possesses 98 per cent. is probably complete from a practical point of view, & although it is no doubt rendered more complete in theory when he possesses himself of the whole of the shares, it is still of the nature of a control exercised by corporators over the corpn., & does not make him & the corpn. in any sense identical. The directors of the corpn. do not become his agents. Their duties are still controlled by the rules & constitution of the corpn. itself (*FLETCHER MOULTON, L.J.*).—*GRAMOPHONE & TYPEWRITER, LTD. v. STANLEY*, [1908] 2 K. B. 89; 77 L. J. K. B. 834; 99 L. T. 39; 24 T. L. R. 480; 15 Mans. 251; *sub nom.* *STANLEY v. GRAMOPHONE & TYPEWRITER, LTD.*, 5 Tax Cas. 358, C. A.

Annotations:—*Reid*. *American Thread Co. v. Joyce* (1912), 106 L. T. 171; *Continental Tyre & Rubber Co. (Great Britain) v. Daimler Co., Continental Tyre & Rubber Co. (Great Britain) v. Tilling*, [1915] 1 K. B. 893; 1 R. Comrs. v. Sansom, [1921] 2 K. B. 492. *Mentd.* *Salmon v. Quin & Axtens*, [1909] 1 Ch. 311; *Logan v. Davis* (1911), 104 L. T. 914; *Liverpool & London & Globe Insce. v. Bennett, Brice v. Northern Assee., Brice v. Ocean Accident & Guarantee Corpn.*, [1912] 2 K. B. 41; *Smith v. Incorporated Council of Law Reporting for England & Wales*, [1914] 3 K. B. 674; 1 R. Comrs. v. Maxse, [1918] 2 K. B. 715; *Singer v. Williams*, [1921] 1 A. C. 41; *New Zealand Shipping Co. v. Thew* (1922), 8 Tax Cas. 208; *Bradbury v. English Sewing Cotton Co.*, [1923] A. C. 744; *Gas Lighting Improvement Co. v. I. R. Comrs.*, [1923] A. C. 723.

15. ——— **Company acting solely on behalf of originators.**—A co. which is duly incorporated cannot be disregarded on the ground that it is a sham, although it may be established by evidence that in its operations it does not act on its own behalf as an independent trading unit, but simply

for & on behalf of the people by whom it has been called into existence (*LORD BUCKMASTER*).—*RAINHAM CHEMICAL WORKS, LTD. v. BELVEDERE FISH GUANO CO.*, [1921] 2 A. C. 465; 90 L. J. K. B. 1252; 126 L. T. 70; 37 T. L. R. 973; 66 Sol. Jo. (W. R.) 7; 19 L. G. R. 657, H. L.; *affg.* *S. C. sub nom. BELVEDERE FISH GUANO CO. v. RAINHAM CHEMICAL WORKS, FELDMAN & PARTRIDGE; IND, COOPE & CO. v. SAME*, [1920] 2 K. B. 487, C. A.

Annotations:—*Mentd.* *Said v. Butt*, [1920] 3 K. B. 497; *Kennard v. Cory* (1922), 91 L. J. Ch. 452; *Performing Right Soc. v. Cyril Theatrical Syndicate* (1923), 92 L. J. K. B. 811.

16. ——— **& person creating company.**—*R. v. GRUBB*, [1915] 2 K. B. 683; 84 L. J. K. B. 1744; 113 L. T. 510; 79 J. P. 430; 31 T. L. R. 429; 59 Sol. Jo. 547; 25 Cox, C. C. 77; 11 Cr. App. Rep. 153, C. C. A.

Annotations:—*Reid*. *R. v. Bottomley* (1922), 87 J. P. 26; *R. v. Cuffin* (1922), 127 L. T. 564.

17. ———.—The registered owner, D., of a trade mark applied to razors, formed a co., of which he was the only substantial shareholder, for dealing in the razors, but did not assign the trade mark to the co. In an action by the co. & D. for infringement of the trade mark, defts. contended that the co. could not obtain an injunction, & that D. could not recover damages. Pltf. co. was dismissed from the action:—*Held*: on appeal (1) the co. could not be regarded as the agents of D.; (2) as defts. had not repeated in their defence their offer of an undertaking, there was nothing to prevent D. from obtaining an injunction.—*FRAM MANUFACTURING CO., LTD. v. MORTON (ERIC) & CO.* (1922), 40 R. P. C. 33, C. A.

18. ——— **Conveyance of property by partners to company—Members of partnership & of company identical.**—By deed between the eight partners composing a firm, of the first eight parts, & a limited co. of the ninth part, it was recited that the partners were desirous that their business should be reconstructed as a limited co., & had agreed that the whole of the undertaking, property, & liabilities of the firm should be transferred to a co. to be formed of all the partners in the firm exclusively, for the purpose of taking over the same; & that there should be allotted amongst the partners, in proportion to their shares in the partnership, the whole of the shares in the co. The deed then recited that such a co. had been registered, being that party to the deed, & that all its shares were taken & held by the partners in specified proportions; & it was thereby witnessed that, "in pursuance of the said arrangement, & for the purpose of giving effect to the said scheme, & of vesting the real estate of the partnership in the co.," the eight partners conveyed & assigned to the co. all the real estate & trade marks of the partnership:—*Held*: the deed was a transfer of property from individuals to a corpn. in consideration of "stocks or securities" within the meaning of Stamp Act, 1870 (c. 97), s. 71, & accordingly was a "conveyance on sale" chargeable with an *ad valorem* duty within the sched. to that Act, & was none the less so because the eight partners who conveyed the property were also the individuals who constituted the corpn.—*FOSTER (JOHN) & SONS v. INLAND REVENUE COMRS.*, [1894] 1 Q. B. 516; 63 L. J. Q. B. 173; 69 L. T. 817; 58 J. P. 444; 42 W. R. 259; 10 T. L. R. 152; 38 Sol. Jo. 128; 9 R. 161, C. A.

Annotations:—*Reid*. *Coats v. I. R. Comrs.*, [1897] 2 Q. B. 423. *Mentd.* *G. N. Ry. v. I. R. Comrs.*, [1899] 2 Q. B. 652.

———— **Company registered in England—**

Sect. 1.—Nature and characteristics. Sect. 2. Parts II. & III. Sect. 1: Sub-sect. 1.]

Majority of shares held by alien members.]—See No. 26, post.

See, also, No. 74, post.

SECT. 2.—DEFINITIONS AND CLASSIFICATION.

19. Company—Society formed under Industrial & Provident Societies Acts.]—An industrial society formed under Industrial & Provident Societies Acts is not a "co." within any of the legal meanings of that word.—*GREAT NORTHERN RY. CO. v. COAL CO-OPERATIVE SOCIETY*, [1896] 1 Ch. 187; 65 L. J. Ch. 214; 73 L. T. 443; 44 W. R. 252; 12 T. L. R. 30; 40 Sol. Jo. 52; *sub nom. Re COAL CO-OPERATIVE SOCIETY, GREAT NORTHERN RY. CO. v. COAL CO-OPERATIVE SOCIETY*, 2 Mans. 621. *Annotation:—Mentd. Clark v. Balm, Hill*, [1908] 1 K. B. 667.

See, generally, INDUSTRIAL, PROVIDENT, & SIMILAR SOCIETIES.

— Under investment clause in wills.]—See WILLS.

20. Joint stock company—Literary & Scientific Institutions Act, 1854 (c. 112), s. 30 (1).]—(1) A literary & scientific institution, in the property of which proprietors were interested in proportion to the number of their shares, which shares were transferable & transmissible:—*Held: to be in the nature of a joint-stock co. within Literary & Scientific Institutions Act, 1854 (c. 112), s. 30.*

(2) Co. distinguished from partnership (*see No. 4, ante*).—*Re RUSSELL INSTITUTION, FIGGINS v. BAGHINO*, [1898] 2 Ch. 72; 67 L. J. Ch. 411; 78 L. T. 588; 14 T. L. R. 406; 42 Sol. Jo. 508.

Annotation:—As to (1) Refd. Re Jones, Clegg v. Ellison, [1898] 2 Ch. 83.

See, generally, LITERARY & SCIENTIFIC INSTITUTIONS.

21. Public company—Judgments Act, 1838 (c. 110).]—A co., not incorporated by charter, but which had all the attributes of publicity—such as, returning the names & places of abode of its members, & of the officer to sue & be sued in the name & on behalf of the co.—is a public co. within above Act.—*MACINTYRE v. CONNELL* (1851), 1 Sim. N. S. 225; 20 L. J. Ch. 284; 18 L. T. O. S. 24; 15 Jur. 529; 61 E. R. 87; *subsequent proceedings*, 1 Sim. N. S. 252.

Annotations:—Consd. Nicholls v. Rosewarne (1859), 6 C. B. N. S. 480; *Re White, Theobald v. White*, [1913] 1 Ch. 231. *Refd. Re Lysaght, Lysaght v. Lysaght*, [1898] 1 Ch. 115.

See, generally, JUDGMENTS & ORDERS.

22. — Under Apportionment Act, 1870 (c. 35).]—By the deed of settlement of an unincorporated life assurance society, established in 1843, & possessing certain powers under a special Act of Parliament passed in 1868, provision was made for division of one-tenth of the surplus profits amongst the shareholders, & that such division should be made once in every five years, unless a special meeting duly convened to

consider thereof should direct otherwise, & then for that time only:—*Held: the society was a public co. within Apportionment Act, 1870 (c. 35), & the surplus profits for the five years ending Dec. 31, 1878, payable in respect of shares in the society specifically bequeathed by a will dated in 1875, the testator dying in the same year, were apportionable.—Re GRIFFITH, CARR v. GRIFFITH* (1879), 12 Ch. D. 655; 41 L. T. 540; 28 W. R. 28.

Annotations:—Refd. Re Sharp, Rickett v. Sharp (1890), 62 L. T. 364; *Re Sale, Nisbet v. Philp*, [1913] 2 Ch. 697; *Re Jowitt, Jowitt v. Keeling*, [1922] 2 Ch. 442.

23. — — —.]—Every co. registered under 1862 Act, is a public co. within Apportionment Act, 1870 (c. 35).—*Re LYSAGHT, LYSAGHT v. LYSAGHT*, [1898] 1 Ch. 115; 67 L. J. Ch. 65; 77 L. T. 637, C. A.

Annotations:—Refd. Re White, Theobald v. White, [1913] 1 Ch. 231. *Mentd. Re Edwards, Newbery v. Edwards*, [1918] 1 Ch. 142.

24. — — — Company registered as private company under 1908 Act, s. 121.]—The term "private co." in 1908 Act, s. 121, is only a convenient way of describing, for the purposes of that Act, a particular class of cos. subject to the Act; & a co. incorporated under the Cos. Acts either before or after that Act, & so constituted, either originally or by subsequent alteration of its articles, as to be a private co. within the meaning of that expression in s. 121 of the Act, is nevertheless a "public co." for the purposes of the Apportionment Act, 1870 (c. 35).—*Re WHITE, THEOBALD v. WHITE*, [1913] 1 Ch. 231; 82 L. J. Ch. 149; 108 L. T. 319; 57 Sol. Jo. 212.

See, generally, EXECUTORS & ADMINISTRATORS; SETTLEMENTS; TRUSTS & TRUSTEES; WILLS.

— Under investment clause in wills.]—See WILLS.

25. Private company—1908 Act, s. 121—How ascertained.]—For the purpose of determining whether a co. is a "private co." within 1908 Act, s. 26, sub-sect. 3, & as such exempt from the liability imposed by that sub-section upon cos. except private cos.—of sending to the registrar of cos. with the prescribed summary an audited balance-sheet, the articles of the co. are alone to be looked at & are the sole test as to whether a co. is a private co. for that purpose; & consequently, if a co. "by its articles" contains the three conditions specified in sect. 121 of the Act & is therefore a "private co.," it does not cease to be a private co. so as to render it liable to a penalty for not sending in an audited balance-sheet, merely because it does not in fact comply with those conditions in the articles, as for instance, that the number of its members exceeds the prescribed number of fifty.—*PARK v. ROYALTIES SYNDICATE LTD.*, [1912] 1 K. B. 330; 81 L. J. K. B. 313; 106 L. T. 184; 76 J. P. 93; 19 Mans. 97, D. C.

See, also, No. 24, ante.

Companies limited by guarantee—Liability of members.]—See Nos. 398, 7574, 7593, post.

— Alteration of articles.]—See No. 4055, post.

Part II.—Domicil, Residence and Nationality of Companies.

26. How determined—Registration according to English law—Though majority of shares held by alien enemies.]—An action was brought by a co. to recover the price of goods sold & delivered. The co. was registered in England under the Cos. Acts about eight years ago, having its office in London & its factory in Birmingham. Of its shares 380 were held by a naturalised German living in this country, & 1,435, being practically the whole of the remaining shares, were held by Germans resident in Germany. It was not disputed at the trial that the sum claimed was owing by defts., but the judge of the City of London Ct. decided that owing to the composition of pltf. co. it was not entitled, during the continuance of a state of war between this country & Germany, to sue in respect of the debt:—*Held*: when once the co. was registered according to English law, it became resident in this country, & was consequently entitled to judgment.—*AMORDUCT MANUFACTURING CO., LTD. v. DEFRIES & CO.* (1914), 84 L. J. K. B. 586; 112 L. T. 131; 31 T. L. R. 69; 59 Sol. Jo. 91, D. C.

Annotation:—*Folld.* Continental Tyre & Rubber Co. (Great Britain) v. Daimler Co., Continental Tyre & Rubber Co. (Great Britain) v. Tilling (1915), 84 L. J. K. B. 926.

Companies as alien enemies.]—*See, generally, ALIENS, Vol. II., pp. 145, 146.*

27. Company may have two domicils.]—A co. may have two domicils, & places of business may for the purpose of founding jurisdiction be treated as places of domicil, & service there is sufficient.—*CARRON IRON CO. v. MACLAREN* (1855), 5 H. L. Cas. 416; 24 L. J. Ch. 620; 26 L. T. O. S. 42; 3 W. R. 597; 10 E. R. 961, H. L.; *reversq. S. C. sub nom. MACLAREN v. STAINTON* (1852), 16 Beav. 279.

Annotations:—*Folld.* Newby v. Colt's Patent Firearms Co.

(1872), L. R. 7 Q. B. 293. *Consd.* Nutter v. Messageries Maritimes De France (1885), 54 L. J. Q. B. 527. *Folld.* Haggin v. Comptoir D'Escompte de Paris, Mason & Barry v. Comptoir D'Escompte de Paris (1889), 23 Q. B. D. 519; La Bourgogne, [1899] P. 1; De Beers Consolidated Mines v. Howe, [1905] 2 K. B. 612. *Consd.* Saccharin Corp. v. Chemische Fabrik Von Heyden Akt., [1911] 2 K. B. 516. *Reid.* Okura v. Forsbacka Jernverks Akt., [1914] 1 K. B. 715. *Mentd.* Pennell v. Roy (1853), 22 L. J. Ch. 409; Walker v. Brooks (1856), 4 W. R. 347; Venning v. Loyd (1859), 1 De G. F. & J. 193; Maundor v. Lloyd (1862), 2 John. & H. 718; *Re Boyse, Crofton v. Crofton* (1880), 15 Ch. D. 591; McHenry v. Lewis (1882), 22 Ch. D. 397; Hyman v. Helm (1883), 24 Ch. D. 531; Ewing v. Orr Ewing (1885), 10 App. Cas. 460, n.; Pena Copper Mines v. Rio Tinto Co. (1911), 105 L. T. 846.

28. "Company in United Kingdom"—Company registered & managed in England—Though property situate & operations carried on abroad—Construction of will.]—A testator authorised his trustees to invest in the stocks, shares, or securities of "any co. in the United Kingdom":—*Held*: a limited co. registered in England & having its head office in England, where its directors met to manage the affairs of the co., was a "co. in the United Kingdom" within the meaning of the investment clause, although its property was situate abroad & its operations were abroad.—*Re HILTON, GIBBES v. HALE-HINTON*, [1909] 2 Ch. 548; 79 L. J. Ch. 7; 101 L. T. 229; 17 Mans. 19.

For registration of British ship.]—*See SHIPPING & NAVIGATION.*

For purposes of taxation.]—*See INCOME TAX; REVENUE.*

For purposes of service of legal process.]—*See PRACTICE & PROCEDURE.*

Jurisdiction of county courts.]—*See COUNTY COURTS, Vol. XIII., pp. 459, 460.*

Jurisdiction of Mayor's & City of London Court.]—*See MAYOR'S COURT, LONDON.*

Foreign companies.]—*See Part XII., post.*

Part III.—Companies under Companies (Consolidation) Act, 1908, and Similar Acts.

NOTE.—The principal Act now in force in England is Companies (Consolidation) Act, 1908 (c. 69), referred to as 1908 Act, which largely re-enacted & consolidated Companies Act, 1862 (c. 89) & amending Acts.

In considering the cases in this Part regard should be had to their dates & the Act under which they were decided.

SECT. 1.—PROMOTION AND FLOTATION.

SUB-SECT. 1.—WHO ARE PROMOTERS.

29. In general.]—Action brought by pltf. under 1867 Act, s. 38, to recover the amount paid

by him on certain shares taken by him in the L. Co. on the ground of the fraud of defts., promoters of the co., in omitting from the prospectus two contracts entered into by them as promoters—the one a contract between defts. C. & P. & one S., for the purchase of certain foreign concessions for the construction of tramways which the co. was afterwards incorporated to make & work; the other a contract between defts. C. & P. & deft. G., as to certain payments to be made by C. & P. to G. in consideration of his obtaining for them a contract from the co. for the construction of the tramways, by means of which

PART II.

d. How determined—Management & head office in foreign country.]—A foreign co. had a place of business in V., where it carried on a trading business, although its principal place of business & head office, where the meetings of the governor, chief traders & shareholders were held, were in E.:—*Held*: E. must be regarded as the domicil of the co.—*WILSON v. HUDSON'S BAY CO.* (1884), 1 B. C. R. pt. II., 102.—CAN.

e. ———.]—*NORTH WEST TIMBER CO. v. McMILLAN* (1886), 3 Man. L. R. 277.—CAN.

f. ———.]—*BRAUN v. DAVIS NORTHERN ASSURANCE CO., GARNISHEES* (1894), 9 Man. L. R. 534.—CAN.

g. ——— Operations carried on elsewhere.]—*WEISBACH INCANDESCENT GASLIGHT CO. v. ST. LEGER* (1895), 16 P. R. 382.—CAN.

h. ———.]—*HALIFAX CITY v. McLAUGHLIN CARRIAGE CO.* (1907), 27 C. L. T. 659; 39 S. C. R. 174.—CAN.

k. ———.]—*ONTARIO WIND ENGINE & PUMP CO. v. ELDRED* (1912), 20 W. L. R. 697; 2 W. W. R. 60; 2 D. L. R. 270.—CAN.

l. ——— Carrying on business.]—If a corpn. carries on business in the colony it may be said to be resident in the colony.—*McCAUL v. NEW ZEALAND LOAN & MERCANTILE AGENCY CO.* (1883), 1 N. Z. L. R. 297.—N.Z.

m. ———.]—*GUY v. FERGUSON SYNDICATE CO., LTD.* (1892), 10 N. Z. L. R. 405.—N.Z.

n. ———.]—*WALLIS v. GORDON DIAMOND MINING CO., LTD.* (1891), 6 H. C. 43.—S. AF.

27 i. Company may have two domicils.]—*WALLIS v. GORDON DIAMOND MINING CO., LTD.* (1891) 6 H. C. 43.—S. AF.

Sect. 1.—Promotion and flotation: Sub-sects. 1 & 2.]

fraud pltf. had been induced to take the shares, which proved worthless. The jury found that these contracts were material to be made known to the intended shareholders of the co.:—*Held*: (1) the contracts ought to have been specified in the prospectus, & defts. were liable; (2) the words “knowingly issuing” in sect. 38 mean intentionally issuing a prospectus without inserting the contracts which are required by that sect. to be specified, although they are omitted under the *bonâ fide* belief that it is unnecessary to specify them; (3) the prospectus was issued by the promoters as promoters within the meaning of the statute, notwithstanding they issued it after the co. had been registered, & after the prospectus had been settled by the board of directors.

At the trial the judge directed the jury that if the real damage occasioned to pltf. by deft.’s fraud was the price he paid for the shares, he was entitled to recover that amount. The jury assessed the damages at the price paid by pltf.:—*Held*: (4) the direction was right, & the shares taken by pltf. being worthless he was entitled to recover the amount paid by him for them.

(5) A promoter is one who undertakes to form a co. with reference to a given project & to set it going, & who takes the necessary steps to accomplish that purpose (COCKBURN, C.J.).—TWYCCROSS v. GRANT (1877), 2 C. P. D. 469; 46 L. J. Q. B. 636; 36 L. T. 812; 25 W. R. 701, C. A.

Annotations:—As to (1) *Folld.* Capel v. Sim’s Ships Compositions Co. (1888), 57 L. J. Ch. 713. *Refd.* Cackett v. Keswick, [1902] 2 Ch. 456; Nash v. Calthorpe, [1905] 2 Ch. 237; Macleay v. Tait, [1906] A. C. 24. As to (2) *Consd.* Sullivan v. Mitcalfe (1880), 5 C. P. D. 455; Baty v. Keswick (1901), 85 L. T. 18. *Folld.* Watts v. Bucknall, [1903] 1 Ch. 766. *Appld.* Shephard v. Broome, [1904] A. C. 342. *Refd.* Stevens v. Hoare (1904), 20 T. L. R. 407. As to (3) *Consd.* Waddell v. Blockey (1879), 4 Q. B. D. 678. As to (4) *Consd.* Macleay v. Tait, [1906] A. C. 24. *Refd.* Arkwright v. Newbold (1881), 17 Ch. D. 301; Peck v. Derry (1887), 37 Ch. D. 541; Capel v. Sim’s Ships Compositions Co. (1888), 57 L. J. Ch. 713; Shaw v. Holland (1900), 82 L. T. 782. As to (5) *Refd.* Emma Silver Mining Co. v. Lewis (1879), 4 C. P. D. 396; *Re* Great Wheal Polgooth Co. (1883), 53 L. J. Ch. 42. *Generally, Refd.* Marshall v. Morrison, [1907] W. N. 29. *Mentd.* *Re* Lisbon Steam Tram Co., *Re* Grant’s Examination (1876), 24 W. R. 516; *Re* Caerphilly Colliery Co., Ormerod’s Case (1877), 37 L. T. 244; Craig v. Phillips (1877), 7 Ch. D. 249; Sanway v. Winch (1893), 9 T. L. R. 552.

30. —.] — JUBILEE COTTON MILLS, LTD. (OFFICIAL RECEIVER & LIQUIDATOR) v. LEWIS, No. 75, post.

31. — Question of fact not law.]—Defts., metal brokers, having previously sold ore of an American mine on a commission of 2½ per cent., arranged with a proprietor to assist in selling the mine to a co. to be raised by him in England. He was to procure the appointment of defts. as metal brokers of the co. at the usual rate of English commission, & he promised that defts. should be liberally remunerated to the extent at least of £5,000 for their assistance, & to compensate for the loss of the higher commission. They were, as he knew, acquainted with facts detrimental to the reputation of the mine, & he promised the liberal remuneration to ensure their silence respecting them. Defts. assisted him in his endeavours to sell the mine to a co. to be formed for the purchase of it, but left him to fix the price, get up the co., & manage all details respecting the

sale. He procured the formation of pltf. co. & the purchase by it of the mine for £100,000, half to be paid in cash & half in paid-up shares. Defts. were appointed metal brokers of the co. at 1 per cent. commission, allowed themselves to be named in the prospectus as being ready to answer any inquiries relating to the mine, & answered such inquiries, but kept silence with respect to the detrimental facts known to them. Payment having been made for the mine to the proprietor, 250 fully paid-up shares out of those received from the co. were transferred by him to defts., & were subsequently sold, & the proceeds received by them. This transaction was not disclosed to the co. In an action to recover the proceeds as secret profits made by promoters, the judge left the question of promotorship, without any definition, to the jury, who found that defts. were promoters, & gave a verdict for pltf.:—*Held*: (1) there was ample evidence for the jury, & the judge was not bound to give them a definition of the term “promoter,” which had no very definite meaning, but involved the idea of exertion for the purpose of floating a co., & also the idea of some duty towards the co., imposed by or arising from the position which the so-called promoter assumed toward it; & defts. were in a fiduciary relation to the co., & therefore liable to refund the secret profits, even though the contract of sale was not rescinded; (2) the question of promotorship is one of fact, & not of law; (3) persons who get up & form a co. have duties towards it before it comes into existence; (4) there may be promoters of a co., even after it is registered & incorporated, other than its directors, so long as it is not in a position to perform the obligations imposed upon it by its creators.—EMMA SILVER MINING CO. v. LEWIS (1879), 4 C. P. D. 396; 40 L. T. 749; 27 W. R. 836.

Annotations:—As to (1) *Folld.* Lydney & Wigpool Iron Ore Co. v. Bird (1886), 33 Ch. D. 85. *Refd.* *Re* Great Wheal Polgooth Co. (1883), 53 L. J. Ch. 42. As to (2) *Refd.* *Re* Olympia, [1898] 2 Ch. 153.

32. — Exertion of flotation of company.]—EMMA SILVER MINING CO. v. LEWIS, No. 31, ante.

33. — Term not of law but of business.]—G. had purchased certain calico printing works for the sum of £15,000. G. & S. associated themselves together as promoters of a co. formed for the purchase of the works from G., & for the purposes of the negotiations for such purchase a contract, which the jury found to be a sham contract, was entered into between them for the pretended sale of the works by G. to S. for £20,000. The co. was ultimately formed, its directors being nominees of G. & S., & the works were conveyed by G. & S. to the co. for £20,000. It was agreed between G. & S. that G. should pay the sum of £3,000 out of the purchase-money to S., but this agreement was not communicated to the directors of the co. when the sale to the co. was effected:—*Held*: S., as a promoter of the co., was not entitled to secure any profit to himself out of the formation of the co. without the knowledge of the directors, & such being the case the co. were entitled to treat the agreement made between G. & S. as made by S. on their behalf, & to enforce it against G., & consequently they could recover from G. so much of the £3,000 which he had agreed to pay to S. as remained unpaid.

The term promoter is a term not of law but of

PART III. SECT. 1, SUB-SECT. 1.

32 i. In general—Exertion of flotation of company.]—One who brings a co. into existence by taking an active part in forming it or in procuring

persons to join it as soon as it is technically formed is a promoter of the co.—WHEAL ELLEN GOLD MINING CO. v. READ (1908), 7 C. L. R. 34.—AUS.

32 ii. —.]—The term pro-

motor involves the idea of exertion for the purpose of getting up & starting co. or in other words floating it, also the idea of some duty toward the co. imposed by or arising from the position which the so-called promoter

PART III.—COMPANIES UNDER COMPANIES (CONSOLIDATION) ACT, 1908, ETC. 39

business, usefully summing up in a single word a number of business operations familiar to the commercial world by which a co. is generally brought into existence (BOWEN, J.).—WHALEY BRIDGE CALICO PRINTING CO. v. GREEN (1880), 5 Q. B. D. 109; 49 L. J. Q. B. 326; 41 L. T. 674; 44 J. P. 185; 28 W. R. 351.

Annotations.—*Reid. Re Great Wheal Polgooth Co. (1883)*, 53 L. J. Ch. 42; Lydney & Wigpool Iron Ore Co. v. Bird (1886), 33 Ch. D. 85; Grant v. Gold Exploration & Development Syndicate, [1900] 1 Q. B. 233.

34. Particular cases—Solicitor profiting by formation of company.—T., a solr., acting for the promoters of an intended co., with an understanding that he should be its solr. when formed, entered into an arrangement with R., who had purchased property suitable for the co. as a speculation, that such purchase should be on their joint account, & that all negotiations relating to the property should be in the name of R. alone, & that the name of T. should not appear. The co., whilst T.'s interest in the property was concealed from them, & under the advice of the firm in which he was a partner, purchased from R. a portion of the property at a sum larger than the price paid by R. & T. for the whole, & the profit was divided between them. The co. afterwards discovered the circumstances under which the sale had been made to them:—*Held*: the co. were entitled as against T. to the benefit of his contract with R., so far as related to the premises sold to them; & T. was entitled to receive from the co. only the difference between the sum paid by him for his share of the property & the value of the portion of the property retained by him, & the surplus which had been paid by the co. to him must be repaid with interest at the rate of £5 per cent.

That T., & perhaps his partner, P., were original promoters of the bank appears from the minutes of the first meeting which is described as a meeting of the promoters of the scheme for establishing a new joint stock bank. At the meeting the only persons present were T., P. & S., & upon this occasion T. & his partner expressed their willingness to undertake the office of solrs. to the bank. From that time, therefore, T. stood in a relation to the present & future members of the co. which precluded him from deriving any private benefit to himself from any contracts or negotiations entered into by him on their behalf (LORD CHELMSFORD).—TYRRELL v. BANK OF LONDON (1862), 10 H. L. Cas. 26; 31 L. J. Ch. 369; 6 L. T. 1; 8 Jur. N. S. 849; 10 W. R. 359; 11 E. R. 934, H. L.; *varying* S. C. *sub nom.* BANK OF LONDON v. TYRRELL, 27 Beav. 273.

Annotations.—*Distd. Mason's Hall Tavern Co. v. Nokes (1870)*, 22 L. T. 503. *Reid. Re Mason's Hall Tavern Co.*, Orgill's Case (1869), 21 L. T. 221; Imperial Mercantile Credit Assn. v. Coleman (1871), 6 Ch. App. 562, n.; Kimber v. Barber (1872), 8 Ch. App. 56; Lindsay Petroleum Co. v. Hurd (1874), L. R. 5 P. C. 221; Albion Steel & Wire Co. v. Martin (1875), 24 W. R. 134; *Re Western of Canada Oil Lands & Works Co.*, Carling's Case (1875), L. R. 20 Eq. 580; New Sombrero Phosphate Co. v. Erlanger (1877), 5 Ch. D. 73; *Re Cape Breton Co.* (1885), 29 Ch. D. 795; *Re Haslam & Hier-Evans* (1902), 46 Sol. Jo. 233; *Omnium Electric Palaces v. Baines*, [1914] 1 Ch. 332.

35. — Solicitor acting for company in early stages.—A solr. acting for a co. in its early stages is not to be treated as a promoter of the co.—

motor assumes towards it.—HERZFELDER v. MCARTHUR, ATKINS & CO., LTD., [1908] T. S. 332.—S. AF.

o. Particular cases—Stockbroker issuing prospectus.—BORDEN v. STANFORD (1915), 4 N. S. R. 532.—CAN.

p. — Partner in firm negotiating sale to company.—SCOTTISH PACIFIC

COAST MINING CO., LTD. v. FALKNER, BELL & CO. (1888), 15 R. (Ct. of Sess.) 290; 25 Sc. L. R. 226.—SCOT.

PART III. SECT. 1, SUB-SECT. 2.

38 i. Nature—Fiduciary.—E. had on behalf of himself & C. acquired from B., the owner of a mining lease, an

Re GREAT WHEAL POLGOOTH CO., LTD. (1883), 53 L. J. Ch. 42; 49 L. T. 20; 47 J. P. 710; 32 W. R. 107.

36. — Temporary secretary receiving commission on formation of company—"Person who has taken part in the formation or promotion."—H., in 1888, acted temporarily as secretary of a co. formed for the purchase of an hotel & gardens, the vendor of which had offered £2,000 to him & other persons if they would form such a co. H. received £250 of this amount to the knowledge of the other persons, who became the directors, & the date & parties to the agreement under which he took this profit were stated in the prospectus issued to the public inviting share subscriptions:—*Held*: although the facts showed that H. was in every sense of the words a "person who had taken part in the formation or promotion of the co.," within 1890 Act, s. 10, yet there was no legal obligation on him to account to the co. for the money which he had received.—*Re SALE HOTEL & BOTANICAL GARDENS CO., LTD., Ex p. HESKETH* (1898), 78 L. T. 368; 46 W. R. 617; 14 T. L. R. 344; 42 Sol. Jo. 416, C. A.

Annotation.—*Reid. Re Olympia* (1898), 78 L. T. 159.

See, also, Nos. 45, 47, 82, *post*.

SUB-SECT. 2.—RELATIONSHIP BETWEEN PROMOTER AND COMPANY.

37. Nature—Neither agency nor trusteeship—Principles of agency & trusteeship apply.—(1) Although a promoter of a co. cannot be considered an agent or trustee for the co., the co. not being in existence at the time, yet the principles of the law of agency & trusteeship are applicable to his case, & he is accountable for all moneys obtained by him from the funds of the co. without the knowledge of the co.

(2) The fact that a promoter is acting as agent for the vendors in getting up a co. for the purchase of their property does not exonerate him from accounting to the co., when formed, for any secret profit made by him.

(3) In estimating the amount of the secret profit for which a promoter was accountable to the co. he was held entitled to be allowed the legitimate expenses incurred by him in forming & bringing out the co., such as the reports of surveyors, the charges of solrs. & brokers, & the cost of advertisements, but not a sum of money which he had expended in obtaining from another person a guarantee for the taking of shares.—LYDNEY & WIGPOOL IRON ORE CO. v. BIRD (1886), 33 Ch. D. 85; 55 L. J. Ch. 875; 55 L. T. 558; 34 W. R. 749; 2 T. L. R. 722, C. A.

Annotations.—*As to (1) Consd. Re Faure Electric Accumulator Co. (1888)*, 40 Ch. D. 141; Metropolitan Coal Consumers Assn. v. Scringeur, [1895] 2 Q. B. 604. *Reid. Re Sale Hotel & Botanical Gardens Co., Hesketh's Case (1897)*, 77 L. T. 681; *Re Olympia*, [1898] 2 Ch. 153; Cross v. Mutual Reserve Life Insce. Co. (1904), 21 T. L. R. 15; *Omnium Electric Palaces v. Baines*, [1914] 1 Ch. 332. *As to (3) Distd. Metropolitan Coal Consumers Assn. v. Scringeur*, [1895] 2 Q. B. 604. *Reid. Re Sale Hotel & Botanical Gardens Co., Hesketh's Case (1897)*, 77 L. T. 681. *Generally, Mentd. Hawkins Hill Consolidated Gold Mining Co. v. Want, Johnson* (1893), 62 L. J. Q. B. 505; *Hood-Barrs v. Crossman & Prichard*, [1897] A. C. 172.

38. — Fiduciary.—The L. Co. was promoted & formed by the directors of the L.

option to purchase it for £2,500 on the terms that, on the sale of the lease to a co. which E. intended to promote B. would pay to E. two-thirds of the difference between that sum & £1,400—one-third for E. & one-third for C. E. & others subsequently promoted a co. which purchased the lease & paid to B. the £2,500 of which B. paid to E.

Sect. 1.—Promotion and flotation: Sub-sect. 2.]

Syndicate for the purpose of purchasing part of the property of the syndicate, consisting of nitrate works. The directors of the syndicate prepared & signed the memorandum & arts. of assocn. of the co., the arts. nominating them as directors & stating specifically that they were also the directors of the syndicate. They also prepared the co.'s prospectus & purchase-contract, & affixed the seals of the syndicate & of the co. to the latter. The co.'s solrs. & secretary were also the same as those of the syndicate. Two years after the date of the contract & the completion of the purchase the shareholders of the co., believing that their property had been purchased at an over-value & that there had been misrepresentations in the contract & prospectus, appointed an independent board of directors who, after investigating the facts & with the sanction of a general meeting of the shareholders, brought an action against the syndicate & the directors for rescission of the contract & damages on the ground of misrepresentation, misfeasance, breach of trust, & concealment of material facts, but not alleging fraud. From the date of the contract & down to & also since the commencement of the action the co. had, first by its original directors & afterwards by its independent board, carried on business & worked the property the subject of the contract:—*Held*: the co. was not entitled to rescission or damages, for (1) at the date of the contract the co. had, by its memorandum & arts., notice that its directors were also the vendors or agents of the vendor syndicate, & the mere fact that its directors did not constitute an independent board was not a sufficient ground for setting aside the contract; (2) there had been no misrepresentation made to, or any material fact concealed from, any of the persons who were members of the co. at the date of the contract, those persons being the directors themselves; (3) although the contract & prospectus were, on the evidence, misleading in certain particulars which would have entitled the co. at the time to repudiate the contract, yet through the subsequent alteration of the property consequent on its being worked by the co., the position of the parties had been so changed that they could not be restored to their original position; (4) defts., the directors, had not been guilty of such negligence or breach of trust as to render them liable in damages in law for the loss occasioned to the co., or in equity to make good the loss.

(5) There is no duty imposed on the promoters of a co. to provide it with an independent board of directors, if the real truth is disclosed to those who are induced by the promoters to join the co.

(6) This appeal involves the proper application to a co. of a few well-settled principles of law. The first principle is that in equity the promoters of a co. stand in a fiduciary relation to it, & to

those persons whom they induce to become shareholders in it, & cannot in equity bind the co. by any contract with themselves without fully & fairly disclosing to the co. all material facts which the co. ought to know. The second principle is that a co. when registered is a corpn. capable by its directors of binding itself by a contract with themselves as promoters if all material facts are disclosed. The third principle is that the directors of a co. acting within their powers, & with reasonable care, & honestly in the interest of the co., are not personally liable for losses which the co. may suffer by reason of their mistakes or errors in judgment. A fourth principle, not confined to cos., but extending to them, is that a contract can be set aside in equity on proof that one party induced the other to enter into it by misrepresentations of material facts, although such misrepresentations may not have been fraudulent. A fifth principle is that a voidable contract cannot be rescinded or set aside after the position of the parties has been changed, so that they cannot be restored to their former position. Fraud may exclude the application of this principle, but I know of no other exception (LINDLEY, M.R.).—*LAGUNAS NITRATE CO. v. LAGUNAS SYNDICATE*, [1899] 2 Ch. 392; 68 L. J. Ch. 699; 81 L. T. 334; 48 W. R. 74; 15 T. L. R. 436; 43 Sol. Jo. 622; 7 Mans. 165, C. A.

Annotations:—As to (6) *Apld.* *Exploring Land & Minerals Co. v. Kolkmann* (1905), 94 L. T. 234. *Refd.* *Re National Bank of Wales*, [1899] 2 Ch. 629; *Merchants Fire Office v. Armstrong* (1901), 17 T. L. R. 709; *Ammonia Soda Co. v. Chamberlain*, [1918] 1 Ch. 266. *Generally, Refd.* *Piercy v. Mills*, [1920] 1 Ch. 77.

39. ———.]—*Re LEEDS & HANLEY THEATRES OF VARIETIES, LTD.*, No. 459, *post*.

40. ———.]—*JUBILEE COTTON MILLS, LTD. (OFFICIAL RECEIVER & LIQUIDATOR) v. LEWIS*, No. 75, *post*.

41. ——— *Distinguished from ordinary trusteeship.*]—Whether promoters are acquiring any asset as trustees for a co. or intended co. is a question of fact. If the intention throughout is that they are to sell to the co., at a profit, the assets which they are acquiring, the natural inference is that they are not intending to be trustees for the co., but vendors only; & the fiduciary duties involved in that relationship are distinct from those of ordinary out-and-out trusteeship.

In Jan. 1912, defts. entered into negotiations for the acquisition of a lease of certain premises, with a view to selling them to a co. which they were promoting, & which was registered as a private co. in March, 1912. The arts. of assocn., which were prepared on the instructions of defts., provided that the co. should forthwith enter into the agreement for purchase; & this it did. The board of directors at the time was not an independent one, & defts. had not a legally binding agreement for the lease. The lease was, however, subsequently executed & assigned to the co. Outside cash shareholders were brought in, & ultimately an independent board was constituted.

the two-thirds of £1,100 as agreed. E. had not paid to C. his share of that sum. E. brought an action against the co., in which the co. by counter-claim sought to recover from E. certain moneys on the ground that E. as agent of the co. had received them as secret commission sales to the co. of mining leases, including the sale by B. of the lease in question, & alternatively, on the ground that E. as one of the promoters of the co. had received the moneys as secret profits on the sales by them to the co. of the leases. A decree was made, by consent, containing a declaration that E.

was a trustee for the co. of all money received from B. by way of commission or in respect of any profit received or made by E. on the sale by B. of the option or on the exercise of it:—*Held*: the declaration was limited to the claim against E. as agent of the company.—*ARDLETHAN OPTIONS, LTD. v. EASDOWN* (1915), 20 C. L. R. 285.—*AUS.*

38 ii. ———.]—Promoters stand in a fiduciary position to the co. they promote. If they wish it to remunerate them for services rendered for the co.'s benefit, they must furnish it with a

board of directors who can & will exercise an independent & intelligent judgment on the question of such remuneration.—*Re ROSEMOUNT GOLD MINING SYNDICATE, LTD. (IN LIQUIDATION)*, [1905] T. H. 169.—*S. AF.*

38 iii. ——— *Refund of secret commissions.*]—A promoter of a co. who receives any secret commission for the purpose of promoting such company may be called upon to refund such commission at the instance of the co.—*YORKSHIRE ESTATE SYNDICATE, LTD. v. COOMER* (1911), 2 C. P. D. 399.—*S. AF.*

On Oct. 30, 1912, the co. commenced an action against defts. for a declaration that they were liable as promoters to make good to the co. such part of the purchase-money of the property as was attributable to the benefit of the lease agreed to be granted to them, with consequential relief:—*Held*: (1) the provisions of the arts. & the registration of the co. as a private co. did not protect defts. against claims by it; (2) the co. had suffered no loss; & while it might have been entitled to rescission of the whole contract the latter could not be apportioned so as to entitle it to a diminution of price without any counterbalancing equivalent; (3) defts. were not trustees for the co. of the lease or the prospect of obtaining it, & the action therefore failed.—*OMNIUM ELECTRIC PALACES, LTD. v. BAINES*, [1914] 1 Ch. 332; 83 L. J. Ch. 372; 109 L. T. 964; 30 T. L. R. 213; 58 Sol. Jo. 218; 21 Mans. 94, C. A.

42. When relationship begins.]—Observations on when the relation of trustee & *cestui que trust* begins, as between the projectors of public cos. & such cos.—*FOSS v. HARBOTTLE* (1843), 2 Hare, 461; 67 E. R. 189.

Annotations:—*Mentd.* *Mozley v. Alston* (1847), 1 Ph. 790; *Edwards v. Shrewsbury & Birmingham Ry.* (1848), 2 De G. & Sm. 537; *Lord v. Copper Miners' Co.* (1848), 1 H. & Tw. 85; *Bagshaw v. Eastern Union Ry.* (1849), 7 Hare, 114; *Cooper v. Shropshire Union Ry. & Canal Co.* (1849), 6 Ry. & Can. Cas. 136; *Yetts v. Norfolk Ry.* (1849), 13 Jur. 249; *Salomons v. Laing* (1850), 6 Ry. & Can. Cas. 289; *Kent v. Jackson* (1851), 14 Beav. 367; *Re Norwich Yarn Co., Ex p. Bignold* (1856), 22 Beav. 143; *Henry v. G. N. Ry.* (1857), 4 K. & J. 1; *Hodgkinson v. National Live Stock Insee.* (1859), 26 Beav. 473; *Hare v. L. & N. W. Ry.* (1861), 2 John. & H. 80; *White v. Carnarthen, etc. Ry.* (1863), 1 Hem. & M. 786; *East Pant Du United Lead Mining Co. v. Merryweather* (1864), 5 New Rep. 166; *Fraser v. Whalley, Gartside v. Whalley* (1864), 2 Hem. & M. 10; *Gregory v. Patchett* (1864), 33 Beav. 595; *Taunton v. Royal Insee.* (1864), 2 Hem. & M. 135; *Atwood v. Merryweather* (1867), L. R. 5 Eq. 450, n; *Hallows v. Fernie* (1867), L. R. 3 Eq. 520; *Hoole v. G. W. Ry.* (1867), 3 Ch. App. 262; *Seaton v. Grant* (1867), 36 L. J. Ch. 638; *Clinch v. Financial Corp'n.* (1868), L. R. 5 Eq. 450; *Turquand v. Marshall* (1869), 4 Ch. App. 376; *Pickering v. Stephenson* (1872), L. R. 14 Eq. 322; *Featherstone v. Cook* (1873), 21 W. R. 835; *Gray v. Lewis, Parker v. Lewis* (1873), 8 Ch. App. 1035; *Trade Auxiliary Co. v. Vickers* (1873), 21 W. R. 836; *Menier v. Hooper's Telegraph Works* (1874), 9 Ch. App. 350; *Ward v. Sittingbourne & Sheerness Ry.* (1874), 9 Ch. App. 490; *MacDougall v. Gardiner* (1875), 10 Ch. App. 606; *Russell v. Wakefield Waterworks Co.* (1875), L. R. 20 Eq. 474; *Duckett v. Gover* (1877), 25 W. R. 554; *Pender v. Lushington* (1877), 6 Ch. D. 70; *Isle of Wight Ry. v. Tahourdin* (1883), 25 Ch. D. 320; *Studdert v. Grosvenor* (1886), 33 Ch. D. 528; *Tomkinson v. S. E. Ry.* (1887), 56 L. T. 812; *Willing v. Met. Dist. Ry.* (1888), 4 T. L. R. 723; *Lever v. Land Securities Co., De Carteret v. Land Securities Co.* (1893), 70 L. T. 323; *Southern Counties Deposit Bank v. Rider & Kirkwood* (1895), 73 L. T. 374; *La Compagnie de Mayville v. Whitley*, [1896] 1 Ch. 788; *Wall v. London & Northern Assets Corp'n.* (1898), 79 L. T. 249; *Whitwam v. Watkin* (1898), 78 L. T. 188; *Tlossen v. Henderson*, [1899] 1 Ch. 861; *Alexander v. Automatic Telephone Co.*, [1900] 2 Ch. 56; *Burland v. Earle*, [1902] A. C. 83; *Punt v. Symons*, [1903] 2 Ch. 506; *Steel v. South Wales Miners' Federation* (1907), 96 L. T. 260; *Normandy v. Ind. Coope.* [1908] 1 Ch. 84; *Kirsopp v. Highton* (1911), 28 T. L. R. 129; *Dominion Cotton Mills Co. v. Amyot*, [1912] A. C. 546; *Fruit & Vegetable Growers Assocn. v. Kekewich*, [1912] 2 Ch. 52; *Baillie v. Oriental Telephone & Electric Co.*, [1915] 1 Ch. 503; *Foster v. Foster*, [1916] 1 Ch. 532; *Lawson v. Financial News* (1917), 34 T. L. R. 52; *Piercy v. Mills* (1919), 122 L. T. 20.

43. — Before existence of company.]—*EMMA SILVER MINING Co. v. LEWIS*, No. 31, *ante*.

44. — Purchase of property.]—In 1871 certain coal areas were purchased for £5,500 by six persons, of whom F. was one, & were vested in G. as a trustee for them without disclosing the trust. In 1873 a co. was formed for the purpose of purchasing these areas & other property. F. was one of the directors, & as such he concurred in effecting a purchase by the co. from G. for £12,000 cash, & £30,000 in fully paid-up shares, without

disclosing the fact that F. was a part-owner. In 1875, the co. was ordered to be wound up. In 1878 a meeting of contributories was called, at which two rival schemes were brought forward, one for repudiating the purchase of the coal areas, the other for adopting the purchase & selling the property. The latter scheme was adopted, & was confirmed by the ct. The liquidator accordingly sold the property, but at a heavy loss. A contributory then took out a summons under 1862 Act, s. 165, to make F. liable for misfeasance as a director in allowing the co.'s seal to be affixed to the agreement for purchase by the co. The judge dismissed the summons, holding that though the co. would have been entitled to rescind the contract, yet as rescission had become impossible no relief could be given against F.; that as F. when he acquired his interest in the property was not a trustee for the co., he could not be treated as having purchased on behalf of the co. at the price he gave & therefore was not chargeable with the difference between the price at which he bought & the price paid by the co., & that he could not be charged with the difference between the price paid by the co. & the value of the property when the co. bought it, as this would be making a new contract between the parties:—*Held*: this decision was right.—*Re CAPE BRETON Co.* (1885), 29 Ch. D. 795; 54 L. J. Ch. 822; 53 L. T. 181; 33 W. R. 788; 1 T. L. R. 450, C. A.; *affd.* on other grounds, *S. C. sub nom. CAVENDISH BENTINCK v. FENN* (1887), 12 App. Cas. 652, H. L.

Annotations:—*Distd.* *Lydney & Wigpool Iron Ore Co. v. Bird* (1886), 33 Ch. D. 85. *Folld.* *Ladywell Mining Co. v. Brookes, Ladywell Mining Co. v. Huggons* (1887), 35 Ch. D. 400. *Consd.* *Re Olympia*, [1898] 2 Ch. 153; *Re Lady Forrest (Murchison) Gold Mine*, [1901] 1 Ch. 582. *Distd.* *Re Leeds & Hanley Theatres of Varieties*, [1902] 2 Ch. 809. *Consd.* *Re Jubilee Cotton Mills*, [1922] 1 Ch. 100. *Refd.* *Re Liverpool Household Stores Assocn.* (1890), 59 L. J. Ch. 616; *Re North Australian Territory Co., Archer's Case*, [1892] 1 Ch. 322; *Burland v. Earle*, [1902] A. C. 83; *Re Brazilian Rubber Plantations & Estates*, [1911] 1 Ch. 425; *Jacobus Marler Estates v. Marler* (1913), 85 L. J. P. C. 167, n.; *Omnium Electric Palaces v. Baines*, [1914] 1 Ch. 332. *Mentd.* *Re Liberator Permanent Benefit Bldg. Soc.* (1894), 10 T. L. R. 537; *Re Kingston Cotton Mill Co. (No. 2)*, [1896] 2 Ch. 279; *Grant v. Gold Exploration & Development Syndicate*, [1900] 1 Q. B. 233; *North American Land & Timber Co. v. Watkins* (1904), 91 L. T. 425; *Kregor v. Hollins* (1913), 109 L. T. 225.

45. — With view to formation of company.]—A syndicate was formed to raise a fund, buy a property & resell it to a co. or some other purchaser; the fund to be in the names of trustees who were to promote & register a co. to which they should resell the property, & who if a co. should be formed were to be directors. The trustees bought up some of the charges upon the property for sums below the amount which the charges afterwards realised & thereby made a profit for the syndicate of £20,000. They bought the property for £140,000, formed a limited co. & resold the property for £180,000 to the co., of which they were the first & at that time the only directors. They issued a prospectus inviting applications for shares & disclosing the two prices of £140,000 & £180,000 but not the profit of £20,000. That some profit had been made by buying up the charges might have been discovered by a close examination of a contract which was referred to in the co.'s memorandum & arts. of assocn. & in the prospectus. Shares were issued & the co. afterwards went into liquidation:—*Held*: the trustees ought to have disclosed to the co. the profit of £20,000; they had not disclosed it; the fact that the co. could not now rescind was no bar to relief; & applt. as one of the trustees was bound to replace that portion of the

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services as such secretary.—*PARKIN v. FRY* (1826), 2 C. & P. 311, N. P.

Annotation:—*Consd.* *Wilson v. Curzon* (1847), 15 M. & W. 532.

57. — — — — —.]—A. & B. were the registered promoters, under 7 & 8 Vict. c. 110, of a railway co. A provisional committee was afterwards formed, at a meeting of which A. was appointed secretary, & B. solicitor, to the co., & other persons a managing committee:—*Held*: A. could not merely upon these facts, recover against an acting member of the managing committee for services afterwards performed by him as secretary.—*WILSON v. CURZON (VISCOUNT)* (1847), 15 M. & W. 532; 5 Ry. & Can. Cas. 24; 16 L. J. Ex. 122; 8 L. T. O. S. 344; 11 Jur. 47; 11 J. P. Jo. 70; 153 E. R. 960.

Annotations:—*Refd.* *Bolter v. Peplow* (1847), 14 L. T. O. S. 550. *Mentd.* *Maddick v. Marshall* (1864), 12 W. R. 687.

58. — — — — — Formerly member of committee.]—The secretary of a railway co. who had previously been a member of the provisional committee:—*Held*: entitled to maintain an action for his services as secretary against another committeeman, who having become so whilst pltf. was a member of the committee, continued to act after pltf. had been to his knowledge appointed secretary, & attended meetings at which pltf. had acted in that capacity.—*DAY v. SHARP* (1846), 7 L. T. O. S. 62.

59. — — — — — Solicitor.]—*LLOYD v. HARRISON* (1846), 7 L. T. O. S. 63.

60. — — — — — Recovery of money spent.]—The promoters of a co. are liable for the preliminary expenses, & any person who has acted as promoter cannot recover from other promoters or directors money which he has expended on the part of the co.—*CAMPBELL v. PEPPER* (1849), 13 L. T. O. S. 120.

61. — — — — — Provisional committee-men — Right to bind remaining members.]—The provisional committee of a projected railway are not partners. Therefore, each member of it can only be liable upon some personal contract with pltf., express or implied, or by some contract entered into by some other person on his behalf & by him duly authorised to act as his agent, or by some person assuming to be his agent, & whose acts are afterwards ratified by such member.—*NEVINS v. HENDERSON* (1848), 5 Ry. & Can. Cas. 684; 12 J. P. Jo. 802; *sub nom.* *NEWINS v. HENDERSON*, 12 L. T. O. S. 354, Ex. Ch.

62. — — — — —.]—In determining that the name of a party is to be placed on the list of contributories of a projected co., it must be shown either that he is liable to the creditors of the co. by having personally contracted with them or given his authority to those who contracted with them, or that he is bound to indemnify persons liable to creditors, this obligation resulting either from an express contract or from a contract implied from his conduct. The mere fact of a party having consented to his name being added to the provisional committee of a projected co. does not confer an authority on the committee to contract on his credit, & therefore gives rise to

no liability to creditors or to indemnify the committee.

B. consented to become one of the provisional committee of a projected co. & was nominated as such accordingly. He shortly afterwards, however, desired his name to be withdrawn from the committee & declined to take any shares in the co. This request was acceded to, but through the neglect of the secretary no communication was made to B. on the subject, & his name in fact continued on the list of the provisional committee. It being found impracticable to establish the proposed co., the project was ultimately abandoned. Up to this time B. had not attended any meetings or done any other act than above mentioned; subsequently, however, he attended meetings of the committee & paid certain sums in order to free himself from liability:—*Held*: the acts done by B. previously to the abandonment of the scheme neither rendered him personally liable to the creditors of the co., nor liable to indemnify the other members of the committee, & no liability arose in either of these respects in consequence of the acts done subsequently inasmuch as they appeared to be done in ignorance of the fact that his application to have his name withdrawn from the provisional committee had been acceded to.—*Re DIRECT EXETER, PLYMOUTH & DEVONPORT RY. CO., Ex p. BESLEY* (May 29, 1851), 3 Mac. & G. 287; 20 L. J. Ch. 385; 17 L. T. O. S. 137; 15 Jur. 523; 42 E. R. 271, L. C.; *revsg.*, on rehearing, *LORD COTTENHAM, C.* (June 5, 1850), 2 Mac. & G. 176, L. C.; *restg.* (May 30, 1850), 3 De G. & Sm. 224.

Annotations:—*Distd.* *Re Direct Exeter, Plymouth & Devonport Ry., Ex p. Roberts* (July 15, 1850), 2 Mac. & G. 192. *Foldd.* *Re Direct Exeter, Plymouth & Devonport Ry., Drake's Case* (July 3, 1850), 15 L. T. O. S. 342; *Re Direct Exeter, Plymouth & Devonport Ry., Hole's Case* (June 7, 1850), 3 De G. & Sm. 241. *Expld.* *Re Wolverhampton, Chester & Birkenhead Junction Ry., Norris v. Cottle* (Aug. 9, 1850), 2 H. L. Cas. 647. *Foldd.* *Re Direct Exeter, Plymouth & Devonport Ry., Tanner's Case* (1852), 5 De G. & Sm. 182. *Refd.* *Re Direct Birmingham, Oxford, Reading & Brighton Ry., Hutton v. Uppill* (Aug. 9, 1850), 2 H. L. Cas. 674; *Re Great North of England & Yorkshire & Glasgow Union Junction Ry., England's Case* (June 24, 1851), 17 L. T. O. S. 175. *Mentd.* *Bright v. Hutton, Hutton v. Bright* (1852), 3 H. L. Cas. 341.

63. — — — — —.]—Upon motion to remove the name of a provisional committeeman from the list of contributories, in respect of a debt due to solicitors & surveyors in respect of certain expenses incurred in pursuance of specific directions to which he was not party, although he was present at the general appointment of both:—*Held*: his name must be struck off the list.—*Re DOVER & DEAL RY. CO., Ex p. HIGHT* (1853), 1 Drew. 484; 22 L. J. Ch. 902; 21 L. T. O. S. 136; 1 W. R. 364; 61 E. R. 537.

See, further, No. 110, *post*, & AGENCY, Vol. I., pp. 356 *et seq.*

64. Right to contribution — Premises hired jointly—Rent recovered from one.]—A., B., & C., by an agreement in writing, hired premises of D.; the premises so hired were intended to be, & were, used for the purposes of a joint stock co. of which A., B., & C. were at the time of the contract committeemen; rent was for some time paid by the co., but ultimately became in arrear; whereupon D. sued A., B. & C. upon the agreement:

agent, or liable for each other's acts.—*HUNG MAN v. ELLIS* (1895), 3 B. C. R. 486.—CAN.

r. Right to contribution — Provisional directors—Debt recovered from one—Ascertainment of contribution.]—One of the provisional directors of a projected railway company, which

was not carried into execution, was sued for services performed in surveying the line of the proposed railway; & judgment was recovered against him in that action. Upon a bill filed by him against his co-directors for contribution:—*Held*: (1) that the suit was properly framed; (2) the amount of the contribution of each director

is to be ascertained by dividing the total loss by the number of directors who consented to act; & not by dividing it by the number of those who were named as directors in the prospectus, nor by reference to the number of shares subscribed for by each director.—*LEFROY v. GORE* (1844), 1 Jo. & Lat. 571. IR.

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B. & C. suffered judgment by default, & D. recovered the amount of rent & costs against A. :—*Held*: A. was entitled to sue B. & C. for contribution; & that his remedy against B. was not affected by the circumstance of B.'s having ceased to be a member of the committee before the accruing of the rent in respect of which the action was brought.—*BOULTER v. PEPLow* (1850), 9 C. B. 493; 19 L. J. C. P. 190; 14 Jur. 248; 137 E. R. 984; *sub nom.* *BOLTER v. BROOKE, BOLTER v. PEPLow*, 14 L. T. O. S. 466.

65. — **Work ordered by committee—Bill paid by one.**—Pltf., being a provisional committeeman, became with eleven others, including deft., liable for a debt contracted in respect of the scheme. The creditor sued pltf., who ultimately paid the whole debt. Two of the original co-contractors died before the payment. Pltf. sued deft. for contribution:—*Held*: (1) though there might be many cross liabilities amongst the provisional committeemen, in respect of the scheme, an action lay, at law, for contribution against such of them as were liable to pay this debt, provisional committeemen not being partners; (2) pltf. was entitled to recover only one-twelfth of the debt; the liability of a co-contractor to one who has paid the entire debt being, at law, to contribute an aliquot part according to the number of persons originally liable, without reference to the number liable at law at the time of payment.

Semble: an action would have lain at law, for contribution, against the representatives of deceased co-contractors.—*BATARD v. HAWES, BATARD v. DOUGLAS* (1853), 2 E. & B. 287; 22 L. J. Q. B. 443; 17 Jur. 1154; 1 W. R. 287, 387; 1 C. L. R. 812, 818; 118 E. R. 775.

Annotation:—*Mentd.* *Mackroth v. Walmesley* (1884), 51 L. T. 19.

66. — **Conditions precedent.**—A contract to take shares in a co. cannot be set aside because it was founded on a prospectus which contains exaggerated views of the advantages of the co., but does not contain any material misstatement of fact. Where, therefore, a prospectus stated that a certain invention which it was the object of the co. to work had been tested, & that according to the experiments the material could be produced at a specified cost, but that it was intended to test the invention further, & the invention turned out worthless, & it appearing that there had been some testing:—*Held*: (1) this was not such a misrepresentation as would enable a purchaser of shares to set aside the contract; (2) the shareholder having had the means of ascertaining the full truth of the matter, & having delayed for upwards of five years before he complained of the misstatement, he was debarred by laches from obtaining relief.

(3) A person who has taken shares in a co. which was provisionally registered under 1844 Act, & paid deposits thereon, cannot recover the deposit by a suit in equity, but must bring an action at law. (4) One of the promoters of a co. cannot maintain a suit against his fellow-promoters for contribution towards expenses incurred by him in promoting the co., unless he is willing that an account should be taken of the expenses incurred by all the promoters.—*DENTON v. MACNEIL* (1866), L. R. 2 Eq. 352; 35 Beav. 652; 14 L. T. 721; 30 J. P. 692; 14 W. R. 813; 55 E. R. 1050.

Annotations:—*As to* (1) *Refd.* *Bellairs v. Tucker* (1884), 13 Q. B. D. 562. *As to* (2) *Refd.* *Sharpley v. Louth & East Coast Ry.* (1876), 2 Ch. D. 663.

— **Release.**—*See* No. 140, *post*.

Right to benefit of fund voluntarily contributed by other committeemen.—*See* No. 164, *post*.

SUB-SECT. 4.—DUTIES OF PROMOTER.

A. To Disclose.

In prospectus.—*See* Sect. 8, sub-sect. 2, *post*.

67. **On sale to company—Interest of vendor professing to give independent advice.**—A. having two parcels & B. one parcel of land, supposed to contain petroleum, it was agreed between them & C. that C. should pay them \$10,000 for the land if he succeeded in forming a co. for the purpose of working the oil springs, & in inducing such co. to pay him \$13,750 as the price of the land, out of which he was to keep for himself \$3,750. B. accordingly, assuming the character of owner, gave to C. a conditional promise to sell all the land to him for \$13,750, provided the offer was accepted within a certain time. A. wrote a letter, meant to be shown to, & which was shown to, persons intending to become members of the new co., & was proved to have influenced them, in which letter he recommended the purchase, not disclosing that he had any interest therein. A. & B. actively co-operated with C. throughout the whole transaction. The co., in ignorance of the combination, accepted the proposal, but having discovered the fraud, sued for a rescission of the contract:—*Held*: the contract must be wholly rescinded, the price repaid, & the land reconveyed.—*LINDSAY PETROLEUM Co. v. HURD* (1874), L. R. 5 P. C. 221; 22 W. R. 492, P. C.

Annotations:—*Consd.* *Bagnall v. Carlton* (1877), 6 Ch. D. 371. *Refd.* *Panama & South Pacific Telegraph Co. v. India Rubber, Gutta Percha & Telegraph Works Co.* (1875), 10 Ch. App. 520, n.; *Phosphate Sewage Co. v. Hartmont* (1877), 5 Ch. D. 394. *Mentd.* *Erlanger v. New Sombrero Phosphate Co.* (1878), 3 App. Cas. 1218; *Allcard v. Skinner* (1887), 36 Ch. D. 145; *Re Sharpe, Re Bennett, Masonic & General Life Assco. v. Sharpe*, [1892] 1 Ch. 154; *Aaron's Reefs v. Twiss*, [1896] A. C. 273; *Rochevoucauld v. Boustead*, [1897] 1 Ch. 196; *Lagunas Nitrate Co. v. Lagunas Syndicate*, [1899] 2 Ch. 392; *Re Taylor, Atkinson v. Lord* (1900), 81 L. T. 812.

68. — **Flaw in title.**—Certain persons, who were owners of a concession from a foreign govt., combined together to form a co. to purchase the concession, knowing at the time that through their default it was voidable & liable to forfeiture. The owners & others who were promoters of the co. fraudulently sold the concession, being aware of the infirmity of the title, to trustees for the intended co., & it was transferred to the co. by the trustees, who were to be paid a portion of the purchase-money for their share in the transaction. The solrs. for the vendors, who were also solrs. for the co., concealed the invalidity of the title, & the trustees neglected to require evidence to establish the title. Upon a bill filed by the co. against the owners of the concession, the promoters, the trustees, the directors & the solrs.:—*Held*: the owners & promoters must repay the whole purchase-money; the trustees who received money in the nature of a bribe for neglecting their duty must repay what they had so received; & all the defts., including the solrs., must pay the costs of the suit.—*PHOSPHATE SEWAGE Co. v. HARTMONT* (1877), 5 Ch. D. 394, 447; 46 L. J. Ch. 661; 37 L. T. 9; 25 W. R. 743, C. A.; *affg.* (1876), 5 Ch. D. 394.

Annotations:—*Consd.* *Nant-y-glo & Blaina Ironworks Co. v. Grave* (1878), 12 Ch. D. 738. *Refd.* *New Sombrero Phosphate Co. v. Erlanger* (1876), 35 L. T. 309. *Mentd.* *Metzler v. Wood* (1877), 47 L. J. Ch. 139; *Re Collie, Ex p. Adamson* (1878), 8 Ch. D. 807; *Rees v. De Bernardy*, [1896] 2 Ch. 437.

Sect. 1.—Promotion and flotation: Sub-sect. 4, A. & B.; sub-sect. 5, A. (a) i., ii. & iii.]

69. — Facts likely to influence decision to purchase.]—Persons who purchase property & then create a co. to purchase from them the property they possess, stand in a fiduciary position towards that co., & must faithfully state to the co. the facts which apply to the property, & would influence the co. in deciding on the reasonableness of acquiring it.—*ERLANGER v. NEW SOMBRERO PHOSPHATE CO.* (1878), 3 App. Cas. 1218; 39 L. T. 269; 27 W. R. 65; *sub nom.* *NEW SOMBRERO PHOSPHATE CO. v. ERLANGER*, 48 L. J. Ch. 73, H. L.; *affg.* (1877), 5 Ch. D. 73, C. A.

Annotations:—*Consd.* *Bagnall v. Carlton* (1877), 6 Ch. D. 371; *Re Cape Breton Co.* (1885), 29 Ch. D. 795; *Ladywell Mining Co. v. Brookes*, *Ladywell Mining Co. v. Huggons* (1887), 35 Ch. D. 400. **Expld.** *Salomon v. Salomon*, *Salomon v. Salomon*, [1897] A. C. 22. **Consd.** *Lagunas Nitrate Co. v. Lagunas Syndicate*, [1899] 2 Ch. 392; *Lagunas Nitrate Co. v. Lagunas Syndicate (No. 2)* (1899), 43 Sol. Jo. 622; *Omnium Electric Palaces v. Baines*, [1914] 1 Ch. 332. **Refd.** *Craig v. Phillips* (1877), 7 Ch. D. 249; *Phosphate Sewage Co. v. Hartmont* (1877), 25 W. R. 743; *Twycross v. Grant* (1877), 2 C. P. D. 469; *Emma Silver Mining Co. v. Grant* (1879), 11 Ch. D. 918; *Emma Silver Mining Co. v. Lewis* (1879), 4 C. P. D. 396; *Re Incorporated Law Soc. & Four Solicitors* (1891), 7 T. L. R. 672; *Gluckstein v. Barnes*, [1900] A. C. 240; *Re Lady Forrest (Murchison) Gold Mine*, [1901] 1 Ch. 582; *Burland v. Earle*, [1902] A. C. 83; *Re Leeds & Hanley Theatres of Varieties*, [1902] 2 Ch. 809; *A.-G. for Canada v. Standard Trust Co. of New York*, [1911] A. C. 498; *Re Jubilee Cotton Mills*, [1922] 1 Ch. 100. **Mentd.** *Re Pepperell*, *Pepperell v. Chamberlain* (1879), 27 W. R. 410; *Re Rica Gold Washing Co.* (1879), 27 W. R. 715; *Re Ambrose Lake Tin & Copper Mining Co., Ex p. Moss*, *Ex p. Taylor* (1880), 49 L. J. Ch. 457; *Re British Seamless Paper Box Co.* (1881), 17 Ch. D. 467; *Re Scottish Petroleum Co.* (1881), 29 W. R. 372; *Re Sharpe*, *Re Bennett*, *Masonic & General Life Assoc. v. Sharpe*, [1892] 1 Ch. 154; *Re Gallard*, *Ex p. Gallard*, [1897] 2 Q. B. 8; *Larocque v. Beauchemin*, [1897] A. C. 358; *Roche-foucauld v. Boustead*, [1897] 1 Ch. 196; *The Birnam Wood*, [1907] P. 1; *United Shoe Machinery Co. of Canada v. Brunet*, [1909] A. C. 330; *Armstrong v. Jackson*, [1917] 2 K. B. 822; *Hulton v. Hulton*, [1917] 1 K. B. 813.

70. Sufficiency of disclosure—Must be explicit.]

—*GLUCKSTEIN v. BARNES*, No. 45, *ante*.

—**In prospectus.]—***See* Sect. 8, sub-sect. 2, B., *post*.

Effect of disclosure.]—*See* Sub-sect. 6, B., *post*.

Whether notice to directors notice to company.]

—*See* Sect. 31, sub-sect. 6, A., *post*.

Liability for secret profits.]—*See* Sub-sect. 5, A. (a), *post*.

B. Other Cases.

71. To provide independent board—Full disclosure in prospectus.]—*LAGUNAS NITRATE CO. v. LAGUNAS SYNDICATE*, No. 38, *ante*.

SUB-SECT. 5.—LIABILITY OF PROMOTER.

A. To Company or Members.

(a) To Account for Secret Profits.

i. In General.

72. General rule.]—*JUBILEE COTTON MILLS, LTD. (OFFICIAL RECEIVER & LIQUIDATOR) v. LEWIS*, No. 75, *post*.

73. Promoter acting as agent for vendors—Not excused.]—*LYDNEY & WIGPOOL IRON ORE CO. v. BIRD*, No. 37, *ante*.

74. Identity of promoters concealed—As corporation—Proof in bankruptcy of one promoter.]—A corp'n. consisted of only the seven signatories to its memorandum of assocn. It was formed by D. & G., two of the signatories, to cloak their identity in carrying on their financial operations, & they were the sole directors & managers of the corp'n. The corp'n. then contracted to buy a licence to work a quarry for a small sum & promoted a co. to acquire the licence, & the usual contracts were entered into by means of a trustee for the co., whereby the corp'n. as vendors agreed to sell the licence to the co. for £10,500 in cash, £2,000 in debentures, & £5,500 in fully-paid shares of £1 each of the co. D. & G. then caused the co. to be registered & found the seven signatories to its memorandum of assocn. & its directors, all of whom were their creatures. The co. duly adopted the contract of sale & issued to the corp'n. 5,500 fully-paid shares & £2,000 in debentures. D. & G. then prepared prospectuses which were issued by the co. to the public inviting subscriptions to an issue of 2,000 debentures of £10 each, & as subscriptions came in the co. paid the corp'n. some £9,000 cash on account of the £10,500, which D. & G. then divided between themselves. The only shareholders of the co. were the seven signatories to its memorandum & the corp'n. as holders of the 5,500 shares. The contracts & prospectuses disclosed that the corp'n. was promoter & vendor to the co. & was making the profit, but did not disclose the fact that D. & G. were the real promoters & vendors & were receiving the profit through the corp'n. The co. went into liquidation, & subsequently D. & G. became bkpt. D. had assets; G. had none. They were prosecuted for fraudulent & material misstatements in the prospectuses & convicted:—**Held:** under the circumstances the corp'n. was only an "alias" for D. & G., & the liquidator of the co. could prove in the bkpcy. of D. for the whole of the secret cash profit that D. & G. had received.—*Re DARBY*, *Ex p. BROUGHAM*, [1911] 1 K. B. 95; 80 L. J. K. B. 180; 18 Mans. 10. **Annotation:—***Refd.* *Re Jubilee Cotton Mills*, [1922] 1 Ch. 100.

Entity of company apart from members, *see* Nos. 8–18, *ante*.

Effect of bankruptcy of promoter—After order for refund.]—*See* BANKRUPTCY & INSOLVENCY, Vol. IV., p. 359, No. 3349.

Effect of disclosure.]—*See* Sub-sect. 6, B., *post*.

75. Profits made by sale of shares & debentures illegally issued—Issue before statement in lieu of prospectus filed.]—A scheme to which early in 1918 L. became a party was that a co. should be formed with a capital of £150,000 divided into shares of £1 each with a power to create & issue debentures to be exercised in the first instance by the creation & issue of debentures for £30,000; the co. was to purchase certain property for £180,000 to be satisfied by the issue of debentures for £30,000 &

PART III. SECT. 1, SUB-SECT. 4.—A.

69 i. On sale to company—Facts likely to influence decision to purchase.]—Defts. organised pltf. co. & sold it the assets of two other cos. which defts. owned, making a profit of \$27,691.76:—**Held:** it was the duty of defts. to place the affairs of the two cos. before an independent board of directors of pltf. co., having full knowledge of the transactions proposed.—*STRATFORD FUEL, ICE, CARTAGE & CONSTRUCTION CO. v. MOONEY* (1910), 16 O. W. R. 246; 21 O. L. R. 426; 1 O. W. N.

914.—CAN.

69 ii. —.]—*CLARK v. MOOERS*, [1922] 3 W. W. R. 594; 69 D. L. R. 448.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—B.

a. To provide independent Board.]—*CLARK v. MOOERS*, [1922] 3 W. W. R. 594; 69 D. L. R. 448.—CAN.

t. —.]—Where one of the directors of a co. had been a promoter & the rest were nominees of the promoters & accepted promises of shares from them:—**Held:** the directors

were not an independent board, & that shares voted by them to the promoters as fully paid up for services rendered had been obtained by the promoters by means of a gross breach of their fiduciary obligations.—*Re ROSEMOUNT GOLD MINING SYNDICATE, LTD. (IN LIQUIDATION)*, [1905] T. H. 169.—S. AF.

PART III. SECT. 1, SUB-SECT. 5.—A. (a) i.

a. Promoter acting as agent for vendors—Sale at fictitious prices.]—

the allotment of fully paid shares for £150,000: L. was to provide £30,000 in two instalments of £15,000, as security for which he was to receive the debentures for £30,000; he was also to receive 95,000 fully paid shares of £1 each, of which 20,000 were to go to D., who was to carry out the details of the promotion & formation of the co., acting therein as the agent of L., leaving 75,000 at L.'s disposal. The remaining 55,000 shares were to go to the owner of the property acquired. The co. was incorporated in 1920. The memorandum & arts. of assocn. of the co. were accepted & retained by the registrar on Jan. 6, 1920, but the certificate, though purporting to be dated on that day, was not in fact signed by the registrar until Jan. 8, 1920. On Jan. 6, 1920, the co., before filing any statement in lieu of prospectus as required by 1908 Act, s. 82, proceeded to allot fully-paid shares & debentures to the vendor, & their shares & debentures were transferred to L. & D. The debentures were worth about 90 per cent. of their face value. The shares were absolutely worthless. L. however not only realised the debentures at their proper market value, but sold his shares, partly for cash, partly for shares in other cos.

The co. was subsequently ordered to be wound up compulsorily & on a misfeasance summons taken out by the official receiver as liquidator, against L. & D. the alleged promoters:—*Held*: (1) L. was a promoter & as such stood in a fiduciary position towards the co. & was liable to account to it for any secret profit made by him in the purchase; (2) he was not exonerated from his liability by the fact that the co. as ultimately formed was of a different type from the co. he intended to promote, as by staying on as promoter he must be held to have acquiesced; (3) the profit made was secret & was therefore the property of the co.; (4) assuming that the allotment of shares & debentures on Jan. 6, 1920, was void by reason of their having been allotted before a statement in lieu of prospectus had been filed as required by 1908 Act, s. 82, L. was put by the co. in control of something out of which he made a profit, & that whatever it was, valid or invalid, he held it from his position of promoter on behalf of the co., & could not, when called upon to account for the profit, justify himself in keeping that profit by saying that the co. had no legal justification for bringing something into existence & entrusting it to him; (5) assuming that it could be shown that the allotment took place before the registration & incorporation of the co. (where, as in this case, the allotment & registration take place on the same day), L.'s liability as promoter for the secret profit was not affected; (6) *Qu.*: whether, in view of 1908 Act, s. 17, evidence is receivable in such circumstances (see (5), *supra*) to show that the allotment did in fact take place before registration; (7) L. having sold the shares as being validly issued by the co. could not disclaim liability for the profits made by such sale; (8) for the purpose of ascertaining L.'s liability the portion of the consideration for the sale of his shares represented by shares in other cos. must be taken not at their nominal value but at their real value.

(9) (WARRINGTON, L.J., agreeing with YOUNGER, L.J.) the allotment of the shares & debentures was illegal & void on the ground that it took place before the co. had filed a statement in lieu of prospectus as required by 1908 Act, s. 82.

(10) (LORD STERNDAL, M.R. & WARRINGTON, L.J., YOUNGER, L.J. expressing no concluded opinion on the point) the effect of 1908 Act, ss. 15, 16, 17, taken together was that the registration of the co. took place when the arts. of assocn. were accepted & retained by the registrar, & the certificate correctly stated the date, but even if that were not so, then under 1908 Act, s. 17, the certificate was conclusive evidence, amongst other things, that the registration & incorporation of the co. were duly effected on the day mentioned in the certificate & must have effect accordingly. The material date was that mentioned in the certificate, & not that on which the signature thereto was written.—JUBILEE COTTON MILLS, LTD. (OFFICIAL RECEIVER & LIQUIDATOR) v. LEWIS (1924), 40 T. L. R. 621, H. L., *varying* S. C. *sub nom.* *Re* JUBILEE COTTON MILLS, LTD., [1923] 1 Ch. 1.; 91 L. J. Ch. 777; 128 L. T. 200; 38 T. L. R. 891; 57 Sol. Jo. 62; [1922] B. & C. R. 229, C. A.

76. — Allotment before registration of company.]—JUBILEE COTTON MILLS, LTD. (OFFICIAL RECEIVER & LIQUIDATOR) v. LEWIS, No. 75, *ante*.

77. — Shares sold by promoter as validly issued.]—JUBILEE COTTON MILLS, LTD. (OFFICIAL RECEIVER & LIQUIDATOR) v. LEWIS, No. 75, *ante*.

78. Measure of liability—How calculated.]—JUBILEE COTTON MILLS, LTD. (OFFICIAL RECEIVER & LIQUIDATOR) v. LEWIS, No. 75, *ante*.

79. Company formed differing from company originally proposed—Acquiescence by promoter.]—JUBILEE COTTON MILLS, LTD. (OFFICIAL RECEIVER & LIQUIDATOR) v. LEWIS, No. 75, *ante*.

Right to deduct expenses.]—See Sub-sect. 6, A., *post*.

Liability of agents for secret profits generally.]—See AGENCY, Vol. I., pp. 475 *et seq*.

ii. On Purchase of Property and Resale to Company.

When relationship of promoter begins.]—See Nos. 42, 47, *ante*.

Must be in fiduciary position to company.]—See Nos. 41, 48, *ante*.

Effect of disclosure.]—See Nos. 162, 163, *post*.

iii. Promotion Money.

When relationship of promoter begins.]—See Sub-sect. 2, *ante*.

80. Bonus payable to one of five vendors—To effect sale—Unknown to remainder.]—Four out of five persons, who entered into a provisional contract to purchase a mine, which they agreed to sell for their joint benefit to a co., were deceived by the fifth who, assuring them that the vendors would not take less than £85,714, obtained secretly from the latter an agreement that, if the contract were perfected, & money paid, he should receive thereout a bonus of £20,000 for his pains in effecting the sale.

Two of the four, having absolute powers from the rest to sell to the intended co., then formed

A person agreed with the owners of oil lands to buy lots at stipulated prices. The purpose was to form a co. to buy at an advance. To facilitate this the real prices were to be concealed; one of the vendors was to write a letter purporting to offer the whole at an advanced price which he named; the interest of the other, whose judgment

in such matters purchasers would be likely to rely on, was not to appear, & he was to write a letter recommending the transaction. The project was successful; the property was bought, & paid for. The shareholders before completing the transaction had notice that something was wrong, but they carried out the purchase, & did not

object to the transaction until after oil lands had greatly fallen in the market:—*Held*: the co. was entitled to a decree for payment of the agent's profit, first against the agent himself, & in default of his paying, then against the other parties.—LINDSAY PETROLEUM OIL CO., v. HURD (1870), 17 Gr. 115; L. R. 5, P. C. 221.—CAN.

*Sect. 1.—Promotion and flotation: Sub-sect. 5, A.
(a) iii.]*

themselves with others into a committee of management, & still ignorant of the surreptitious agreement, issued a prospectus stating that a contract had been entered into for the purchase by the co. of the entire property for £125,000 "including all preliminary expenses, & a premium to the parties who incurred the risk & responsibility of the original purchase." The co. having been established, the requisite capital paid up, & the provisional contract perfected:—*Held*: the £20,000 transaction was fraudulent & void, not only as against the four original purchasers, but also as against the co., notwithstanding the mine proved cheap at the price—£125,000—at which they became shareholders. It was not enough that the co. got the whole of their bargain. They had a right to the best bargain, which the two members of the committee of management, had they known the facts, would have been in a position, acting fairly & rightly, to give them.—*BECK v. KANTOROWICZ, KANTOROWICZ v. CARTER, KALB v. KANTOROWICZ* (1857), 3 K. & J. 230; 69 E. R. 1093.

Annotations:—*Refd. Imperial Mercantile Credit Assocn. v. Coleman* (1871), 6 Ch. App. 562, n.; *Lydney & Wigpool Iron Ore Co. v. Bird* (1886), 33 Ch. D. 85. *Mentd. Tyrrell v. London Bank* (1862), 10 H. L. Cas. 26.

81. Agent acting on behalf of company—Afterwards becoming secretary—Commissions received while secretary—Liable under 1908 Act, s. 215.]—The owner of a mine, by an agreement adopted by a co., agreed with M., acting on behalf of the co., to sell the mine to the co. for a price partly in cash & partly in paid-up shares. By another agreement not known to the co., the vendor was to give to M. for his trouble 600 of the paid-up shares. The co. was formed, & whilst M. was secretary to the co. the shares were allotted to the vendor, & transfers of 600 of them by the vendor to M. were prepared. The 600 shares were afterwards transferred to M., & 500 of them remained in his name when the co. was ordered to be wound up:—*Held*: (1) M. had been guilty of misfeasance in relation to the co., & could under 1862 Act, s. 165, be made to contribute in respect of such misfeasance; (2) the measure of the damages to be contributed by M. was the highest value of the shares transferred to him, & as some of the shares had been allotted to solvent shareholders, the value must be taken to be the amount unpaid on the shares.

Qu.: whether M. could be made a contributory in respect of these shares, as shares on which nothing had been paid.—*Re MORVAH CONSOLS TIN MINING CO., MCKAY'S CASE* (1875), 2 Ch. D. 1; 45 L. J. Ch. 148; 33 L. T. 517; 24 W. R. 49, C. A.

Annotations:—*As to* (1) *Refd. Re Western of Canada Oil Land & Works Co.* (1875), 45 L. J. Ch. 5; *Phosphate Sewage Co. v. Hartmont* (1877), 5 Ch. D. 394; *Nant-y-glo & Blaina Ironworks Co. v. Grave* (1878), 12 Ch. D. 738; *Hirsche v. Sims*, [1894] A. C. 654. *As to* (2) *Refd. Re Western of Canada Oil Land & Works Co.* (1875), 45 L. J. Ch. 5; *Phosphate Sewage Co. v. Hartmont* (1877), 5 Ch. D. 394; *Nant-y-glo & Blaina Ironworks Co. v. Grave* (1878), 12 Ch. D. 738. *Generally, Refd. Re Ambrose Lake Tin & Copper Mining Co., Ex p. Taylor, Ex p. Moss* (1880), 14 Ch. D. 390.

82. Promoter acting as agent for another—Sharing remuneration.]—Pltfs. were a joint-stock co., which was formed for the purpose of purchasing & working a colliery & ironworks formerly the property of B., deceased. Before the co. was formed B.'s trustees entered into negotiations with R., a financial agent, to get up a co. for the purchase of the property for about £300,000. R.

applied to C. & C. made an arrangement with G. upon the term stated below. Two contemporaneous agreements were signed, by one of which the trustees agreed to sell the property to a trustee for the co. for £300,000; & by the other, which was called in the pleadings the secret agreement, the trustees agreed with C. that he should bring out the co. or forfeit £20,000; & that they should pay £85,000 for commission & risk. On the same day C. agreed with G. that G. should take the whole risk of bringing out the co., & should receive £60,000 & C. £25,000 of this bonus. D. & Co., the vendors' solrs., were to receive £1,500 from the tenant for life of the property if the purchase was completed. The co. was established, the first directors being found by R.; D. & Co. became the solrs. of the new co. The prospectus & arts. referred to the agreement for the purchase of the property, but made no mention of the agreement between the vendors & C., or of any of the arrangements relating to it. The purchase-money was paid to the vendors, who paid out of it £85,000 to C., of which he gave £60,000 to G. & £10,000 to R. The directors were not informed by D. & Co., or any other person, of the agreement between the vendors & C.; but some time afterwards they discovered it, & thereupon called a general meeting of the co. to consider the subject. The result was that a bill was filed by the co. against the vendors & against R., C., G., & D. & Co., praying that the purchase might be rescinded, or that defts. might be held liable to repay all the profits which they had made by the transaction; pltfs. offering to allow expenses properly incurred & a fair commission. Before the cause came to a hearing, pltfs. compromised the suit with the vendors, receiving from them £31,000 as the price of not insisting on the purchase being rescinded:—*Held*: (1) the suppression in the prospectus of the agreement between the vendors & C. was unjustifiable; & defts., R., C., & G., were in a fiduciary relation to the intended co., & therefore could not be allowed to retain any profit which they had made without disclosing it to the co.; (2) the compromise with the vendors did not affect the claim of pltfs. against defts. R., C., & G., & the last-named defts. had no claim to any allowance in respect of the £31,000 paid by the vendors on such compromise; (3) defts., R., C., & G., were entitled to be allowed their expenses properly incurred in bringing out the co., & although they would not have been entitled to any commission unless pltfs. had offered to allow it in their bill, pltfs. could not retract their offer, & a fair commission must be allowed; (4) also, although D. & Co. had acted improperly in concealing from the co. the agreement between the vendors & C., they ought to have been dismissed from the suit when pltfs. elected not to rescind the purchase, & inasmuch as D. & Co. had acted in the matter with no fraudulent intent, the ct. dismissed the suit against them without costs up to the time of the compromise, & with costs as to all subsequent proceedings.—*BAGNALL v. CARLTON* (1877), 6 Ch. D. 371; 47 L. J. Ch. 30; 37 L. T. 481; 26 W. R. 243, C. A.

Annotations:—*As to* (1) *Consd. Emma Silver Mining Co. v. Grant* (1879), 11 Ch. D. 918. *Refd. Nant-y-glo & Blaina Ironworks Co. v. Grave* (1878), 12 Ch. D. 738; *Emma Silver Mining Co. v. Lewis* (1879), 4 C. P. D. 396; *Lydney & Wigpool Iron Ore Co. v. Bird* (1886), 33 Ch. D. 85; *Capel v. Sim's Ships Compositions Co.* (1888), 57 L. J. Ch. 713; *Salford Corpn. v. Lever*, [1891] 1 Q. B. 168; *Re Liberator Permanent Benefit Bldg. Soc.* (1894), 10 T. L. R. 537. *As to* (2) *Refd. Lydney & Wigpool Iron Ore Co. v. Bird* (1886), 33 Ch. D. 85; *Salford Corpn. v. Lever*, [1891] 1 Q. B. 168; *Edwards v. Hood-Barrs*, [1905] 1 Ch. 20. *As to* (3) *Apld. Emma Silver Mining Co.*

11 Ch. D. 918. *Reid. Evans v. Davis* (1878), 10 Ch. D. 747; *Re Faure Electric Accumulator Co.* (1888), 40 Ch. D. 141.

83. Promoter nominating agent for company.]—By an agreement between the vendors of a mine & G. a financial agent, the vendors agreed to sell the mine to a co. to be formed by G. for its purchase at the price named, & that G. should receive 20 per cent. of the amount of the allotted capital of the co. By a second agreement between P., the agent of the vendors, & D., a nominee of G., described as agent of the intended co., P. agreed to sell the mine to the co. for the price mentioned in the former agreement, but no reference was made to the percentage which G. was to receive. Shortly afterwards the co. was formed; the memorandum of assocn. & prospectus, which were settled by G., stated that its object was to carry out the second agreement & for the purchase & working of the mine, but they contained no reference to the first agreement, under which G. received the amount therein agreed upon. G. secured the services of the first directors, provided their qualifications, & launched the co. In an action by the co. to make him liable for what he had received without the knowledge of the co.:—*Held*: G. was liable for the amount of the secret profit which he had made; also, in estimating the amount of such profit he was entitled to be allowed all sums *bonâ fide* expended in securing the services of the directors & providing their qualification, & in payments to the brokers & officers of the co. & to the public press in relation to the co.—*EMMA SILVER MINING Co. v. GRANT* (1879), 11 Ch. D. 918; 40 L. T. 804; *subsequent proceedings* (1880), 17 Ch. D. 122.

Annotations:—*Reid. Lydney & Wigpool Iron Ore Co. v. Bird* (1886), 55 L. J. Ch. 875; *Capel v. Sim's Ships Compositions Co.* (1888), 57 L. J. Ch. 713; *Salford Corp'n. v. Lever* (1890), 63 L. T. 658; *Re Salo Hotel & Botanical Gardens Co., Hesketh's Case* (1897), 77 L. T. 681. *Mentd. Emma Silver Mining Co. v. Lewis* (1879), 40 L. T. 168; *Tasmanian Main Line Ry. v. Clark & Punched* (1879), 27 W. R. 677; *Piercy v. Young* (1880), 15 Ch. D. 475.

84. Fictitious purchaser from true vendor — Company entitled to stand in place of purchaser.]—*WHALEY BRIDGE CALICO PRINTING Co. v. GREEN*, No 33, *ante*.

85. Fictitious lease from true vendor — One lessee becoming director—Liable in respect of fictitious interests created.]—P. & Q. were working a quarry in partnership. P. also owned an adjoining quarry, & had the option of taking a lease of S. Quarry. Wishing to form a co. for working the quarries they called in A. & B. to assist them. A lease of the S. Quarry was granted to P., Q., A., & B., & on the same day the four entered into an agreement with a trustee for the intended co. to sell to the co. the three quarries for a sum to be paid partly in cash & partly in paid-up shares, A. & B. to receive 120 shares each. The co. was formed. B. was one of the first directors; the agreement was confirmed, & A. & B. received

their shares. The co. was ordered to be wound up, & it turned out that A. & B. had no interest in the property sold to the co. except their interest as lessees of S. Quarry under the lease of even date with the agreement, & B. admitted that he had no interest in the S. Quarry till that day, & had nothing to do with fixing the price. The arts. provided that the agreement for sale should not be impeached on the ground of the directors, or any of them, being vendors or being promoters of the co., nor should they be accountable for benefits secured to them. The judge held that B. was liable to contribute to the assets of the co. a sum equal to the nominal amount of the shares issued to him & to A. on the ground of his misfeasance as director in accepting the shares allotted to himself & in allowing A.'s shares to be issued to him:—*Held*: although if A. & B. had been *bonâ fide* owners of shares in the S. Quarry & had agreed to sell their interests for shares in the co. the transaction could not have been impeached, the insertion of their names as vendors when they had no real interest in the property sold was a device for enabling them to get fully paid-up shares for their services in the promotion of the co., & the issuing them was a misfeasance on the part of the directors, & as it was not known to the co. that A. & B. were not really vendors, the clause in the arts. did not protect B.—*Re WESTMORELAND GREEN & BLUE SLATE Co., BLAND'S CASE*, [1893] 2 Ch. 612; 62 L. J. Ch. 975; 69 L. T. 700; 2 R. 509, C. A.

86. Measure of liability — Shares allotted — Highest value of shares.]—*Re MORVAH CONSOLS TIN MINING Co., MCKAY'S CASE*, No. 81, *ante*.

87. — Expenses properly incurred allowed.]—*BAGNALL v. CARLTON*, No. 82, *ante*.

88. — Payments made *bonâ fide* allowed.]—*EMMA SILVER MINING Co. v. GRANT*, No. 83, *ante*.

— **Agreement to pay lump sum for preliminary expenses.]**—*See* No. 148, *post*.

See, also, No. 33, *ante*.

What expenses may be retained.]—*See* Sub-sect. 6, A., *post*.

89. Loss of remedy — Against concealed promoter—By compromise of action brought by promoter as creditor.]—The arts. of assocn. of a limited co. provided for the payment of a sum of money to A. as the promoter. A bill was filed by the co. to restrain an action commenced in the name of A. to recover the money, on the ground that, as was the fact, not A., but B., was the promoter, & the person who would really receive the money if paid. Proceedings in the action & suit, & in a subsequent winding-up petition presented by B. as a creditor for the money, were stayed on the terms of certain payments being made to B. The co. being subsequently in process of being wound up, the official liquidator obtained from the Master of the Rolls an order for repayment of

PART III. SECT. 1, SUB-SECT. 5.—

A. (a) iii.

86 i. Measure of liability—Shares allotted—Market price at time of allotment.]—H. & H. sold eight mining leases to W. & B. for money down—promissory notes for more & paid up shares in a mining co. to be formed by W. & B. & a prospectus issued by them which stated the price in shares & money to be paid to H. & H. for the purchase of the leases as £36,840 the excess being in an increased number of paid up & partly paid up shares; this excess of shares was appropriated to their own use by W. & B. As to part of them, they were issued in the names of H. & H. who signed transfers in blank of them & handed them to W.

to be dealt with as he thought fit. The remainder were issued directly to B., who divided them equally between himself & one S. who joined in endorsing the promissory notes to H. & H. On suit by a shareholder on behalf & against W. & B., H. & H. & the co.:—*Held*: the proper measure of the value of the shares appropriated by W. & B. who were constructive trustees was the price they would have fetched in the market at the time they were appropriated & not the highest price that might have been obtained for them at the time of the suit being instituted.—*BENJAMIN v. WYMOND* (1884), 10 V. L. R. 3.—**AUS.**

87 i. — Expenses properly incurred allowed—Value of promoter's

shares when issued though subsequently worthless.]—In an action by a mining co. against deft. to recover the profit made by him as a promoter of the co. which profit had not been disclosed to the Directors or to the shareholders. On the facts:—*Held*: the co. was entitled to recover from deft. his net gain from the transaction as a whole, including the value when issued of shares in the co. issued to him, which had become worthless, but not including money paid, & shares issued, to him, & paid & transferred by him to others for services rendered him in the promotion of the co.—*WHEAL ELLEN GOLD MINING Co. v. READ* (1908), 7 C. L. R. 34.—**AUS.**

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(a) iii. & (b).]

money paid to B. under these compromises, on the ground of the original concealment of the name of the real promoter. But the order was reversed, on appeal, on the ground that, although the original arrangement was open to suspicion, its real nature was known to the directors, & therefore presumably to the body of shareholders, when the compromises were made, & that it was too late afterwards to seek to disturb them.—*Re GENERAL EXCHANGE BANK, LTD., Ex p. PRESTON* (1868), 37 L. J. Ch. 618; 19 L. T. 138; 16 W. R. 1097, L. J.

90. — Against solicitors to vendors—By compromise of action for rescission against vendors.]—*BAGNALL v. CARLTON*, No. 82, *ante*.

Effect of bankruptcy of promoter—Whether provable debt.]—See *BANKRUPTCY & INSOLVENCY*, Vol. IV., p. 307, No. 2878.

— & discharge.]—See *BANKRUPTCY & INSOLVENCY*, Vol. IV., p. 582, No. 5335.

(b) Return of Subscriptions and Deposits.

91. On abandonment of project—Free of deduction for expenses.]—If the projectors of a scheme, to be carried on by subscriptions, induce a number of persons to subscribe their money in the purchase of shares, & the scheme is abandoned before it comes into operation:—*Held*: the subscribers are entitled to maintain money had & received against the projectors for the whole money subscribed, free from any deduction for expenses incurred in the formation of the plan. *NOCKELS v. CROSBY* (1825), 3 B. & C. 814; 5 Dow. & Ry. K. B. 751; 107 E. R. 935.

Annotations:—*Consd.* *Doubleday v. Muskett* (1830), 7 Bing. 110. *Fold.* *Walstab v. Spottiswoode* (1846), 15 M. & W. 501. *Refd.* *Reynell v. Lewis, Wyld v. Hopkins* (1846), 10 Jur. 1097; *Clarke v. Chaplin* (1848), 11 L. T. O. S. 6; *Jarrett v. Kennedy* (1848), 6 C. B. 319; *Hutton v. Upfill* (1850), 2 H. L. Cas. 674; *Hutton v. Thompson, Norris v. Cooper* (1851), 3 H. L. Cas. 161; *Bright v. Hutton, Hutton v. Bright, Re Direct Birmingham, Oxford, Reading, & Brighton Ry.* (1852), 16 Jur. 695; *Baird v. Ross* (1855), 25 L. T. O. S. 34; *Moseley v. Cressey's London & Burton Steam Cooperage Co.* (1864), 35 L. J. Ch. 360.

92. Abandonment must be proved.]—A railway co. was provisionally registered, & a prospectus was issued, which stated the proposed capital to be £2,000,000, in 80,000 shares of £25 each. Pltf. applied to the provisional committee for seventy shares, in a letter whereby she undertook to accept the same or any less number that they might allot to her, to pay the deposit of £2 12s. 6d. per share thereupon, & to sign the parliamentary contract & subscribers' agreement when required. To this letter she received an answer, signed by the secretary, stating that the committee of management had allotted to her thirty shares, & requesting her to pay the deposit of £2 12s. 6d. per share, amounting to £78 15s., into one of certain banks on or before a day mentioned. Pltf. accordingly paid into one of those banks, in due time, the deposit of £78 15s., & received the bankers' receipt for the same. She afterwards presented the receipt to the co., & made several fruitless applns. to the committee for scrip, & at length was informed that the directors

had come to the resolution not to issue any scrip, & that the greater part of the deposits had been expended, & the balance would be rateably divided.

In an action by pltf. to recover back, from a member of the managing committee, the sum of £78 15s. so paid by her as deposits on the shares allotted to her:—*Held*: (1) there was sufficient evidence of the final abandonment of the project; (2) on its abandonment, under the circumstances above stated, pltf. was entitled to recover back, as money had & received to her use, the whole sum so paid by her.—*WALSTAB v. SPOTTISWOODE* (1846), 15 M. & W. 501; 4 Ry. & Can. Cas. 321; 15 L. J. Ex. 193; 7 L. T. O. S. 66, 262; 10 Jur. 460, 498; 10 J. P. Jo. 282, 374; 153 E. R. 947; *previous proceedings*, 6 L. T. O. S. 455.

Annotations:—*As to* (1) *Distd.* *Smith v. Newcomb* (1846), 7 L. T. O. S. 370. *Refd.* *Garwood v. Ede* (1847), 1 Exch. 264; *Vollans v. Fletcher* (1847), 8 L. T. O. S. 317; *Re Direct Birmingham, Oxford, Reading, & Brighton Ry., Ex p. Walstab* (1850), 20 L. J. Ch. 58; *Re Universal Salvage Co., Ex p. Mansfield* (1850), 2 Mac. & G. 57; *R. v. Liverpool, Manchester, & Newcastle-upon-Tyne Ry.* (1852), 16 Jur. 949. *As to* (2) *Distd.* *Garwood v. Ede* (1847), 1 Exch. 264. *Consd.* *Bell v. Moxborough* (1848), 5 Ry. & Can. Cas. 149; *Landon v. Beiorley* (1848), 10 L. T. O. S. 505; *Middleton v. Beresford* (1848), 10 L. T. O. S. 504; *Willey v. Parratt* (1848), 3 Exch. 211; *Baird v. Ross* (1855), 25 L. T. O. S. 34. *Refd.* *Reynell v. Lewis, Wyld v. Hopkins* (1846), 10 Jur. 1097; *Jarrett v. Kennedy* (1848), 6 C. B. 319; *Watson v. Charlemont* (1848), 12 Q. B. 856; *Hutton v. Thompson, Norris v. Cooper* (1851), 3 H. L. Cas. 161; *Yorkshire & Glasgow Union Ry., Carrick's Case* (1851), 1 Sim. N. S. 505; *Moseley v. Cressey's London & Burton Steam Cooperage Co.* (1864), 35 L. J. Ch. 360. *Generally, Mntd.* *Jones v. Harrison* (1848), 2 Exch. 52; *Burnside v. Dayrell* (1849), 3 Exch. 224; *Re Universal Salvage Co., Ex p. Sharpus* (1849), 13 L. T. O. S. 420; *Re Wolverhampton, Chester, & Birkenhead Junction Ry., Norris v. Cottle* (1850), 2 H. L. Cas. 647; *Re Direct Birmingham, Oxford, etc., Ry., Spottiswoode's Case, Amsinck's Case*, (1855), 6 D. G. M. & G. 345.

93. — — —.]—The principle of the case of *Walstab v. Spottiswoode*, No. 92, *ante*, does not extend to cases where there is no evidence of the abandonment of the scheme by the committee. The project must have come to a conclusion before an action will lie to recover back the deposits.—*SMITH v. NEWCOMB* (1846), 7 L. T. O. S. 370.

94. — — — Whole sum paid.]—*WALSTAB v. SPOTTISWOODE*, No. 92, *ante*.

95. — — — Subscribers' deed signed by allottee—Proof of fraud.]—The promoters of a projected railway co., in June, 1845, issued a prospectus stating the capital to consist of £3,000,000 in 120,000 shares of £25 each, & stating amongst other things, that appln. would be made for a bill to incorporate the co. early in the next session; & that, in case Parliament should not sanction the undertaking, the money deposited, deducting the necessary expenses attending the projection, would be returned to the shareholders. On Sept. 25, pltf. made appln. to the provisional committee of management for sixty shares, by a letter in the form prescribed in the prospectus, undertaking to accept the same, or such less number as they might appropriate to him, subject to the regulations of the co., to sign the necessary legal documents, & to pay, when required, the deposit thereon of £1 7s. 6d. per share. The committee by a letter dated Oct. 11, but not sent until some days after, informed pltf. that they had

PART III. SECT. 1, SUB-SECT. 5.—
A. (b).

92 i. On abandonment of project—Abandonment must be proved—Proof of receipt of money.]—To sustain an action for money had & received, against a person named as a director of a projected company, by a proposed subscriber, for his deposit, two

things must be shown: first, that the money so paid came to the deft.'s hands or power, for the purpose of being applied to the objects of the projected co., & secondly, that the project failed by reason of no company, or no company conformable to the prospectus having been formed.—*HAYES v. STIRLING* (1863), 14 L. C. L. R. 277; 15 Ir. Jur. 308.—*IR.*

b. — — — Subscriptions paid into bank—Whether recoverable from bank.]—Where the object for which a co. had been started had failed, & no allotment of shares had been made:—*Held*: money paid into the bank in the usual way by a subscriber on application for shares was part of the co.'s assets, & could not be recovered in an action against the bank.—*LYNCH v. PRO-*

allotted him sixty shares, upon condition that the deposit of £1 7s. 6d. per share thereon was paid on or before the 18th, in default of which the allotment would be forfeited, & the shares disposed of to other appcts. This letter was headed "Not transferable," & as well as the letter of appln., described the concern as one having the amount of capital & the number of shares mentioned in the prospectus. On Oct. 17, the committee published an advertisement in *The Times*, stating that "they had completed the allotment of shares." There was evidence for the jury that pltf. saw this notice; & he paid his deposit on Oct. 22. On Nov. 4, pltf. signed the subscribers' agreement & the parliamentary contract, by which the committee were empowered, amongst other things, to apply the money received for deposits, in liquidation of the preliminary expenses of the undertaking. A meeting of the shareholders was held on Dec. 15, at which pltf. for the first time learned, that, although applns. had been made before Oct. 17, sufficient to absorb the whole 120,000 shares, 58,000 only had been allotted; & that, in consequence of the plans & sections not being duly deposited to comply with the standing orders, & the want of necessary funds, the committee were not in a condition to go to Parliament. At this meeting, resolutions were proposed expressive of confidence in the committee, & of a desire to proceed. Pltf. moved an amendment that, as 58,000 shares only had been allotted, the deposits already received should be returned to the parties who had paid them. The chairman declined to put the amendment; & the original resolutions were carried by a large majority. On Dec. 31, the committee came to the conclusion that to proceed with the undertaking would be impracticable, & on Jan. 6, pltf. brought an action for money had & received against deft., a member of the committee of management, to recover back his deposit.

At the trial, the judge told the jury that pltf. was entitled to a verdict, if deft. knowingly made a false representation which was a material inducement to pltf. to pay his money, & if pltf. executed the deed under the same belief that induced him to pay the deposit. The jury having found for pltf.:—*Held*: the direction was right, & the judge was not bound to tell the jury whether or not the letters of appln. & allotment constituted a valid & binding contract; the letter of allotment not being an unconditional acceptance of the offer made by the letter of appln., the two did not constitute a contract under which pltf. could have been compelled to pay the deposit; pltf. had not, by attending the meeting of Dec. 15, precluded his right to rescind the contract on the ground of fraud.—*WONTNER v. SHAIRP* (1847), 4 C. B. 404; 4 Ry. & Can. Cas. 542; 17 L. J. C. P. 38; 9 L. T. O. S. 148; 11 Jur. 373; 136 E. R. 563.

Annotations:—*Consd.* Jones v. Harrison (1848), 2 Exch. 52; Watts v. Salter (1850), 10 C. B. 477. *Refd.* Duke v. Andrews (1848), 2 Exch. 290; Landon v. Belorley (1848), 10 L. T. O. S. 505; Middleton v. Beresford (1848), 10

L. T. O. S. 504; Watson v. Charlemont (1848), 12 Q. B. 856. *Mentd.* Bell v. Mexborough (1848), 10 L. T. O. S. 457; *Re* Universal Salvage Co., *Ex p.* Mansfield (1849), 14 L. T. O. S. 345; *Re* Universal Salvage Co., *Ex p.* Sharpus (1849), 13 L. T. O. S. 420; Johnson v. Goslett (1857), 3 C. B. N. S. 569; Robson v. Devon (1857), 5 W. R. 724; Farrant v. Barnes (1862), 11 C. B. N. S. 553.

96. ———.]—In an action by an allottee in a projected railway, upon the failure of the scheme, for the recovery of his deposit, where he had executed the usual subscribers' deed, there being no evidence that such execution was obtained by fraud, deft., under the direction of the judge, obtained a verdict:—*Held*: as pltf. should have been nonsuited, a rule for a new trial ought not to be granted, although some observations made by the judge to the jury, as to what would constitute fraud, might not be legally correct; but in such a case the ct. will grant a rule to enter a nonsuit.—*ATKINSON v. POCKOCK* (1848), 1 Exch. 796; 10 L. T. O. S. 330; 12 Jur. 60; 154 E. R. 339; *previous proceedings* (1847), 10 L. T. O. S. 251.

97. ——— No active part taken.]—Deft., a member of the provisional committee, & chairman of the managing committee had not personally superintended the allotment of shares, & had taken no active part in the concern, having been present once only, at any meeting, when he acted in the capacity of chairman but dissented from the proceedings, in an action by an allottee against deft. for recovery of his deposit on the abandonment of the scheme:—*Held*: deft. was not liable.

Pltf. must recover back his money from the parties to whom it was paid. Although the money was paid to the bankers named in the prospectus, it was not paid to the use of deft., nor was there any proof that deft. ever received, or could have received part of it (*POLLOCK, C.B.*).—*BURNSIDE v. DAYRELL* (1849), 3 Exch. 224; 6 Ry. & Can. Cas. 67; 19 L. J. Ex. 46; 12 L. T. O. S. 312, 404; 154 E. R. 825.

Annotations:—*Distd.* Moore v. Garwood (1849), 14 L. T. O. S. 224. *Mentd.* Johnson v. Goslett (1857), 3 C. B. N. S. 569.

See, also, No. 91, *ante*.

Failure of consideration generally.]—*See* CONTRACT, Vol. XII., pp. 224 *et seq.*

98. **Payment induced by misrepresentation—Need not be fraudulent.**]—In an action for money had & received against A., B., & C., three of the provisional committee of a projected railway co., to recover deposits paid by pltf., an allottee of shares, on the ground of fraud, it appeared that the money was paid by pltf. to certain bankers, who gave him a receipt on account of five persons as trustees of the co. A., alone of defts., was a trustee:—*Held*: the action could not be maintained. *Semle*: to support such an action it is not necessary to show that pltf. was induced to pay his deposit by a fraudulent misrepresentation; it is sufficient that such a misrepresentation was made before pltf. paid the money.—*WATSON v.*

having refused to appoint G. as their agent, as agreed by P. at the time the agreement to take shares was signed—claimed a rescission of the contract & a return of the money paid by them:—*Held*: pltf. could not recover.—*GOURLIE v. CHANDLER* (1907), 41 N. S. R. 341.—*CAN.*

e. ——— *Return of subscription with interest.*]—Pltf. brought action against several defts. alleging that by fraudulent misrepresentation he had been induced to take shares in a co. promoted by them, which proved valueless & claiming damages:—*Held*: pltf. had been induced by fraudulent misrepresentation of certain of defts.

VINCIAL BANK (1895), 30 I. L. T. Jo. 37.—*IR.*

c. **Payment induced by misrepresentation—By agent of promoters—Liability of promoters for fraud of agent.**]—Promoters of a co. employed an agent to solicit subscriptions for stock, & W. was induced to subscribe, on false representations by the agent of the number of shares already taken up. In an action by W. to recover the amount of his subscription from the promoters:—*Held*: the promoters, having benefited by the sum paid by W., were liable to repay it, though they did not authorise & had no knowledge of the false representations of

their agent.—*MILBURN v. WILSON* (1901), 31 S. C. R. 481.—*CAN.*

d. ——— *Promoter may be liable—Although contract not voidable as against company.*]—Pltf. were induced to sign an agreement to take stock in a proposed co., upon the representation of P., acting for the promoters in securing subscriptions, that G., one of pltf., would be appointed agent & representative of the co. for the province of P. E. I. After the incorporation of the co., notices were sent out to subscribers requiring payment of a first call upon the stock subscribed for by them. Pltf. paid the amount of the call, but subsequently—the co.

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CHARLEMONT (EARL) (1848), 12 Q. B. 856; 18 L. J. Q. B. 65; 12 L. T. O. S. 212; 13 Jur. 117; 116 E. R. 1091.

*Annotations:—*Reid. Moore v. Garwood (1849), 4 Exch. 681. Mentd. Mallalieu v. Hodgson (1851), 16 Q. B. 689; Wheelton v. Hardisty (1857), 8 E. & B. 285.

99. — **Proof of receipt of money.]—**BURNSIDE v. DAYRELL, No. 97, ante.

—.]—*See, also*, Nos. 95, 96, ante.

Authority to pledge credit of committee or members.]—*See* AGENCY, Vol. I., pp. 356 et seq.

(c) *For Misrepresentation in Prospectus.*

Action of deceit.]—*See* Sect. 8, sub-sect. 3, D. (a), post.

Return of subscription & deposit.]—*See* No. 98, ante.

(d) *Other Cases.*

100. **Promise to create voluntary trust for benefit of shareholders—Shareholder influenced by promise.]—**N., a promoter of, & vendor to, an unsuccessful mining co., publicly & in good faith promised to create a trust, under which the co. & its shareholders would have benefited, but died before the trust was created:—*Held*: a person who heard of the contemplated trust could not, in virtue of the fact that he bought or held shares of the co. in confidence of N.'s promise being carried out, establish a case of contract as against N., & in the absence of any fraud or special representation, neither N. nor his exors. would be estopped from denying liability, notwithstanding that N. himself might have benefited by the promise having been made.—COLEMAN v. NORTH (1898), 47 W. R. 57.

To make good amount alleged to be subscribed—Winding up of unregistered company.]—*See* No. 7681, post.

101. **Work done for company—By shareholder.]—**The mere fact of being a shareholder in a projected railway co. does not render a party, who has done work & labour for the co., incompetent to sue a member of the provisional committee.—SMITH v. ARCHIBALD (1849), 14 L. T. O. S. 174.

B. To Strangers.

(a) *In General.*

102. **As member of provisional committee—General rule.]—**I never could understand why it was considered a pure question of law, why provisional committeemen & allottees of shares, persons who stood in both capacities, were on that account to be liable as contributories. The law does not know what is the meaning of provisional committeemen. Yet they have been talked of in our cts., their liabilities have been considered & dealt with & their powers made the subject of discussion, & their liabilities treated of as aiming from their powers, as if they were as well known to the law as tenants for life or tenants in tail. I consider this is a matter of contract. A person

to take shares & held said debts answerable for pltf.'s loss, & said debts ordered to pay pltf. amount paid by him for shares with interest less value of shares & directed inquiry.—DAVOREN v. WOOTTON, [1900] 1 L. R. 273.—IR.

PART III. SECT. 1, SUB-SECT. 5.—*B. (a).*

102 i. **As member of provisional committee—General rule.]—**The mere fact that persons agree to become pro-

visional directors of a co. does not render them liable for goods supplied on the order of the attorney or secretary of the co., & they are not necessarily rendered liable by allowing their names to appear as provisional directors on the prospectus. Whether they are liable depends on the terms of the prospectus. If it merely states that they are provisional directors they will not be liable. If it represents that the attorney or secretary is not merely to act as such when the co. is formed,

can become liable as a contributory in respect of the contract he has entered into, not in respect of assuming a particular character. The question of contract will depend upon the facts of the case, not merely on the party being a provisional committeeman; & then the only question of law will be whether there is evidence to submit to the jury whether a contract has been proved (LORD CAMPBELL, C.J.).—BRIGHT v. HUTTON, HUTTON v. BRIGHT (1852), 3 H. L. Cas. 193, 341; 7 Ry. & Can. Cas. 325; 19 L. T. O. S. 289; 16 Jur. 695; 10 E. R. 74, 133, H. L.; affg. S. C. sub nom. *Re DIRECT BIRMINGHAM, OXFORD, READING, & BRIGHTON RY. CO.*, BRIGHT'S CASE (1851), 1 Sim. N. S. 602.

*Annotations:—*Consd. *Re* Direct Birmingham, Oxford, etc., Ry., Spottiswoode's Case, Amsinck's Case (1855), 6 De G. M. & G. 345. Reid. *Re* Rugby, Warwick & Worcester Ry., Preece & Evans's Case (1852), 2 De G. M. & G. 374; *Re* Midland Union, Burton-upon-Trent, Ashby de la Zouch & Leicester Ry., Lucy's Case (1853), 4 De G. M. & G. 356; Burbidge v. Morris (1865), 3 H. & C. 664; Hebbert v. Purchas (1871), L. R. 3 P. C. 664. Mentd. *Re* Wolverhampton, Chester & Holyhead Ry., Robert's Case (1852), 20 L. T. O. S. 9; Quartermaine v. Bittleston (1853), 13 C. B. 133; Paul v. Joel (1858), 3 H. & N. 455; *Re* Laurence, Mortimore (1862), 5 L. T. 726; I. R. Comrs. v. Harrison (1874), L. R. 7 H. L. 1; The Vera Cruz (No. 2) (1884), 9 P. D. 96; London Tram. Co. v. L. C. C. (1898), 78 L. T. 361.

103. **Liable for preliminary expenses.]—**CAMPBELL v. PEPPER, No. 60, ante.

104. **On contract entered into by provisional committee—Contract for service—Unless liability of committee excluded.]—**Where a local committee is formed for the purpose of forwarding the project of an intended railway, they are the persons who are liable to pay the salaries of their secretary, etc., unless it be shown that the secretary, etc., agreed to look to some other fund for payment, & where deft. was not a member of the local committee at the time pltf. was first engaged as secretary, but became so while pltf. continued secretary, it will be for the jury to say whether deft. did not continue to employ pltf. on the same terms in which he was originally engaged.—KERRIDGE v. HESSE (1839), 9 C. & P. 200.

See, also, No. 142, post.

105. — **Contract existing at time of joining.]—**KERRIDGE v. HESSE, No. 104, ante.

106. — **Contract for work & labour—Evidence of liability.]—**WALLINGTON v. LAMBERT (1847), 9 L. T. O. S. 171.

107. — **Authorisation must be proved.]—**NEVINS v. HENDERSON, No. 61, ante.

108. — **Extent of liability.]—**Where a solicitor is instructed in pursuance of a resolution at a meeting of the provisional committee, it is a joint contract on the part of the members of such committee, & they are liable as co-contractors only, & proof cannot be had against the separate estate of those who have taken the most active & prominent part in the proceedings of the undertaking.—*Re* LAURENCE, MORTIMORE & Co. (1862), 5 L. T. 726.

— **Shareholder in position of stranger.]—***See* No. 101, ante.

109. — **No authority to pledge credit.]—***Re*

but is already appointed to act for such provisional directors, they will be liable for such business as is usually done by the attorney or secretary of persons who are forming a co.—*DE DRUKKERS MAATSCHAPPIJ v. OOSTHUIZEN* (1915), 6 C. P. D. 401.—S. AF.

i. **On contract entered into by provisional committee—Contract for supply of goods—Liability as partners.]—**Defts. signed a certificate of their

DIRECT EXETER, PLYMOUTH & DEVONPORT RY. Co., *Ex p.* BESLEY, No. 62, *ante*.

— — — — —.]—*See, generally*, AGENCY, Vol. I., pp. 356, 359, Nos. 643 *et seq.*, 679 *et seq.*

On contract by promoters—Before company incorporated.]—*See* Sect. 31, *post*.

110. On contract by member of committee.]—One member of a provisional committee cannot bind another member so as to render him liable for orders he may give.—BAILEY v. STEVENSON (1847), 8 L. T. O. S. 368.

— **Authority to pledge credit of other members.]—***See* AGENCY, Vol. I., p. 357, Nos. 657 *et seq.*
See, also, No. 61, *ante*.

111. On contract by managing committee.]—T., a member of a provisional committee of an abortive railway scheme, attended a meeting of that committee, at which a committee of management was appointed, who incurred debts which the funds of the co. were insufficient to pay. At a subsequent meeting of the provisional committee, at which T. attended, the committee of management reported that they had incurred such debts; & that, according to an opinion taken, all the members of the provisional committee were liable for the debts so incurred; when resolutions were passed adopting the report, & arranging, by a rateable contribution, for payment of the debts. T. was, at such meetings, appointed a member of a finance committee to arrange for the payment of the debts of the co., & was active in such committee, & he contributed several sums towards liquidating the debts. The Master, in winding up the affairs of the co. under the Winding-up Acts, placed T.'s name on the list of contributories:—*Held*: (1) T. was not a contributory; (2) the committee of management was a body of persons acting for themselves independently, & not as agents for, or on behalf of the provisional committee; & the committee of management was the committee of the intended co., & not of the provisional committee.—*Re* DIRECT EXETER, PLYMOUTH & DEVONPORT RY. Co., TANNER'S CASE (1852), 5 De G. & Sm. 182; 21 L. J. Ch. 212; 18 L. T. O. S. 233; 16 Jur. 214; 64 E. R. 1072.

See, further, AGENCY, Vol. I., p. 359, Nos. 683, *et seq.*

112. On contract by agent of company.]—A. being employed by the local agent of a railway co. to procure the names of parties willing to join the provisional committee, exerted himself accordingly, & by his interest, five names were added to the existing committee:—*Held*: he could not recover in an action for work & labour from the original members of the provisional committee, & that he could only sue in respect of such services on an express contract with depts.—WADDY v. DILLON (1846), 8 L. T. O. S. 218.

113. On contract by secretary appointed by promoters.]—Deft. was a provisional committeeman, & had applied for shares in a railway co., which, however, never issued any shares, & the secretary of which, appointed, however, by the promoters only, had entered into certain contracts which he communicated to the committee:—*Held*: deft. was not liable on such contract; & the tender of £40 to the attorney of the co., as it did not appear on what account it was tendered,

intention to become incorporated as a co-operative association under R. S. O., c. 158. They failed, however, to fulfil the requirements of the Act & never actually became a corp'n. under it. In the meanwhile pltf. supplied depts. & other intended members of the association with certain goods, & now sued the former for the

balance due in respect thereof:—*Held*: he was entitled to judgment against depts. as partners.—SKIFFERT v. IRVING (1887), 15 O. R. 173.—CAN.

g. On contract of promoters—*Debenture holder induced to make advance on misrepresentation of promoters.]—*The holder of a debenture

& he had dealings & other business with him, was not evidence of an admission to go to the jury.

The mere fact of a man being a member of a provisional committee, does not of itself render him liable for the contracts made by the co., & his applying for shares in a co. that never issued any, does not do so either.—BARKER v. LYNDON (1847), 2 Car. & Kir. 637.

114. On contract by engineer to company.]—A co. was projected for the filtration & supply of water. Whilst the bill for its formation was before a committee of the House of Commons, the engineer, upon the suggestion of counsel, employed a builder to erect a cistern for the purpose of testing the process of filtration for which the engineer had obtained a patent. Deft. was a member of the provisional committee, & the cistern was with his assent erected on land in his occupation:—*Held*: no evidence to warrant a jury in inferring that the order for the work was given by deft.'s authority, or that the work was done upon his credit.—PATRICK v. REYNOLDS (1857), 1 C. B. N. S. 727; 140 E. R. 299.

115. On contract made by company.]—BARKER v. LYNDON, No. 113, *ante*.

Misrepresentation to directors—Causing damage to stranger.]—*See* No. 178, *post*.

(b) *How Incurred.*

i. *By Pledging Personal Credit.*

116. Allowing name to appear as provisional committeeman—Whether credit pledged—Question for jury.]—Deft. applied to become a member of the provisional committee, & also of the acting committee, of a certain railway. His request was complied with as to the former, but not as to the latter. A prospectus was issued with deft.'s name as one of the provisional committee, & deft. heard it read at a meeting at which he was present, & made no objection:—*Held*: it was a case for the jury.

The question would be, had deft., by agency or by his own act, given an authority to the co. to hold him out in their prospectus to the world as a person liable for the expenses of this undertaking. Pltf. had a right to see who was on the provisional committee, & if the jury should think that deft.'s name appearing on the list with his consent was enough to sustain this action, it would prove an awful lesson to all those who had entered into this sort of speculation, & authorised the use of their names as provisional committeemen (LORD DENMAN, C.J.).—ALLEY v. GAIN (1846), 8 L. T. O. S. 216, N. P.

117. — — — — — What jury may consider.]—In an action against a member of the committee of a projected railway co. for work & labour, goods supplied, & money paid, the jury are to consider whether deft., by taking upon him the character of a committeeman, & afterwards acting in the affairs of the co., has authorised the co.'s solr. or secretary, or any member of the committee, to hold him out to the world as personally responsible for the reasonable & necessary expenses incurred in forming such a co., & on its behalf; & then, whether the credit was given on the faith of his being so personally responsible.

A committeeman by merely allowing his name to

bond of a joint stock co. registered under Companies Acts has a good title to sue an action of damages against the promoter of the co., or the ground that by false & fraudulent representations of the promoter he had been induced to advance money to the co.—DUNNETT v. MITCHELL (1885), 12 R. (Ct. of Sess.) 400.—SCOT.

Sect. 1.—Promotion and flotation: Sub-sect. 5, B.
(b) i., ii. &

appear in that character in the ordinary form of prospectus issued by railway cos. incurs no liability to a tradesman who supplies goods to the co.; but the consent of a person to his name so appearing may be a fact of importance on a question of such liability, as showing that he took an interest in the proposed concern, whether merely as a patron & well wisher, or as co-operating in the measures preparatory to its formation. It becomes, therefore, material to know what the committee was doing when he joined it, & whether he knew what it was doing, & concurred therein. If advertising, printing & stationery are necessary to the working of the committee, & no fund has been raised to pay for such necessities, the tradesman may justly suppose that all who act on the committee have authorised him to supply them on their credit, although the individual committeeman has not specifically given such authority, & though the tradesman may know nothing more of the committeemen than that they are probably men of character & substance. The absence of the committeeman's intention to pledge his credit is immaterial, if he have given the authority beforehand.

If, however, the tradesman looked solely to the deposits on shares as the fund from which payment was to be made to him, he has no cause of action against the committeeman.

As the liability of the committeeman arises, not from his filling that character, but from his authorising the orders for goods or services, his admission of general liability may be evidence of his having authorised such orders before his name appeared on the committee.

The jury are to consider whether such an admission was made because the actual liability in law was questionable, & for the purpose of preventing litigation, or whether the admission is referable to his conscientious conviction that his acts have made him personally liable. In the latter case they may infer his general liability.—*BAILEY v. MACAULAY* (1849), 13 Q. B. 815; 19 L. J. Q. B. 73; 14 L. T. O. S. 104; 14 Jur. 80; 116 E. R. 1475.

Annotations:—Consd. Patrick v. Reynolds (1857), 1 C. B. N. S. 727. *Refd. Norris v. Cottle* (1850), 2 H. L. Cas. 647; *Pilot v. Craze* (1888), 4 T. L. R. 453.

118. — Insufficient without further evidence.]
 —A. sued C. & others being part of the provisional committee of an abortive railway scheme for his expenses, incurred on behalf of the committee. The evidence showed merely that debts. had allowed their names to be published as committeemen without objecting; but there was no proof of actual employment or of adoption by debts. of the contract:—*Held*: debts. were not liable.

Observations on the law of provisional committeemen.—*MACEWAN v. CAMPBELL* (1857), 29 L. T. O. S. 30, H. L.

See, also, AGENCY, Vol. I., p. 420, No. 1145.

Pledge of credit for part of work—Whether admission of liability for remainder.]—See No. 121, post.

119. Authority to agent to pledge credit.]—PATRICK v. REYNOLDS, No. 114, ante.

—.]—*See AGENCY, Vol. I., p. 353, No. 617.*

PART III. SECT. 1, SUB-SECT. 5.—
B. (b) iii.

126 i. Meeting when liability incurred.]—By a resolution passed at a meeting of the promoters of a projected co. the pltf., a solicitor, was retained to draw the deed of settlement & do other work towards its

incorporation. Defendants were present at the meeting, & were subsequently appointed, together with a partner of the pltf., directors of the co.; pltf. being appointed its solicitor. The original prospectus contained a provision that all the preliminary expense should be paid by the proprietors.

Authority of committee to pledge credit of individual members.]—See, generally, AGENCY, Vol. I., p. 356, Nos. 643 et seq., p. 359, Nos. 679 et seq.
Effect of subsequent formation of company.]—See AGENCY, Vol. I., p. 361, Nos. 701, 702.

ii. By Admission of Liability.

120. By admission of liability—Evidence of.]—BARKER v. LYNDON, No. 113, ante.

121. — Under mistake—Question for jury.]—In an action against a provisional committeeman of a railway co., for work, etc., it appeared that deft. had authorised the pledging of his credit for a portion of the work, but not for the residue, & had subsequently admitted his liability for the whole. The judge directed the jury to consider the circumstances under which the admission was made, & the mistaken view under which deft. might at that time have acted in respect of the supposed liability of all members of provisional committees:—*Held*: the direction was right.—*NEWTON v. BELCHER* (1848), 12 Q. B. 921; 6 Ry. & Can. Cas. 38; 18 L. J. Q. B. 53; 12 L. T. O. S. 213; 13 Jur. 253; 116 E. R. 1115.

122. — Resolution to contribute to expenses.]—Re DIRECT EXETER, PLYMOUTH & DEVONPORT RY. CO., TANNER'S CASE, No. 111, ante.

123. — Payment causâ pacis.]—Re DIRECT EXETER, PLYMOUTH & DEVONPORT RY. CO., Ex p. ROBERTS, No. 138, post.

124. — Extent of admission—Payment causâ pacis.]—A provisional committeeman who pays a sum of money *causâ pacis* as a contribution with others to satisfy *bonâ fide* outstanding claims against an abandoned assocn., does not thereby admit a general liability to contribute to satisfy every outstanding demand.—*Re WINDING-UP ACTS & HARBOROUGH & WATLINGTON RY. CO., & WOLVERHAMPTON, WALSALL, LEICESTER, PETERBOROUGH, NORWICH & GREAT YARMOUTH JUNCTION RY. CO.* (1850), 16 L. T. O. S. 297.

iii. By Attendance at Meetings.

125. Meetings preliminary to formation of committee—Evidence of liability for necessary expenses.]—Where persons meet together for the purpose of forming an assocn. for a purpose of public utility, & hold meetings preliminary to its formation, the attendance of any one of such persons at such meetings is some evidence to go to a jury to fix him with the liability for expenses necessarily incurred.—*LAKE v. ARGYLL (DUKE)* (1844), 6 Q. B. 477; 14 L. J. Q. B. 73; 4 L. T. O. S. 171; 9 Jur. 295; 115 E. R. 178.

126. Meeting when liability incurred.]—The managing committee of a railway co. resolved "that the solrs. should take the necessary steps for advertising the co., & preparing & circulating the prospectuses." A witness stated that "advertising the co." meant advertising the prospectus of the co.:—*Held*: the resolution authorised the insertion of the prospectus in the newspapers as an advertisement & the advertising agent was entitled to recover his charge for these advertisements from a member of the committee who was present when the resolution was passed.—*BARKER v. COLLINS* (1849), 13 L. T. O. S. 90.

Pltf. sent his bill of costs to the manager of the co., & on being refused payment, sued the debts.:—*Held*: all the promoters who were present at the meeting at which pltf. was retained were personally bound by their resolution.—*DE LISSA v. ASHER* (1875), 14 N. S. W. S. C. R. 173.—AUS.

127. — Subsequent modification at meeting from which absent.]—A. was, in his absence, chosen by the provisional committee of a provisionally registered railway to be one of the managing committee, to whom, by resolutions of the provisional committee then passed, power was given to allot shares & to apply the funds of the co. in payment of expenses. The scheme having proved abortive, the allottees recovered their deposits in actions against A. & other persons who had been appointed to be members of the managing committee. The members of the managing committee thereupon appointed a sub-committee, of which A. was one, to take measures to protect the members of the committee. A. was a constant attendant at the meetings of the sub-committee, & took an active share in providing for some of the demands on the committee of management & resisting others:—*Held*: he thereby sanctioned & adopted the former proceedings of the managing committee, in which he had not taken part, & was liable to contribute in respect of them.

B., who was appointed & acted as a member of the managing committee of a provisionally registered railway co., with power to contract with engineers for the requisite surveys, etc., was one of the members liable in respect of an order given to the engineers, who afterwards being unable to complete the contract by the required time, offered to forego it, & to substitute a contract for a part of the line only, on the terms that the completion of the latter within the time should not be required. At a meeting, at which B. was not present, the majority of the managing committee present resolved to accede to the proposal. B. at a subsequent meeting opposed the confirmation of the resolution. Afterwards he concurred in resolutions for providing means of satisfying the engineer's demand among others:—*Held*: the substituted contract was only a modification of the contract, in respect of which B. was liable, & under the circumstances B. was liable to contribute to the payment of the engineers' demand.—*Re DIRECT BIRMINGHAM, OXFORD, READING & BRIGHTON RY. CO., SPOTTISWOODE'S CASE, AMSINCK'S CASE* (1855), 6 De G. M. & G. 345; 3 Eq. Rep. 681; 25 L. T. O. S. 136; 43 E. R. 1267.

Annotations:—*Re London, Birmingham & Bucks Ry., Ex p. Curzon* (1856), 3 Drew. 508; *Hill v. Lathom* (1894), 10 T. L. R. 301.

128. Meetings subsequent to meeting when liability incurred—Active part taken.]—Deft.'s name was placed upon a committee on Oct. 15. On Nov. 20 he signed a consent to act as director. On Jan. 22 a meeting was held, at which deft. was not present, but he afterwards called at the co.'s offices, & said he was ready to render any assistance in his power towards the settlement. On Feb. 12 he attended a meeting, & moved a resolution. He further interested himself in the matter, & asked for accounts, which he saw at a subsequent meeting on Mar. 5, & among them was that of pltf.

Upon these facts the liability of deft. was established.—*NEWTON v. STEWART* (1846), 8 L. T. O. S. 256.

129. — Proceedings at previous meeting confirmed.]—A member of the committee of management of an abortive railway co. attended many of the meetings, but he did not attend the only meeting at which the only unsatisfied debt of the co., being a debt to its engineer, was contracted; he, however, attended a subsequent meeting, at which the report of the engineer was received & adopted:—*Held*: *prima facie*, the claim of the engineer was a liability of the co. within the meaning of Winding-up Acts, 1848 & 1849; &

that, although the member was not directly liable to the engineer, he was liable to the persons liable to the engineer to contribute rateably with them; & the members' name was retained on the list of contributories.—*Re MIDLAND UNION, BURTON-UPON-TRENT, ETC., RY. CO., NORBURY'S CASE* (1852), 5 De G. & Sm. 423; 64 E. R. 1181.

Annotation:—*Reid. Hill v. Lathom* (1894), 10 T. L. R. 301.

130. — Proceedings at previous meeting read but not confirmed.]—Deft. was a brewer in Y., & the action was brought against him by pltf., an advertising agent, for work done & money paid for the use of deft. as a director of the Dutch Hanoverian Ry. Co., which began at the latter end of 1845. On Nov. 5, 1845, after the first meeting, £10 was agreed to be subscribed by each of the directors, deft. being one, to cover preliminary disbursements. On Jan. 1, 1846, a meeting of the directors took place, but deft. was not then present, & resolutions were then made which had been received in evidence in this case, to advertise etc., in the necessary papers. On Jan. 7, another meeting took place, at which deft. was present, when the proceedings of Jan. 7 were read, but not confirmed; but it was then agreed by a resolution, into which deft. had entered, to indemnify C. from liability in consequence of any advertisements ordered by the secretary. On Jan. 14 another meeting was held, at which deft. was present; & he never attended afterwards. On Feb. 25, deft. demanded back his £10 & received it; he had refused also, to take any shares. The secretary had ordered the advertisements in pursuance of the resolutions, & it was sought to make deft. liable on the resolutions come to on Jan. 1, at which he was not present, because they were read at the meeting on the 7th, at which he was present. Rule absolute to enter a nonsuit.—*BARKER v. BRADLEY* (1847), 9 L. T. O. S. 39, 229.

131. — Liability question for jury.]—On the trial of an action by an advertising agent against a member of the managing committee of a railway co., it appeared that on Oct. 13, deft. consented to become a member of the managing committee, & that an order for the insertion of some of the advertisements in question was given by the committee on that day, but that deft. did not attend a meeting of the committee until Oct. 18:—*Held*: the question of deft.'s liability was properly left to the jury.—*MITCHELL v. MOORE* (1848), 11 L. T. O. S. 124.

132. — Expenses incurred arising out of liability incurred at former meeting.]—At the same meeting at which deft. was appointed a provisional committeeman of a projected joint stock co., a resolution was come to that the solrs. of the projected co. should be instructed to prepare a deed of settlement. Deft. did not attend any meeting until two days after such meeting; & subsequently he attended meetings at which the solrs. were ordered to alter the terms of the deed:—*Held*: deft. was not liable for charges for preparing the deed; but he was liable for other business done by the solrs. pursuant to resolutions passed at meetings which he attended, notwithstanding the solrs. were retained before he became a member of the committee.—*JENKYN v. FINDEN* (1854), 2 W. R. 158.

133. — Present at subsequent meetings of sub-committee—Active part taken.]—*Re DIRECT BIRMINGHAM, OXFORD, READING & BRIGHTON RY. CO., SPOTTISWOODE'S CASE, AMSINCK'S CASE*, No. 127, *ante*.

After resignation.]—*Sec No. 138, post*.

See, also, No. 97, ante.

Sect. 1.—Promotion and flotation: Sub-sect. 5, B. (b) iii. & C.; sub-sect. 6, A.]

134. Proof of identity.]—Pltf. was appointed engineer to a railway co. at a meeting of the provisional committee. Deft. had previously agreed to join that committee, & had forwarded applns. for shares, but whether before or after the meeting, was uncertain. An individual answering to deft.'s name was present at the meeting:—*Held*: there was no evidence to go to the jury of deft.'s identity with that individual.—*GILES v. CORNFoot* (1847), 2 Car. & Kir. 653, N. P.

C. Termination and Limitation of Liability.

135. Termination—Withdrawal of name—Consent of others necessary.]—One of several persons who have subscribed an agreement *inter se*, to promote a joint undertaking or common purpose cannot withdraw his name, & discharge himself from the engagement, without the consent of the rest of the subscribers. If an Act of Parliament has been passed for effectuating the purpose of the undertaking, by which certain obligations are created, such original subscriber is not exonerated from the liabilities imposed by the Act, by having, during the progress of the bill, renounced, before the committee, all further connection with the undertaking, & desired that his name might be, in consequence, omitted in the Act; nor can the circumstances of his name so being omitted, have the effect of disengaging him.—*KIDWELLY CANAL Co. v. RABY* (1816), 2 Price, 93; 146 E. R. 32.

Annotations:—Mentd. Day v. Sharp (1846), 7 L. T. O. S. 62; *Walstab v. Spottiswoode* (1816), 4 Ry. & Can. Cas. 321.

— **Evidence of consent.]—**See No. 58, *ante*.

136. — Before issue of prospectus.]—*BARNETT v. SOTHWELL* (1846), 8 L. T. O. S. 123.

137. — Subsequent attendance at meetings—& payment towards liabilities of company.]—*Re DIRECT EXETER, PLYMOUTH & DEVONPORT RY. CO., Ex p. BESLEY*, No. 62, *ante*.

138. — No express or implied acceptance of liability.]—R., in a letter assenting to become one of the provisional committee of a ry. co., expressly stated that this assent was to be taken subject to his approval of the plans & course of the line when definitively fixed upon, & so that he should be held free from all liabilities. His name was thereupon inserted in the list of the provisional committee; & he attended two meetings of the committee, but took no part whatever in the proceedings. At one of these meetings a committee of management was appointed. R. subsequently desired that his name might be struck out of the committee, & it was struck out accordingly:—*Held*: (1) in the circumstances, independently of the stipulation contained in his letter, R. having neither expressly nor impliedly assented to any act affecting him with liability, his name ought not to be inserted in the list of contributories of the co.; (2) the circumstance of R. having paid a sum of money under protest & *causa pacis* did not vary the case.—*Re DIRECT EXETER, PLYMOUTH & DEVONPORT RY. CO., Ex p. ROBERTS* (1850), 2 Mac. & G. 192; 6 Ry. & Can. Cas. 310; 2 H. & Tw. 391; 19 L. J. Ch. 368; 15 L. T. O. S. 361; 14 Jur. 655; 42 E. R. 74.

Annotations:—As to (1) Reifd. Re Direct Exeter, Plymouth & Devonport Ry., Ex p. Besley (1850), 2 Mac. & G. 176; *Re Direct Exeter, Plymouth & Devonport Ry., Tanner's Case* (1852), 5 De G. & Sm. 182; *Re Met. Ry. Junction Co., Markwell's Case* (1852), 5 De G. & Sm. 528. *As to (2) Reifd. Re Direct Exeter, Plymouth & Devonport Ry., Ex p. Besley* (1851), 3 Mac. & G. 287. *Generally, Mentd. Re Wolverhampton, Chester & Birkenhead Ry., Ex p. Cottle* (1850), 15 L. T. O. S. 361.

139. — Company completely registered.]—Pltf., an engineer, sued deft. as the director of a railway co., for the expenses of surveys, etc. It appeared at the trial that deft. had been an active member of the committee, but that the co. had been completely registered:—*Held*: deft. was not liable; although the co. could not be sued, the contract not having been under seal.—*STEVENS v. GREEN* (1848), 10 L. T. O. S. 326.

140. — Release by co-promoters—On payment.]—At some of the meetings of the managing committee of a provisionally registered co., at which A., one of the committee, was present, it was resolved that certain proceedings should be advertised. At another meeting, attended by four of the body, but not by A., it was resolved, that a circular should be sent to the members of the provisional committee, which included the members of the managing committee, stating that, on payment of £160 each, they should be released from all liability. A. paid this amount & never attended any subsequent meeting. Meetings of the managing committee were afterwards held, at which some of these payments were referred to, & the terms of the circular were recognised & acted upon. The co. was wound up, & it appeared that one of the provisional committee had been compelled, by proceedings at law, to pay the bill of the advertising agent:—*Held*: A. was *prima facie* liable for some part of the demand, & was not exonerated by his payment of £160 & the subsequent conduct of his co-committeemen, but had been properly placed on the list of contributories.—*Re MIDLAND UNION, BURTON-UPON-TRENT, ASHBY-DE-LA-ZOUCH & LEICESTER RY. CO., PEARSON'S EXECUTORS' CASE* (1853), 3 De G. M. & G. 241; 20 L. T. O. S. 254; 43 E. R. 95, L. C. & L. JJ.

141. Limitation—Projector agreeing to look to deposits.]—The solr. who had projected, & at his own expense brought forward, a scheme for making a railway, entered into an agreement with the persons who became the provisional committee for prosecuting the undertaking, that the costs & expenses should be paid by such solr. & projector, & that the members of such provisional committee should not be personally liable to him for such costs & disbursements, but that the same should be paid out of the fund to arise from the deposits to be paid on the shares:—*Held*: this agreement was not illegal as between the provisional committee & the shareholders, regarded as trustee & *cestui que trust*, inasmuch as the trustee was entitled to be indemnified by his *cestui que trust* in respect of the costs & expenses properly incurred.

Qu.: whether the contract to pay future costs out of the deposits was illegal as between the solr. & client, attending to the fact that the client, being a trustee, might properly stipulate that he should not be personally liable for the costs to be incurred, but that the same should be paid exclusively out of the trust fund.—*PARSONS v. SPOONER* (1846), 5 Hare, 102; 4 Ry. & Can. Cas. 163; 15 L. J. Ch. 155; 6 L. T. O. S. 344; 10 Jur. 423; 67 E. R. 845.

Annotation:—Reifd. Melhado v. Porto Alegre Ry. (1874), L. R. 9 C. P. 503.

142. — Resolution passed in presence of plaintiff—Disclaiming personal liability for salaries.]—At a meeting of the provisional committee of a co., after certain resolutions appointing the engineers, the solr. & other officers of the co., the following resolution was lastly come to: "That the salaries remunerative of the above officers & promoter, be payable out of the deposits, & that the provisional committee be held not liable for

the same." At that meeting A. was appointed engineer to the co., & B., being a provisional committeeman, & also in the acting committee, at a subsequent meeting assented to the above resolutions. In an action for work & labour, as an engineer, brought by A. against B.:—*Held*: the last resolution absolved B. from all personal responsibility.—GILES v. SMITH (1847), 11 Jur. 334.

See, also, No. 104, ante.

143. — Disclaiming personal liability for work done.]—In an action by an engineer against a provisional committeeman of a co., it appeared that, at a meeting of the committee, at which pltf. was present, it was resolved that the provisional committee should disclaim the intention of taking on themselves any personal responsibility as regards the expenses incurred or to be incurred in or about the co. & that no such responsibility should attach to them. At another meeting, at which pltf. was also present, a resolution was passed which contained a statement that the plaintiff had said that he would make no claim for his services until there should be sufficient funds of the co. to meet any demand he might be entitled to make. Pltf. stated in a letter that he never understood that, unless the project was successful, the engineers were to abandon all claim; but he did understand that the individuals comprising the committee were not to be held personally liable. At a subsequent meeting of the committee, it was resolved that the committee should bind themselves to be answerable to the extent of £1,000, to be applied to engineering & surveying purposes. The scheme was abandoned, & deposits to the amount of £4,168, which had been received by the committee, were returned to the shareholders:—*Held*: deft. was not responsible, the contract being that pltf. should be paid out of such funds as could be properly applied in satisfaction of his claim, & there were no funds of that description.—LANDMAN v. ENTWISTLE (1852), 7 Exch. 632; 7 Ry. & Can. Cas. 472; 21 L. J. Ex. 208; 155 E. R. 1101.

Annotation:—Refd. Caldicott v. Griffiths & Lowe (1853), 1 C. L. R. 715.

144. — Construction of deed.]—At the first meeting of the managing committee of a projected co. it was resolved that a deed of indemnity should be prepared. At the second meeting a solr. who was one of the promoters of the co., executed the deed of indemnity, which recited his appointment as solr. to the co., & an agreement by him that no member of the provisional committee, or director of the co. should be rendered personally or individually liable to him for any salary or other payment to be made to him for any services at any time rendered by him, but that the same should be chargeable upon such funds only as should be produced by the sale of, or subscriptions for, shares in the projected co.; & that no committeeman, or director, or shareholder, should be individually liable to pay the same to any greater or larger proportion than the amount of the share or shares subscribed for by him & unpaid from time to time. The deed then contained a covenant by the solr. not to sue any committeeman, director, or shareholder, save & except to the extent of the shares which should from time to time be subscribed for, or so much thereof as should remain unpaid by the committeeman, director, or shareholder, at the commencement of the suit; & declared that if any

action or suit was commenced so as to render them personally liable to a greater extent, that deed should operate as a release. Shares were afterwards allotted by the committee, & deposits & subscriptions received to a certain amount, but not enough to comply with the Standing Orders of the Houses of Parliament, & the project was consequently abandoned. Some of the deposits were returned to the shareholders, & no funds remained in the hands of the committee. In an action by the solr. against a member of the committee who had paid his deposit & all calls which had been made upon his shares, for services rendered to the co.:—*Held*: the effect of the deed, as evidence of the contract between pltf. & deft., was to release deft. from individual responsibility, although the full amount of his shares had not been paid up.

All parts should be construed together, receiving as much effect as possible. The deed is the instrument of pltf., & therefore, in case of ambiguity, should be construed against him. Also it would be the duty of pltf., as the solr. of the co., to prepare & settle the deed, & on that account it would be inconsistent for him to derive any benefit from an ambiguity created by himself (LORD DENMAN, C.J.).—SHERLOCK v. SPIERS (1849), 13 L. T. O. S. 424.

Profits made by sale of shares illegally issued.]—*See No. 75, ante.*

SUB-SECT. 6.—RIGHTS OF PROMOTERS.

A. As to Preliminary Expenses.

145. What are "formation expenses"—Include promotion-money.]—The prospectus issued by the promoters of a projected co. stated that the purchase-money to be paid by the co. to the vendors was £32,500, of which £15,000 was to be paid in 3,000 fully paid-up shares, & that "the remuneration of the directors will be paid by the shareholders, & it is proposed that they should be paid only by a commission on the profits made, no promotion-money whatever being paid to them by the co., & all formation expenses being paid by the vendors." The £32,500 was the real price originally agreed to be paid to the vendors. Shortly after the registration of the co. the vendors, who were two of the first directors of the co., transferred 800 of their vendors' paid-up shares to their co-directors in pursuance of an understanding which existed at the time the prospectus was issued, but which was not disclosed. The shares were so transferred as promotion-money, & in order to induce them to continue directors. In an action by a shareholder against the directors, claiming damages, on the ground that he had been induced to take his shares in the co. by the fraudulent misrepresentations contained in the above paragraph of the prospectus, & on the faith of which he had taken his shares:—*Held*: (1) the understanding was not a contract within 1867 Act, s. 38, & the omission to state it in the prospectus did not make the latter fraudulent within the statute; (2) although the transaction between the vendors & their co-directors might be ground for holding them liable in some other proceedings, it did not render the prospectus false or fraudulent, & the action must be dismissed with costs.

PART III. SECT. 1, SUB-SECT. 6.—A.

h. Right to recover from company—Work improperly carried out.]—Company promoter not entitled to remuneration where prospectus improperly drawn & formation of company abandoned in consequence.—BRIERLY v. REGAN PALACE FLOUR MILLS (1912), 12 S. R. N. S. W. 524; 29 N. S. W.

W. N. 132.—AUS.

k. — Payment for services—No personal agreement—Or provision therefor in company's constitution.]

Sect. 1.—Promotion and flotation: Sub-sect. 6, A. & B.]

“Formation expenses” necessarily include promotion-moneys paid to persons as commission for floating a co.; & where a prospectus states that “no promotion-money will be paid by the co., & that the formation expenses will be paid by the vendors,” it must be shown, in order to prove such a statement false, that the purchase price agreed upon has been purposely & fraudulently increased for the purpose of making the co. pay the promotion-money in addition to what was understood to be the real price between the parties.—**ARK-WRIGHT v. NEWBOLD** (1881), 17 Ch. D. 301; 50 L. J. Ch. 372; 44 L. T. 393; 29 W. R. 455, C. A.

Annotations:—As to (2) **Refd.** *Nash v. Wooderson* (1884), 52 L. T. 49; *Lydney & Wigpool Iron Ore Co. v. Bird* (1885), 31 Ch. D. 328. *Generally, Mentd.* *Mathias v. Yotts* (1882), 46 L. T. 497; *Boswell v. Coaks* (1883), 23 Ch. D. 302; *Joliffe v. Baker* (1883), 11 Q. B. D. 255; *Roots v. Snelling* (1883), 48 L. T. 216; *Re Scottish Petroleum Co., Wallace's Case* (1883), 49 L. T. 348; *Smith v. Chadwick* (1884), 9 App. Cas. 187; *Capel v. Sim's Ships Compositions Co.* (1888), 57 L. J. Ch. 713; *Derry v. Peek* (1889), 14 App. Cas. 337; *Seaton v. Heath*, *Seaton v. Burnand* (1899), 68 L. J. Q. B. 631; *McConnel v. Wright* (1903), 51 W. R. 661.

—“Costs incurred on account of promotion”

—**Railways Abandonment Act, 1869 (c. 114), s. 5.]**

—**See RAILWAYS & CANALS.**

146. Provision for payment in articles—Gives promoters no right of action.]—The arts. of assocn. of a joint stock co. provided that the co. should defray such expenses incurred in its establishment as the directors should consider might be deemed & treated as preliminary expenses to an amount not exceeding £2,000. Pltfs., who were promoters of the co. had incurred preliminary expenses in the establishment of the co.:—**Held:** no action would lie at the suit of pltfs. against the co. for non-payment of such preliminary expenses in accordance with the arts. of assocn.—**MELHADO v. PORTO ALEGRE RY. Co.** (1874), L. R. 9 C. P. 503; 43 L. J. C. P. 253; 31 L. T. 57; 23 W. R. 57.

Annotations:—**Consd.** *Spiller v. Paris Skating Rink Co.* (1878), 7 Ch. D. 368; *Hickman v. Kent or Romney Marsh Sheep-Breeders' Assocn.*, [1915] 1 Ch. 881. **Refd.** *Eley v. Positive Government Security Life Assco.* (1875), 1 Ex. D. 20; *Re Empress Engineering Co.* (1880), 16 Ch. D. 125.

147. — Solicitor employed by promoter—No evidence of novation.]—P., a solr. employed by M. in the formation of a co. formed to purchase & carry on M.'s business, incurred costs & made certain disbursements in such formation. One of the arts. of asscn. of the co. provided that the directors should pay all “the costs incidental to the formation of the co.” An agreement between M. & the co. was approved & settled, one clause of which provided that all preliminary costs & expenses of & incidental to the co. should be considered as incurred & paid or payable by the co. The agreement was not executed, but the co. entered into possession of the property agreed to be purchased. On the winding-up of the co., P. sent in a claim for his costs & disbursements. The taxing master disallowed all the items prior to the date of the registration of the co.:—**Held:** (1) the certificate was right, & the solr. could not claim payment of the costs; the arts. of assocn. gave him no privity of contract; & the fact that the co. had had the benefit of his services was immaterial, as those services had been rendered on the retainer of M.; (2) on an examination of the minutes of the meeting of the co. & of the resolutions which were passed, there was no evidence of

novation.—**Re ROTHERHAM ALUM & CHEMICAL Co.** (1883), 25 Ch. D. 103; 53 L. J. Ch. 290; 50 L. T. 219; *sub nom. Re ROTHERHAM ALUM & CHEMICAL Co., LTD., Ex p. PEACE & Co.*, 32 W. R. 131, C. A.

Annotations:—As to (1) **Apld.** *Hume v. Record Reign Jubilee Syndicate* (1899), 80 L. T. 404; *Re English & Colonial Produce Co.*, [1906] 2 Ch. 435. As to (2) **Refd.** *Re Fireproof Doors, Umney v. The Co.*, [1916] 2 Ch. 142.

148. — Amount agreed with promoter before registration—Payment without examination—Improper application of funds.]—E. agreed with S. that S. should get up a co. to purchase & work a colliery which E. had power to sell; that S. should sell to the co. for a certain price in cash & shares, & that the balance, after paying preliminary expenses, should be equally divided. S. promoted the formation of a co. to purchase the colliery for £25,000 in cash & £25,000 in paid-up shares, & induced six gentlemen to become directors, engaging that they should be at no expense. The arts. contained a clause empowering, but not binding, the directors to pay the preliminary expenses attending the formation of the co. Shortly before the co. was registered an agreement was made between S. & the directors that S. should receive £3,500 for preliminary expenses. On this occasion he produced a list of preliminary expenses, but did not produce vouchers, & no inquiry was made of him as to whether he was entitled to receive anything under his arrangements with E. S. received £3,200 from E., & received out of the funds of the co. the £3,500, out of which he paid the calls on the shares which the directors had taken to qualify them for the office. The co. having been ordered to be wound up:—**Held:** the directors were jointly & severally liable to repay to the co. the sum ordered to be paid to S. for preliminary expenses, on the ground that the money was paid in order to provide the directors' qualifications.

On appeal:—**Held:** this decision must be affirmed, for the directors had by their agreement with S. disqualified themselves for exercising a discretion as to the payment of preliminary expenses, & had not used due care & caution in examining into the propriety of paying them, & irrespective of the fact of their calls having been paid out of the money received by S., the payment to him was, under the circumstances a misapplication of the funds of the co., for which they were liable under 1862 Act, s. 165.—**Re ENGLEFIELD COLLIERY Co.** (1878), 8 Ch. D. 388; 38 L. T. 112, C. A.

Annotations:—**Refd.** *Re Carriage Co-op. Assocn.* (1884), 27 Ch. D. 322; *Re Lady Forrest (Murchison) Gold Mine*, [1901] 1 Ch. 582.

149. Right to recover from company—General rule.]—The owner of certain property agreed with a solr. & an accountant that if they should succeed in forming a co. to purchase the property at a valuation, he would pay them £1,500, besides their costs & expenses to be received from the co. The co. was formed, but proved abortive, & the purchase was never carried out, nor the £1,500 paid. The agreement had not been disclosed to the subscribers of the memorandum, who were the only contributories. In the winding up:—**Held:** (1) though a co. is generally bound in equity to pay the expenses of its formation, & though if the co. had adopted & carried out the purchase they might, notwithstanding the fraud, have been bound to discharge such expenses, & their only

A promoter is not entitled to recover from the co. or shareholders anything for his services in promoting the organisation of the co.—the Act

incorporating the co. making no provision for payment of these expenses, & no individual having undertaken personally any liability otherwise than

as subscribing shareholders.—**VAN HUMMELL v. INTERNATIONAL GUARANTEE Co.** (1913), 23 W. L. R. 248; 23 Man. L. R. 103.—**CAN.**

remedy might have been to recover the £1,500, yet the co. having proved abortive, the fraud absolved them from any liability to pay the preliminary expenses, & also was a defence in equity to their legal liability for professional services rendered by the promoters after the co.'s formation; (2) the claim of the valuer, against whom there was no imputation, for the valuation made by him by direction of the promoters, was legally only a claim against them, & as a claim against the co. it failed with theirs.—*Re HEREFORD & SOUTH WALES WAGGON & ENGINEERING CO.* (1876), 2 Ch. D. 621; *sub nom. Re HEREFORD & SOUTH WALES WAGGON & ENGINEERING CO., HEAD & WALTER'S CLAIMS*, 45 L. J. Ch. 461; 35 L. T. 40; 24 W. R. 953, C. A.

Annotations:—As to (1) *Consd. Re Rotherham Alum & Chemical Co.* (1883), 25 Ch. D. 103; *Re English & Colonial Produce Co.*, [1906] 2 Ch. 435. *Reid. Re Empress Engineering Co.* (1880), 16 Ch. D. 125; *Hume v. Record Reign Jubilee Syndicate* (1899), 80 L. T. 404.

150. — **Lost by fraudulent concealment—Of agreement to pay promotion-money in addition.**—*Re HEREFORD & SOUTH WALES WAGGON & ENGINEERING CO.*, No. 149, *ante*.

151. — **Agreement to pay lump sum—Power under articles to pay expenses—Duty of directors to examine items.**—*Re ENGLEFIELD COLLIERY CO.*, No. 148, *ante*.

152. — **—**—The mere fact that a promoter pays the registration fees & *ad valorem* stamp duty on the registration of a co. does not in itself entitle him to recover them from the co.—*Re NATIONAL MOTOR MAIL-COACH CO., LTD., CLINTON'S CLAIM*, [1908] 2 Ch. 515; 77 L. J. Ch. 790; 99 L. T. 632; 15 Mans. 362, C. A.

— **Under provision in articles.**—*See* No. 146, *ante*.

— **Liability of company—On contracts made before incorporation.**—*See, generally*, Sect. 31, sub-sect. 5, B., *post*.

153. **Right to retain on return of secret profits—Expenses of securing services of directors & providing qualifications.**—*EMMA SILVER MINING CO. v. GRANT*, No. 83, *ante*.

154. — **Payments to brokers & officers of company.**—*EMMA SILVER MINING CO. v. GRANT*, No. 83, *ante*.

155. — **Payments to surveyors, solicitors & brokers.**—*LYDNEY & WIGPOOL IRON ORE CO. v. BIRD*, No. 37, *ante*.

156. — **Payments to public press.**—*EMMA SILVER MINING CO. v. GRANT*, No. 83, *ante*.

157. — **Costs of advertising, printing, etc.**—*LYDNEY & WIGPOOL IRON ORE CO. v. BIRD*, No. 37, *ante*.

158. — **Payment to guarantor—To secure flotation.**—*LYDNEY & WIGPOOL IRON ORE CO. v. BIRD*, No. 37, *ante*.

B. Authorised Profits.

159. **Promotion money—Provided for in articles—Large remuneration openly provided for.**—(1) A large remuneration to the projector & directors of a co., if openly provided for by the arts. of asscn., cannot afterwards be questioned by shareholders.

(2) A benefit received by a director from persons employed by the co., or arising from the transactions of the co., cannot be supported.

(3) It is not only the duty of directors of cos. to be ready, at all times, to explain everything to shareholders, but also that they shall be engaged in no transactions connected with the co. from which they can derive a profit which is not openly known to, & acquiesced in by, all the shareholders.

(4) Every subscriber in a public co. is bound to

know the arts. of assocn., & cannot complain of anything disclosed in them, which, if he does not know, he might & ought to know.

(5) Everything connected with the scope & objects of a co. ought to be fully & clearly set forth in its arts. of assocn.—*Re ANGLO-GREEK STEAM CO.* (1866), L. R. 2 Eq. 1; 35 Beav. 399; 14 L. T. 120; 30 J. P. 515; 12 Jur. N. S. 323; 14 W. R. 624; 55 E. R. 950.

Annotations:—*Generally, Mentd. Re Humber Iron Works Co.* (1866), 35 Beav. 346; *Re Bwlch y Plwm Co.* (1867), 17 L. T. 235; *Re Suburban Hotel Co.* (1867), 2 Ch. App. 737; *Re Horsham Industrial & Provident Soc.* (1894), 70 L. T. 801; *Re Brinsmead* (1897), 4 Mans. 70; *Re Shepherd's Bush Improvements* (1909), *Times*, Mar. 9, p. 3.

160. — **Full disclosure made—Binding on shareholders.**—A stipulation in the arts. of assocn. of a co. that a certain sum shall be paid to the promoters is valid, & will be binding on persons taking shares, if all the facts are fully disclosed, but not if there is a sub-agreement concealed, by which the directors are to receive back part of the money for their own benefit.—*Re MADRID BANK, Ex p. WILLIAMS* (1866), L. R. 2 Eq. 216; 35 L. J. Ch. 474; 14 L. T. 456; 14 W. R. 706.

Annotations:—*Reid. Re Madrid Bank, Wilkinson's Case* (1866), 15 W. R. 331. *Mentd. Re General Exchange Bank, Preston's Claim* (1868), 19 L. T. 138.

161. — **Disclosed in prospectus—Full knowledge of directors.**—*Re SALE HOTEL & BOTANICAL GARDENS, LTD., Ex p. HESKETH*, No. 36, *ante*.

— **Duty to disclose.**—*See* Sect. 8, sub-sect. 2, A., *post*.

162. **Profits on sale to company—All members of company party to transaction—Intention to deceive public.**—The shareholders in a cost-book mine were desirous of converting it into a limited co. The accordingly assigned the mine to a trustee; & then T. & M., the two principal shareholders, signed an agreement on behalf of the intended co. to purchase the mine of the trustee for £24,000, to be paid in shares of the new co., partly paid up & partly unpaid. The value of the mine at that time was about £6000. The co. was formed & registered with a nominal capital of £36,000 in 18,000 shares of £2 each, & T. & M. were two of the first directors. The agreement for purchase of the mine was sanctioned by the directors & carried into effect, & the whole of the shares in the co. were allotted to the shareholders of the cost-book mine, some as paid-up & others as partly paid-up shares, to the nominal amount of £24,000. Afterwards the co. was wound up, & the official liquidator claimed to make T. & M. account for the difference between the nominal value of their shares & the actual value of their interest in the cost-book mine:—*Held*: although the scheme, by which the mine was estimated much beyond its true value, might have been intended to deceive the public, there was no fraud upon the co., all the members of which were parties to the arrangement; & T. & M. were not accountable to the co. for any profit they had made or might have made by the transaction.

Semle: the transaction was intended to deceive the public by representing the co. as a valuable undertaking, & if any member of the public had bought shares on the faith of that representation, he would have a good right of action against his transferor.—*Re AMBROSE LAKE TIN & COPPER MINING CO., Ex p. TAYLOR, Ex p. MOSS* (1880), 14 Ch. D. 390; 49 L. J. Ch. 457; 42 L. T. 604; 28 W. R. 783, C. A.

Annotations:—*Consd. Re Cape Breton Co.* (1884), 26 Ch. D. 221. *Reid. Re British Seamless Paper Box Co.* (1881), 17 Ch. D. 467; *Re Cape Breton Co.* (1885), 29 Ch. D. 795; *Lee v. Neuchatel Asphalte Co.* (1889), 41 Ch. D. 1; *London*

Sect. 1.—Promotion and flotation: Sub-sect. 6, B.; sub-sects. 7, 8, 9 & 10.]

Trust Co. v. Mackenzie (1893), 68 L. T. 380; Lagunas Nitrate Co. v. Lagunas Syndicate, [1899] 2 Ch. 392; Omnium Electric Palaces v. Baines, [1914] 1 Ch. 332; Re Jubilee Cotton Mills, [1922] 1 Ch. 100.

163. ———.]—A syndicate of four persons procured a Quebec Act incorporating a railway co. which they had promoted, & subscribed for \$300,000 of the co.'s shares, being all that were issued, & were with others whom they had qualified elected directors. They then purchased a railway themselves, & the incorporated co., being empowered so to do by their Act, purchased the said railway from them for \$648,000, paying for it by taking credit for the said subscription & acknowledging indebtedness to the said four persons of the balance of \$348,000 in equal shares. On the insolvency of the said incorporated co. & of another co. with which it had been amalgamated their railways were sold, & the resp. co., to whom the syndicate's claim had been assigned, claimed to rank as creditors against the proceeds of sale:—*Held*: the claim must be allowed. The incorporating Act authorised the purchase, & whether or not the price was excessive every one interested in the capital of the co. concurred in the purchase with full knowledge of all the circumstances.—*A.-G. FOR CANADA v. STANDARD TRUST CO. OF NEW YORK*, [1911] A. C. 498; 80 L. J. P. C. 189; 105 L. T. 152, P. C.

Sufficiency of disclosure of profits.]—*See* No. 45, *ante*.

Allotment of shares to directors without consideration—Company consisting of directors & company's solicitor.]—*See* No. 3216, *post*.

SUB-SECT. 7.—GIFTS BY PROMOTERS TO DIRECTORS.

See Sect. 28, sub-sect. 2, E., *post*.

SUB-SECT. 8.—PROCEEDINGS AGAINST PROMOTERS.

164. When action lies—Misapplication of funds—Contributed by committee voluntarily.]—A member of the provisional committee of an abandoned railway scheme, against whom an action had been brought by a creditor who was alleged to be also a member of the committee, filed a bill on behalf of himself & all other persons interested as partners in the co., except defts., who consisted of pltf. in the action & nine other members of the committee, stating that no shares had ever been allotted, but that various sums had been contributed by several members of the committee, whose names pltf. did not know, pursuant to a resolution of their board, in trust for the liquidation of the liabilities of the co., & defts. had received those sums & also other property of the co., & were misapplying them; & praying that the same might be properly applied in discharge of the liabilities of the co., pltf. being willing to pay his due proportion, & that the outstanding property of the co. might be got in & that the action might be restrained:—*Held*: as the alleged contributions appeared to be purely voluntary, pltf. had no right to interfere with or ask any relief in respect of them, at all events in the absence of the parties by whom they had been made; & a demurrer for want of parties was on that ground allowed.—*SHARP v. DAY*

(1846), 1 Ph. 771; 4 Ry. & Can. Cas. 261; 16 L. J. Ch. 1; 8 L. T. O. S. 229; 41 E. R. 826, L. C. ——— **Loss of right of action.]—***See* Nos. 82, 89, *ante*.

165. Nature of remedy—Dissolution—Alleged misfeasance—Sufficiency of pleading.]—(1) A subscriber to a projected railway co., by his bill filed on behalf of himself & all other shareholders except defts., alleged that the promoters, who were defts., in conjunction with the provisional committeemen, also defts., issued a prospectus representing the capital as £450,000, in 22,500 shares, on the faith of which pltf. & many others paid their deposits & signed the deed; that the provisional committeemen, however, never, as they ought, superintended the administration of the affairs of the co., but that, with their sanction, certain of their body acted as directors, & exercised the whole direction of the co., & that the other provisional committeemen sanctioned all their acts, without making any inquiry.

The bill alleged various acts of misfeasance on the part of the directors, &, in particular, that they did not allot all the shares, although they had many more than sufficient applns. for them; & the bill prayed for a dissolution, accounts, payment of the liabilities of the co., & distribution of the surplus among the subscribers. Some of the provisional committeemen, who were alleged by the bill to have applied for shares, but never to have paid any deposit or accepted them, demurred:—*Held*: the above charges against them were not sufficiently distinct or certain to support the bill.

(2) A deft., who was stated in the bill to be a shareholder, declining to concur with pltf., also demurred on the ground that the case stated by the bill entitled the shareholders to a return of the whole deposit, & that pltf. could not represent absent shareholders for the purpose of seeking a less extensive remedy. Demurrer overruled.

(3) One of the general body of shareholders, on whose behalf pltf. sued, had commenced an action at law against one of defts. to the suit, which continued & was pending after the bill filed. This deft. pleaded the pendency of the action, & that the sum sought to be recovered therein was a part of the monies which were the subject of the relief sought by the bill, & that pltf. in equity had not such a common interest with pltf. at law as to entitle the former to sustain a bill on behalf of himself & the latter:—*Held*: on appeal overruling the plea, the pendency of the action did not constitute a defence to the bill, as it must be assumed that pltf. at law repudiated the character of shareholder.

(4) A subscriber to a projected railway co., who had executed the subscription contract, filed a bill on behalf of himself and all the other shareholders, except defts., alleging misfeasance on the part of the directors, & seeking a dissolution & a distribution of the funds, after discharging the liabilities of the co. One of defts. pleaded that there were allottees who had not executed the deed. It appeared from the statements on the bill that the form of appln. for shares contained an undertaking to sign the contract when required. Plea overruled, without prejudice to same defence by answer.—*SIBSON v. EDGORTH* (1848), 2 De G. & Sm. 73; 9 L. T. O. S. 293; 11 L. T. O. S. 23; 11 Jur. 626; 12 Jur. 279; 64 E. R. 34.

166. ——— Rescission—Undisclosed interest of vendor.]—*LINDSAY PETROLEUM CO. v. HURD*, No. 67, *ante*.

167. ——— Whether contract apportionable.]

PART III.—COMPANIES UNDER COMPANIES (CONSOLIDATION) ACT, 1908, ETC. 61

—OMNIUM ELECTRIC PALACES, LTD. v. BAINES, No. 41, *ante*.

— **Action of deceit—Misrepresentation in prospectus.**—See Sect. 8, sub-sect. 3, D., *post*.

— **Action by co-promoters—Contribution.**—See Nos. 64–66, *ante*.

168. Parties to action—When representative action allowed—Shareholders numerous.—A bill brought by A., on behalf of himself & all other shareholders in a co. provisionally registered, except defts., against the provisional committee, & praying relief against defts., on the ground that the concern had been brought immaturely to an end, by reason of their fraud & mismanagement, charged that the other shareholders were unknown to pltf., & if known, would be too numerous to be made parties to the suit. Demurrer, for want of parties, overruled.—WILSON v. STANHOPE (1846), 2 Coll. 629; 4 Ry. & Can. Cas. 251; 7 L. T. O. S. 176; 10 Jur. 421; 63 E. R. 892.

Annotation:—**Refd.** Cooper v. Webb (1847), 15 Sim. 454.

169. ———.]—Where money has been fraudulently obtained by the promoters of a co., a suit may be instituted by one of the persons who have been induced to advance money to promote this common object, on behalf of himself & all others who have contributed.—BEECHING v. LLOYD (1855), 3 Drew. 227; 3 Eq. Rep. 737; 24 L. J. Ch. 679; 25 L. T. O. S. 62; 1 Jur. N. S. 769; 3 W. R. 364; 61 E. R. 890.

Annotations:—**Refd.** Ellis v. Bedford, [1899] 1 Ch. 494; Markt v. Knight S.S. Co., Sale & Frazar v. Knight S.S. Co., [1910] 2 K. B. 1021.

See, also, No. 164, *ante*.

170. Joinder of actions—Separate actions against several promoters—Same cause of action—Not enforced.—Pltf. having brought eleven actions against eleven of the members of the provisional committee of a railway co., sued each separately for the same cause of action. A rule obtained by deft. to stay proceedings in all the actions except such one as pltf. should elect, discharged.—GILES v. TOOTH (1846), 3 C. B. 665; 4 Dow. & L. 186; 4 Ry. & Can. Cas. 678; 16 L. J. C. P. 3; 8 L. T. O. S. 140; 11 J. P. 7; 10 Jur. 948; 136 E. R. 266.

Annotations:—**Refd.** Newton v. Blunt (1846), 3 C. B. 675; Bailey v. Haines (1850), 15 Q. B. 533.

171. Stay of proceedings—Action against promoters for work & labour for company—Foreign attachment in Mayor's Court for same debt.—Where a foreign attachment had been sued by pltf. out of the Lord Mayor's Ct., to seize money in the hands of bankers to a railway co. only provisionally registered, but no further steps had been there taken against the garnishee, the ct. refused to stay proceedings in an action subsequently brought in this ct. against three of the provisional committee of the railway co., in which the same debt was sought to be recovered as for work & labour done for the co.—DENTON v. MAITLAND (1846), 15 L. J. Q. B. 332; 7 L. T. O. S. 188; 11 Jur. 42.

Annotation:—**Mentd.** Frith v. Guppy (1866), 15 L. T. 616.

172. — **On terms—Action by creditor in collusion with winding-up committee.**—A., being a provisional committeeman of a provisionally registered joint stock co., was called on by a committee appointed to wind up the affairs of the co. to contribute his share towards the expenses. On his declining to do so they, by arrangement with a creditor of the co., brought an action against A. in the name of the creditor for the amount due to the latter. A. then filed his bill for & obtained an injunction to restrain the proceeding at law. On the coming in of the creditor's answer, admitting

the above facts, but stating that the committee, who were suing in his name, would guarantee A. from all liability on his contributing £75, being his proportion of the expenses of the co., the ct. continued the injunction on the terms of A. bringing that amount into ct.—CUTTS v. RIDDELL (1847), 1 De G. & Sm. 226; 63 E. R. 1044.

Annotations:—**Refd.** Woodhams v. Anglo-Australian & Universal Family Life Assec. (1864), 2 De G. J. & Sm. 162; Escott v. Gray (1878), 47 L. J. Q. B. 606.

173. Measure of damages—Negligence causing loss to company.—JACOBUS MARLER ESTATES, LTD. v. MARLER (1913), 85 L. J. P. C. 167, n.; 114 L. T. 640, n., P. C.

Annotation:—**Mentd.** Cook v. Deeks, [1916] 1 A. C. 554.

SUB-SECT. 9.—FLOTATION.

174. What is flotation—Sale to company—Offer of shares to company not necessary.—The condition of flotation in an agreement between a mining prospector & his employers is fulfilled when claims, pegged-off under licences & registered in the name of the employers or their nominees, are sold to a mining co. in consideration of fully paid-up shares of the co. & the undertaking by the purchasers of the contracts & obligations of the vendors. It is not necessary that the purchasing co. should have offered its shares to the public or be actually working at a profit, or that the word should be confined to the particular kind of flotation referred to in the mining regulations in force in the territories of the British South Africa Co.—TORVA EXPLORING SYNDICATE v. KELLY, [1900] A. C. 612; 69 L. J. P. C. 115; 83 L. T. 34; 16 T. L. R. 495, P. C.

175. — **Taking over claims by independent company—Not mere transfer.**—Flotation means more than a mere transfer of a claim. It points to the taking over of the claims by an independent co. with a separate legal entity, for the purpose of working them (LORD RUSSELL OF KILLOWEN, C.J.).—GIFFORD v. MASHONALAND DEVELOPMENT CO. (WILLOUGHBY'S), LTD., & WILLOUGHBY'S CONSOLIDATED CO., LTD. (1902), 18 T. L. R. 274, H. L.

Annotation:—**Refd.** Torva Exploring Syndicate v. Kelly, [1900] A. C. 612.

SUB-SECT. 10.—OTHER CASES.

176. Contract to form company—When specific performance granted—Remedy incomplete.—The ct. will not entertain a bill for specific performance of an agreement, which contains terms that cannot be enforced against pltf., where the effect of a decree would be that, on pltf. refusing to perform his part of the contract, defts. could not be restored to their former position.

The ground upon which the ct. goes, in enforcing, by injunction, a negative term in an agreement, the positive terms in which cannot be enforced by decree for specific performance is, that the injunction is dependent upon pltf.'s performing his part of the contract, & will be dissolved upon his failing to do so.

Defts. entered into an agreement with pltf. to form a joint-stock co. for the purpose of working pltf.'s patent, & by the same agreement pltf. agreed to devote his whole time to the interest of the co. & the improvement of the patent. Upon demurrer to a bill for specific performance:—**Held**: the bill could not be sustained, the remedy being

Sect. 3.—The name: Sub-sects. 1, 2 & 3, A. & B. (a).]

190. — Effect of omission—Registration of trade mark.]—*Re BRYANT & MAY, LTD.* (1888), 4 T. L. R. 675.

See, generally, TRADE MARKS, TRADE NAMES & DESIGNS.

Use of words “& reduced.”]—*See Sect. 10, sub-sect. 3, H., post.*

Incorrectness of name on bill of exchange.]—*See No. 3316, post.*

SUB-SECT. 2.—REGISTRATION.

191. Refusal of registrar to register—When court will interfere.]—*R. v. COMPANIES REGISTRAR, Ex p. BOWEN*, No. 192, *post*.

192. — Name calculated to deceive—Qualification of practitioners.]—Application was made for the registration under 1908 Act, of a co. with the name of “The United Dental Service, Limited.” One of the objects of the co. was “to carry on the practice, profession, or business of practitioners in dentistry in all its branches,” which it was intended to carry on by practitioners not registered under Dentists Act, 1878 (c. 33):—*Held*: the use of the proposed name by the co. when carrying on business by unregistered practitioners would not constitute an offence under Dentists Act, 1878 (c. 33), s. 3, & therefore the object of the co. was not unlawful; & the registrar of cos. had no power to refuse registration upon the ground that the name of the co. would be calculated to deceive people into the belief that the business was carried on by registered practitioners.—*R. v. COMPANIES REGISTRAR, Ex p. BOWEN*, [1914] 3 K. B. 1161; 84 L. J. K. B. 229; 112 L. T. 38; 30 T. L. R. 707, D. C.

— **Similarity.]—***See Sub-sect. 3, post.*

193. — Name constituting offence under Dentists Act, 1878 (c. 33).]—*R. v. COMPANIES REGISTRAR, Ex p. BOWEN*, No. 192, *ante*.

194. Restraint of registration—On application of existing company—Though unregistered—Name calculated to deceive.]—A co. not registered under 1862 Act, can restrain the registration under that Act of a projected new co., which is intended to carry on the same business as the unregistered co. & to bear a name so similar to that of the unregistered co. as to be calculated to deceive the public.—*HENDRIKS v. MONTAGU* (1881), 17 Ch. D. 638; 50 L. J. Ch. 456; 44 L. T. 879; 30 W. R. 168, C. A.

Annotations:—*Consd. Accident Insec. v. Accident, Disease & General Insec. Corpn.* (1884), 54 L. J. Ch. 104; *Turton v.*

Turton (1889), 42 Ch. D. 128. **Fold.** *Tussaud v. Tussaud* (1890), 44 Ch. D. 678. **Consd.** *Saunders v. Sun Life Assce. of Canada*, [1894] 1 Ch. 537; *Ewing v. Buttercup Margarine Co.*, [1917] 2 Ch. 1. **Refd.** *Bumsted v. General Reversionary Co.* (1888), 4 T. L. R. 621; *Manchester Brewery Co. v. North Cheshire & Manchester Brewery Co.* (1897), 14 T. L. R. 83; *Daimler Motor Co., 1904, Ltd. v. London Daimler Co.* (1907), 24 R. P. C. 379; *Bright v. Bright* (No. 1) (1922), 67 Sol. Jo. 112. **Mentd.** *Cowen v. Hulton* (1881), 46 L. T. 897; *Walter v. Emmott* (1885), 53 L. T. 437; *Huntley & Palmers v. Reading Biscuit Co.* (1893), 37 Sol. Jo. 494; *Cooper & McLeod v. MacLachlan* (1901), 18 R. P. C. 380; *Pullman v. Pullman* (1919), 36 R. P. C. 240.

195. — Admissibility of evidence.]—In an action to restrain the registration of a co. with a name so nearly resembling that of an existing co. as to cause confusion, evidence is admissible for the purpose of ascertaining how the existing co. has used its name, & what, by reason of its connecting that name with its goods, the public have come to attribute to that name.—*DAIMLER MOTOR CAR CO., LTD. v. BRITISH MOTOR TRACTION CO., LTD.*, (1901), 18 R. P. C. 465.

196. — Considerations affecting.]—On an application by a co. registered under 1862 Act, to restrain the registration of a new co. with a title alleged to be so similar to that of the old co. as to be calculated to deceive, it is material to consider (1) what business has been or is intended to be carried on by the old co., & what is intended to be carried on by the new co., & (2) what sort of name has been adopted by the old co.

A co. cannot, merely by registering as its title, or part of its title, a single word, whatever its nature, remove that word from the English language so far as regards its use in the title of subsequent cos.

A co. registered as “Aerators, Ltd.,” sought to restrain the registration of a new co. with the name “Automatic Aerators Patents, Ltd.” on the ground that it so nearly resembled the name of pltf. co. as to be calculated to deceive. The principal object of both cos. was the manufacture of apparatus for the instantaneous automatic aeration of liquids, but the patents & apparatus of pltf. co. were quite different from those of defts.:—*Held*: pltf. co. had no monopoly of the word “Aerator,” which was a word in common use in the English language, & the injunction was refused.—*AERATORS, LTD. v. TOLLITT*, [1902] 2 Ch. 319; 71 J. L. Ch. 727; 86 L. T. 651; 53 W. R. 584; 18 T. L. R. 637; 46 Sol. Jo. 451; 10 Mans. 95; 19 R. P. C. 418.

Annotations:—*Apprvd. Randall v. Bradley* (1907), 24 R. P. C. 773. **Expld.** *Facsimile Letter Printing Co. v. Facsimile Typewriting Co.* (1912), 29 R. P. C. 557. **Refd.** *British Vacuum Cleaner Co. v. New Vacuum Cleaner Co.*, [1907] 2 Ch. 312; *Kingston, Miller v. Kingston*, [1912] 1 Ch. 575. **Mentd.** *Burberry's v. Cording* (1909), 100 L. T. 985; *Edge*

limited liability cos. the word “limited” must be written or printed in full, a previous statute, 52 Vict. c. 26, s. 2, having made the directors liable for amounts due upon such contracts where the word “limited” did not appear after the name of the co. where it first occurred in the contract. The writ of summons in an action against the directors was issued on the very day on which the royal assent was given to 61 Vict. c. 19, of which s. 4 suspended the operation of the Act of the previous session:—*Held*: the use of the abbreviation “Ltd.” was not a compliance with 52 Vict. c. 26, s. 2.—*HOWELL LITHOGRAPHIC CO., LTD. v. BRETHOUR* (1899), 30 O. R. 204.—**CAN.**

p. Need not be precisely descriptive of company's business—Company changing its business—Need not alter name.]—A co. styled “The Southern Cross Biscuit Co. Ltd.” altered its memorandum of association so as to allow it, in addition to the manufac-

ture of biscuits & confectionary, to carry on the business of flour-milling:—*Held*: it was not bound to alter its name so as to give notice to the public that it was carrying on the business of flour-milling.—*Re SOUTHERN CROSS BISCUIT CO., LTD.* (1907), 26 N. Z. L. R. 557.—**N.Z.**

PART III. SECT. 3, SUB-SECT. 2.

192 i. Refusal of registrar to register—Name calculated to deceive—Qualification of practitioners.]—The memorandum of association of a co. proposed to be formed for the purpose of carrying on the business of teeth extracting & artificial teeth making, provided that the name of the company should be “S. G. Rowell, Dentist, Limited.” None of the signatories to the memorandum, one of whom was S. G. Rowell, was registered as a dentist under Dentists Act, 1878. The registrar of Joint Stock Companies having refused to register the

memorandum of association under Companies Act, 1862:—*Held*: a mandamus would not be granted to compel him to do so, since the use by the company of the proposed name would involve a false representation, tending to mislead the public.—*R. (ROWELL) v. JOINT STOCK COMPANIES REGISTRAR*, [1904] 2 I. R. 634; 38 I. L. T. 137.—**IR.**

192 ii. — — —.]—A.-G. v. MYDDLETONS, LTD., [1907] 1 I. R. 471.—**IR.**

q. — — — Action to enforce registration—Liability of registrar for costs.]—Where the registrar is indemnified by the co. at whose instance he refuses to register another co. with a similar name, he must pay the costs of an action in which the latter co. successfully vindicates its right to the use of the name.—*BRITISH COLUMBIA PERMANENT LOAN, ETC., CO. v. WOOTTON* (1898), 6 B. C. R. 382.—**CAN.**

v. Nicolls (1910), 80 L. J. Ch. 154; *Ridgway Co. v. Hutchinson* (1923), 40 R. P. C. 335.

Restraint of user of registered name.]—See Sub-sect. 3, B. (d), post.

SUB-SECT. 3.—WHAT NAME MAY BE ADOPTED.

A. In General.

197. Whether name describing company as "corporation."]—A joint stock co. provisionally registered under 1844 Act, cannot assume a title denominating it a corp'n. The ct., therefore, refused to compel the registrar by *mandamus* to register a proposed change of the name of such co. from the Sea, Fire, etc. Assurance Co., to the Sea, Fire, etc. Assurance Corp'n.—*R. v. WHITMARSH* (1850), 14 Q. B. 803; 14 L. T. O. S. 486; 117 E. R. 309; *sub nom. R. v. WHITMARSH, Re SEA, FIRE, LIFE ASSURANCE CO.*, 19 L. J. Q. B. 185.

Annotation:—Mentd. R. v. Whitmarsh, Re National Land Co. (1850), 19 L. J. Q. B. 469.

Adoption of name of promoter or vendor.]—See Sub-sect. 3, B. (c), post.

B. Name Calculated to Deceive.

(a) In General.

See, now, 1908 Act, s. 8 (1), (2).

198. General rule.]—In considering whether the name of a registered co. so nearly resembles the name of another co. previously registered "as to be calculated to deceive" within the meaning of 1862 Act, s. 20, the principles to be applied are at any rate extremely analogous to those which are applicable in ordinary passing off cases in which the ct. has to consider whether a trade name, or a trade description, or a description of a particular class of goods, or the get-up of a particular class of goods, is or is not likely to deceive.

A distinction must always be drawn between cases in which the words complained of are words of common ordinary meaning & cases in which the words complained of more or less partake of the character of "fancy" words or primarily do not relate to the article, but to the person who makes it.

The *onus* of proving that words which are commonly & properly used as descriptive words have such a secondary or subsidiary meaning as to entitle the person who has used them to their exclusive use lies on that person, & is not easily discharged.—*BRITISH VACUUM CLEANER CO., LTD. v. NEW VACUUM CLEANER CO., LTD.*, [1907] 2 Ch. 312; 76 L. J. Ch. 511; 97 L. T. 201; 23 T. L. R. 587; 51 Sol. Jo. 553; 14 Mans. 231; 24 R. P. C. 641.

Annotations:—Folld. Electromobile Co. v. British Electromobile Co. (1907), 97 L. T. 196. *Expld. Facsimile Letter Printing Co. v. Facsimile Typewriting Co.* (1912), 29

R. P. C. 557. *Consd. Ridgway Co. v. Hutchinson* (1923), 40 R. P. C. 335. *Refd. Burberrys v. Cording* (1909), 100 L. T. 985. *Mentd. Re Royal Worcester Corset Co.'s Appln.*, [1909] 1 Ch. 459.

199. Whole name of existing business—With addition of word "limited."]—Pltf. was the proprietor of an old-established library business at the West-end of London. Defts., being the promoters of a projected co., having for the principal object the carrying on of a library business in another quarter of the West-end, proposed to adopt as the title of their undertaking the same trade name as that which pltf. had used for a considerable period, but with the addition of the word "limited":—*Held*: defts. must be restrained from carrying on in or near London the business in question under the proposed title, or under any other title only colourably differing from the name of pltf.'s business, & also from advertising the intended commencement thereof under such title.—*HOBV v. GROSVENOR LIBRARY CO., LTD.* (1880), 28 W. R. 386.

Annotation:—Consd. Hendriks v. Montagu (1881), 50 L. J. Ch. 456.

200. —.]—A co. or trading concern is not entitled to adopt a name which incorporates the whole of the name of a pre-existing concern carrying on a like business.

Before 1897 two brewery cos. existed, resp. co., whose brewery was in Manchester, where they did a large business, & the "North Cheshire Brewery Co.," whose brewery was in Macclesfield & their business chiefly in that neighbourhood, although they had a certain amount of trade in Manchester. In 1897 the business of the North Cheshire Co. was sold as a going concern to a new co., who altered the name to "The North Cheshire & Manchester Brewery Co.":—*Held*: resp. co. were entitled to an injunction to restrain the new co. from using or carrying on business under their proposed name, as being calculated to deceive the public, though there was no evidence of a fraudulent intention, & the word "Manchester" was not used as the first word of the new name.—*NORTH CHESHIRE & MANCHESTER BREWERY CO. v. MANCHESTER BREWERY CO.*, [1899] A. C. 83; 68 L. J. Ch. 74; 79 L. T. 645; 15 T. L. R. 110, H. L.; *affg. S. C. sub nom. MANCHESTER BREWERY CO. LTD. v. NORTH CHESHIRE & MANCHESTER BREWERY CO., LTD.*, [1898] 1 Ch. 539, C. A.

Annotations:—Expld. London General Omnibus Co. v. Lavell, [1901] 1 Ch. 135. *Consd. Aerators v. Tollitt*, [1902] 2 Ch. 319; *Bourne v. Swan & Edgar, Re Bourne's Trade Mks.*, [1903] 1 Ch. 211; *Daimler Motor Co., 1904, Ltd. v. London Daimler Co.* (1907), 24 R. P. C. 379. *Appld. Ouyah Ceylon Estates v. Uva Ceylon Rubber Estates* (1910), 103 L. T. 416. *Refd. Cooper & McLeod v. MacLachlan* (1901), 18 R. P. C. 380; *Lambert & Butler v. Goodbody* (1902) 18 T. L. R. 394; *Randall v. British & American Shoe Co.* (1902), 18 T. L. R. 611; *Fine Cotton Spinners & Doublers' Asscn. v. Harwood Cash* (1907), 76,

PART III. SECT. 3, SUB-SECT. 3.—
B. (a).

198 i. General rule.]—In considering whether the name of a registered company as nearly resembles the name of another company previously registered "as to be calculated to deceive" within the meaning of Sect. 10 of Act 31 of 1909, the principles applied are substantially the same as those in passing off cases. A distinction must be drawn between cases in which the words complained of are words of ordinary common meaning or partake of the character of "fancy" words.—*UNION STEEL, ETC. v. COMPANIES REGISTRAR* (1920), T. P. D. 266.—**S. AF.**

r. Whether registrar's opinion final.]—The opinion of the registrar as to the similarity of the names of different cos. is not conclusive under

Investment & Loan Societies Act, 1898, c. 7, s. 2.—*BRITISH COLUMBIA PERMANENT LOAN, ETC., CO. v. WOOTTON* (1898), 6 B. C. R. 382.—**CAN.**

s. — Question of fact—Difference between using existing name & adopting new name.]—A co. may be restrained from carrying on business under a name so similar to that of a competing co. with a well established business as to be calculated to deceive. It is a question of fact in each case whether the names of the two cos. are thus similar. While in the absence of fraud or false representation a man is entitled to carry on business in his own name in competition with a similar business notwithstanding that confusion & mistake may arise, yet if he has never carried on such business on his own account or in partnership with others, he cannot by promoting & registering a co. with a title of which

his name forms a part, confer upon that co. the rights which he as an individual possesses in the use of that name, notwithstanding the absence of any fraudulent intention.—*HOUSTON (W. M.) CO., LTD. v. HOUSTON (W. S.), LTD.*, [1920] 1 W. W. R. 463; 13 Sask. L. R. 143.—**CAN.**

t. Whole name of existing business—Already trading within province.]—There not being any express prohibition in British Columbia Fire Insurance Act, of the licensing of a co. with a name so similar to that of another co. already established in the province as to be likely to lead persons doing business with the new co. to think they are doing business with the old co., the ct. has no power to restrain the applt. for a license for the new co. from making or persisting in his application.—*GUARDIAN ASSURANCE*

Sect. 3.—The name: Sub-sect. 3, B. (a) & (b).]

L. J. Ch. 670; *Hennessy v. Keating* (1908), 24 R. P. C. 484; *Royal Warrant Holder's Assocn. v. Deane & Beal*, [1912] 1 Ch. 10; *Teofani v. Teofani, Re Teofani Trade Mks.*, [1913] 2 Ch. 545; *Tokalon v. Davidson* (1914), 31 R. P. C. 74; *Albion Motor Car Co. v. Albion Carriage & Motor Body Works* (1917), 34 R. P. C. 257. *Mentd.* *Dowden & Pook v. Pook* (1903), 73 L. J. K. B. 38; *Gramophone Co. v. Magazine Holder Co.* (1910), 102 L. T. 409.

201. Part of name of existing business used alone.]—DUTTON, MASSEY & CO. (LIVERPOOL), LTD. *v.* DUTTON, MASSEY & CO., LTD., No. 228, *post*.

202. Existing name descriptive word in common use—Acquisition of secondary meaning.]—AERATORS, LTD. *v.* TOLLITT, No. 196, *ante*.

203. ———.]—The Daimler Motor Co. (1904), Ltd., commenced an action to restrain a co., which had been recently registered under the name of the London Daimler Co., Ltd., from using the word "Daimler" either in its name or in connection with motor cars. In an action brought in 1901 by the predecessors of pltf. co. it was held that the word "Daimler" indicated a system, & that a "Daimler" motor indicated a certain form of motor; but pltf. alleged that that word had since acquired a secondary meaning indicating pltf. co. & its cars. About 37 per cent. of pltf.'s sales were effected in London, where they had show rooms. It did not appear what name defts. were going to give to their cars, but in a letter they said that their cars would be known as the "London Daimler," whereas pltf. were of Coventry. It was held at the trial, that the alleged secondary meaning of the word "Daimler" was not established, even only in connection with English cars; that the evidence showed that the name of deft. co. could be honestly used without suggesting connection with pltf. co.; & that as to the cars there was no evidence as to the name which defts. intended to give them. The action was dismissed with costs. Pltf. appealed:—*Held*: the word "Daimler" no longer indicated a type or system of motors, & the name London Daimler Co., Ltd., was calculated to deceive & to cause confusion between the two cos., & pltf. were entitled to an injunction as to the name of deft. co., although not in so wide a form as that claimed.—*DAIMLER MOTOR CO. (1904), LTD. v. LONDON DAIMLER CO., LTD. (1907)*, 24 R. P. C. 379, C. A.

Annotations:—Distd. Electromobile Co. v. British Electromobile Co. (1907), 97 L. T. 196. *Refd. Waring & Gillow v. Gillow & Gillow (1916)*, 32 T. L. R. 389.

204. ———.]—In an action by the Electromobile Co. to restrain deft. co. from carrying on business under the name of the British Electromobile Co., upon the ground that the similarity of name was calculated to deceive the public, it was admitted by pltf. that the word "electromobile" was formerly a generic word, meaning a car propelled by electricity, but they contended that the evidence adduced by them showed that it had since acquired a secondary meaning denoting cars dealt in by them. The judge at the trial without a jury found in favour of defts. Upon appeal:—*Held*: the question was one of fact, & there was no ground for interfering with the decision of the judge.—*ELECTROMOBILE CO., LTD. v. BRITISH ELECTROMOBILE CO., LTD. (1907)*, 98 L. T. 258; 24 T. L. R. 192; 25 R. P. C. 149, C. A.

205. ———.]—Pltf., in 1900, started an

advertising business, which he had since carried on under the name or style of the "Trade Extension Co." In 1909 defts. started a similar business, which was carried on under the name of "Expansion of Trade (Ltd.)":—*Held*: pltf.'s trade name had not acquired a secondary meaning as denoting pltf.'s business, & the name of deft. co. was not calculated to deceive.—*ELLIOTT v. EXPANSION OF TRADE, LTD. (1909)*, 54 Sol. Jo. 101.

206. ——— Onus of proof.]—BRITISH VACUUM CLEANER CO., LTD. *v.* NEW VACUUM CLEANER CO., LTD., No. 198, *ante*.

207. Businesses not in competition—Different locality.]—DUNLOP PNEUMATIC TYRE CO., LTD. *v.* DUNLOP MOTOR CO., No. 237, *post*.

208. ——— "John Bright & Brothers"—"John Bright (Outfitters)."]—A co. was formed to carry on a retail tailoring & outfitting business, with shops in various towns, & adopted, without any intention to deceive, as part of their style, a well-known name which was also borne by a wholesale textile manufacturing co. of long standing. In an action by the latter to restrain the former from using the same name:—*Held*: as the use of the name by defts. was *bona fide*, & as there was no competition between the two businesses, there was discretion in the ct. to refuse an injunction, & pltf. would be sufficiently protected by undertakings given by defts. to distinguish clearly their business from pltf.'s, & if required to disclaim connection with pltf. by notices displayed in their windows.—*BRIGHT (JOHN) & BROTHERS, LTD. v. BRIGHT (JOHN) (OUTFITTERS), LTD. (1922)*, 67 Sol. Jo. 112, C. A.

Branch business becoming separate firm.]—See No. 228, *post*.

(b) Particular Instances.

209. "London & Provincial Law Assurance Society"—"London & Provincial Joint Stock Life Assurance Co.]"—Motion for an injunction to restrain defts. from using the first three words in the title of their co., refused, upon the ground that no injury was likely to accrue to pltf.—*LONDON & PROVINCIAL LAW ASSURANCE SOCIETY v. LONDON & PROVINCIAL JOINT STOCK LIFE ASSURANCE CO. (1847)*, 17 L. J. Ch. 37; 10 L. T. O. S. 127; 11 Jur. 938.

Annotation:—Refd. Merchant Banking Co. of London v. Merchants' Joint Stock Bank (1878), 9 Ch. D. 560.

210. "London Assurance"—"London & Westminster Assurance Corporation.]"—Upon a motion for an injunction on behalf of the corpn. called "The London Assurance," to restrain "The London & Westminster Assurance Corpn. (Ltd.)" from using the latter title, the ct. refused to make any order.—*LONDON ASSURANCE v. LONDON & WESTMINSTER ASSURANCE CORPN., LTD. (1863)*, 32 L. J. Ch. 664; 8 L. T. 497.

Annotation:—Refd. Merchant Banking Co. of London v. Merchants' Joint Stock Bank (1878), 9 Ch. D. 560.

211. "Colonial Life Assurance Co."—"Home & Colonial Assurance Co.]"—Application by "The Colonial Life Assurance Co." for an injunction to restrain another co., lately established, from using the style of "The Home & Colonial Assurance Co., Ltd.," refused.—*COLONIAL LIFE ASSURANCE CO. v. HOME & COLONIAL ASSURANCE CO., LTD. (1864)*, 33 Beav. 548; 4 New Rep. 129; 33 L. J. Ch. 741;

Co., LTD. v. GARRETT, [1919] 45 D. L. R. 32; 58 S. C. R. 47.—CAN.

a. Existing name descriptive word in common use—"Fanciful name"—"Geographical name"—Restraint of extra provincial company.]—Pltf., the

"Northwest Trading Company, Ltd.," a foreign co., attacked the use of the same name by deft., a British Columbia co.:—*Held*: the name was "geographical" & not "fanciful" and at the time of the incorporation of deft. under that name pltf. had not estab-

lished such business in the province that the public were deceived by the adoption of the name by deft.—*NORTHWEST TRADING CO., LTD. v. NORTHWEST TRADING CO., LTD., [1920]* 3 W. W. R. 729.—CAN.

10 L. T. 448; 28 J. P. 745; 10 Jur. N. S. 967; 12 W. R. 783; 55 E. R. 482.

Annotation:—*Refd.* Merchant Banking Co. of London v. Merchants' Joint Stock Bank (1878), 9 Ch. D. 560.

212. "**Guardian Fire & Life Assurance Co.**"—"**Guardian & General Insurance Co.**"—A limited co., incorporated in 1877 for the purpose of carrying on a business of insuring horses & vehicles against accidents under the style of the "**Guardian Horse & Vehicle Assurance Assn.**," with offices at 31 L. Street, went into voluntary liquidation, & transferred its goodwill & business to a new co., which was registered under the style of the "**Guardian & General Insurance Co., Ltd.**," with offices likewise at 31, L. Street. In the memorandum of assocn. of the new co. were contained powers of adding a fire & life assurance business to the old business. In an action by a co. incorporated in 1821, & since that date carrying on a business of fire & life assurance at 11 L. Street, under the style of the "**Guardian Fire & Life Assurance Co.**":—*Held*: (1) the style of the "**Guardian & General Insurance Co., Ltd.**" was a style calculated to deceive, & was in fraudulent imitation of the style "**Guardian Fire & Life Assurance Co.**"; (2) the assumption by defts. of the style "**Guardian Horse, Vehicle & General Insurance Co., Ltd.**" would be permissible.

In such an action the question to be determined between the parties is, whether the style complained of has been assumed with the intention of appropriating pltf.'s business.—**GUARDIAN FIRE & LIFE ASSURANCE CO. v. GUARDIAN & GENERAL INSURANCE CO., LTD.** (1880), 50 L. J. Ch. 253; 43 L. T. 791.

Annotation:—*Refd.* Hendriks v. Montagu (1881), 50 L. J. Ch. 257.

213. — "**Guardian Horse Vehicle & General Insurance Co., Ltd.**"—**GUARDIAN FIRE & LIFE ASSURANCE CO. v. GUARDIAN & GENERAL INSURANCE CO., LTD.**, No. 212, *ante*.

214. "**Australian Mortgage & Finance Co.**"—"**Australian & New Zealand Mortgage Co.**"—**AUSTRALIAN MORTGAGE LAND & FINANCE CO. v. AUSTRALIAN & NEW ZEALAND MORTGAGE CO.**, [1880] W. N. 6, C. A.

215. "**Accident Insurance Co.**"—"Accident, Disease & General Insurance Corporation."—An insurance co., registered under the Companies Acts, having carried on its business in the City of London for many years under the name of the Accident Insurance Co., Ltd., sought an *interim* injunction to restrain another insurance co., recently registered under the Companies Acts, & having its offices & place of business in the City of London, from carrying on its business under its registered name of the Accident, Disease, & General Insurance Co., Ltd.:—*Held*: pltf. co. was entitled to the injunction to restrain deft. co. from using its registered name, or any other name calculated to cause deft. co. to be mistaken by the public for pltf. co.—**ACCIDENT INSURANCE CO., LTD. v. ACCIDENT, DISEASE & GENERAL INSURANCE CORPN., LTD.** (1884), 54 L. J. Ch. 104; 51 L. T. 597.

Annotation:—*Consd.* Manchester Brewery Co. v. North Cheshire & Manchester Brewery Co., [1898] 1 Ch. 539.

216. "**Sun Life Assurance Co.**"—"Sun Life Assurance Co. of Canada."—A co. was incorporated in Canada under the title of the Sun Life Assurance Co. of Canada:—*Held*: in the absence of fraud & dishonesty the co. were entitled to carry on business under their corporate name, provided it were without abbreviation, addition or other modification, in England, notwithstanding the existence of the Sun Life Assurance Co.—**SAUNDERS v. SUN LIFE ASSURANCE CO. OF**

CANADA, [1894] 1 Ch. 537; 63 L. J. Ch. 247; 6 L. T. 755; 42 W. R. 315; 10 T. L. R. 143; 3 Sol. Jo. 113; 8 R. 125.

Annotation:—*Refd.* Daimler Motor Co., 1904, Ltd. v. London Daimler Co. (1907), 24 R. P. C. 379.

217. "**Daimler Motor Co.**"—"London Daimler Co."—**DAIMLER MOTOR CO. (1904), LTD. v. LONDON DAIMLER CO., LTD.**, No. 203, *ante*.

218. "**Standard Bank of South Africa**"—"Standard Bank."—Injunction granted restraining deft. co. from carrying on business under its present name or any other name so closely resembling pltf. bank's name as to be calculated to deceive.—**STANDARD BANK OF SOUTH AFRICA LTD. v. STANDARD BANK, LTD.** (1909), 25 T. L. R. 420.

219. "**Electromobile Co.**"—"British Electromobile Co."—**ELECTROMOBILE CO., LTD. v. BRITISH ELECTROMOBILE CO., LTD.**, No. 204, *ante*.

220. "**Trade Extension Co.**"—"Expansion of Trade Co."—**ELLIOTT v. EXPANSION OF TRADE LTD.**, No. 205, *ante*.

221. "**Ouvah Ceylon Estates**"—"Uva Ceylon Rubber Estates."—Pltf. co., whose business was that of growing tea & rubber, was registered in Aug. 1896, as the Ouvah Ceylon Estates, Ltd. Deft. co., in ignorance of the existence of pltf. co., was registered in Apr. 1910, as the Uva Ceylon Rubber Estates, Ltd., for the purpose of acquiring & developing a rubber estate:—*Held*: the similarity of names was calculated to deceive, & therefore pltf. co. was entitled to an injunction to restrain deft. co. from using or carrying on business under its present name.—**OUVAH CEYLON ESTATES, LTD. v. UVA CEYLON RUBBER ESTATES, LTD.** (1910), 103 L. T. 416; 27 T. L. R. 24, C. A.

222. "**Water Softening Materials Co. (Sofnol)**"—"Water Softeners."—Upon an application under 1908 Act, s. 15, to the registrar of cos. to register a co. with the name "**The Water Softening Materials Co. (Sofnol), Ltd.**" the registrar refused to register it upon the ground that the name so nearly resembled that of "**Water Softeners, Ltd.**," an existing co. already registered, as to be calculated to deceive within the meaning of sect. 8, sub-sect. 1 of the Act. Appcts. applied for a writ of *mandamus* to the registrar to register the co. with that name upon the grounds that he was required to do so under sect. 15 & that the name did not so nearly resemble that of any co. already registered as to be calculated to deceive:—*Held*: the *mandamus* must be refused as there was no ground for saying that the registrar, in exercising his discretion, had come to a wrong decision.

In order to displace the decision of the registrar & justify this ct. in interfering by *mandamus*, it would be necessary for appcts. to show one or more of three things: either that the registrar had not in fact exercised any discretion in the particular case, or that he had exercised it upon some wrong principle of law, or that he had been influenced by extraneous considerations which he ought not to have taken into account (*AVORY, J.*).—**R. v. COMPANIES REGISTRAR**, [1912] 3 K. B. 23; 28 T. L. R. 457; *sub nom.* **R. v. COMPANIES REGISTRAR, Ex p. PAUL**, 81 L. J. K. B. 914; 107 L. T. 62; 19 Mans. 280, D. C.

Annotation:—*Refd.* *Re* British Milk Products Co.'s Appln., [1915] 2 Ch. 202.

223. "**Kingston, Miller & Co.**"—"Thomas Kingston & Co."—Pltfs. were incorporated in 1897 to carry on a business of caterers theretofore carried on by a firm named Kingston & Miller. One of the managing directors had a son, Thomas Kingston, who assisted in the management, & so became skilled in the business & well known to the

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customers. In 1911 Thomas Kingston left his employment in the business & promoted deft. co., which was formed to carry on a business of the same character as that of pltf's., & to secure & turn to account Thomas Kingston's services as an expert in the business. He was shortly afterwards appointed managing director:—*Held*: the use of the name "Kingston" by defts. was likely to mislead & deceive the public into the belief that defts. were the same co. as pltf's.; even if Thomas Kingston could, by selling the goodwill of a business which he had carried on in his own name to a co., have conferred on it the right to use the name, he had nothing in the nature of a goodwill to transfer, & so could not give defts. the right to use his name; & defts. must be restrained from using their registered name or any other so nearly resembling that of pltf's. as to be calculated to deceive, & from carrying on a similar business under it.—**KINGSTON, MILLER & Co., LTD. v. KINGSTON (THOMAS) & Co., LTD.**, [1912] 1 Ch. 575; 81 L. J. Ch. 417; 106 L. T. 586; 28 T. L. R. 246; 56 Sol. Jo. 310.

Annotations:—**Consd.** Waring & Gillow v. Gillow & Gillow (1916), 32 T. L. R. 389. **Refd.** Dorman v. Meadows, [1922] 2 Ch. 332.

224. "Lloyds Bank"—"Lloyds Investment Trust Co."—Injunction granted restraining the use by defts. of the word "Lloyds" or any title or description including that name in connection with the business of capitalists or financiers or any similar business, or in connection with the word "trust."—**LLOYDS BANK, LTD. v. LLOYDS INVESTMENT TRUST CO., LTD.** (1912), 28 T. L. R. 379.

225. "Lloyds"—"Lloyds, Southampton."—Injunction granted restraining defts. from carrying on business under the name of Lloyds, Southampton (Ltd.), or under any other name calculated to produce the belief that their business was the business of, or any branch or department of Lloyds' business.—**LLOYD'S & DAWSON BROTHERS v. LLOYDS, SOUTHAMPTON, LTD.** (1912), 28 T. L. R. 338; 56 Sol. Jo. 36; 29 R. P. C. 433, C. A.

Annotation:—**Refd.** Waring & Gillow v. Gillow & Gillow (1916), 32 T. L. R. 389.

226. "Waring & Gillow"—"Gillow & Gillow"—**Partial similarity of business.**—Pltf's., Waring & Gillow (Ltd.) were a limited co. carrying on business in Oxford Street, London, as furniture manufacturers & dealers in furniture, carpets, & rugs, & as auctioneers & estate agents. The co. was formed in 1896 to take over two businesses known as "S. J. Waring & Sons" & "Gillow & Co." Defts., Gillow & Gillow (Ltd.), were a co. established in 1915 (*inter alia*) to hold auction sales of carpets, rugs, & mats, in St. James's Street, London. Before the formation of deft. co., C. L. Gillow, who was an auctioneer, had carried on auction sales of carpets, & deft. co., in which he was largely interested, was formed to continue this business. In an action by pltf's. to restrain defts. from carrying on business in the name of Gillow & Gillow (Ltd.) or any other name so nearly resembling that of pltf's. as to be likely to mislead the public into the belief that deft. co. was the same as pltf. co. or a branch or department thereof:—*Held*: on the facts deft. co. was not likely on any reasonable or legitimate ground to be mistaken for pltf. co., & therefore the action failed.—**WARING & GILLOW, LTD. v. GILLOW & GILLOW, LTD.** (1916), 32 T. L. R. 389; 33 R. P. C. 173.

Annotation:—**Distd.** Albion Motor Car Co. v. Albion Carriage & Motor Body Works (1917), 34 R. P. C. 257.

227. "Albion Motor-Car Co."—"Albion Carriage & Motor Body Works."—The ct. granted an injunction restraining defts. from carrying on business under the name "Albion Carriage & Motor Body Works (Ltd.)," on the ground that the word "Albion" had come to be identified with pltf's. & both parties were in the motor-car industry.—**ALBION MOTOR CAR CO., LTD. v. ALBION CARRIAGE & MOTOR BODY WORKS, LTD.** (1917), 33 T. L. R. 346; 34 R. P. C. 257.

228. "Dutton, Massey & Co. (Liverpool)"—"Dutton, Massey & Co."—Long before 1868 the business carried on by pltf. co. was founded at Liverpool for the purpose of carrying on the business of coal merchants, factors & dealers, colliery proprietors & shipping & forwarding agents. In 1868 the firm name of Dutton, Massey & Co. was adopted. In 1922 pltf. co. was formed & acquired that business. In 1906 a London branch was started for the purpose of carrying on the business of metal & general merchants in London. It became a separate firm, which continued under the old name & in 1921 it passed to a trustee of a deed of assignment. Early in 1922 the London business was sold & transferred to a co. registered under the name of Dutton, Massey & Co. (Eastern), Ltd. Subsequently the latter co., with the sanction of the Board of Trade, changed their original name by eliminating therefrom the word "Eastern" & in Oct., 1922, they opened an office in Liverpool under their name, Dutton, Massey & Co., Ltd., & advertised themselves in the "Journal of Commerce" as general export merchants, coal, shipping & forwarding agents. Pltf. co. commenced an action for an injunction restraining deft. co. from representing, or doing anything calculated to cause confusion & lead to the belief, that the business carried on by them was that formerly carried on by Dutton, Massey & Co. of Liverpool, & from using the name of Dutton, Massey & Co., Ltd., so as to induce such belief. Evidence of actual confusion was given at the trial:—*Held*: the word "Eastern" had been dropped by deft. co. for a fraudulent purpose & the sanction of the Board of Trade to the change had been obtained by fraudulent means; & deft. co. must, in the circumstances of the case, be restrained by injunction (1) from using the name of Dutton, Massey & Co., Ltd., or any other name of which the words Dutton, Massey formed a part, in the businesses of coal merchants, factors, & dealers, colliery proprietors, shipping & forwarding agents, & from in any other manner representing or causing or procuring to be represented or doing any other thing which was calculated to lead to the belief that they had been or were carrying on the business or were the successors in business of the late firm of Dutton, Massey & Co. of Liverpool, coal merchants, etc., & (2) from using in any business the name of "Dutton, Massey & Co., Ltd." or any other name of which the words "Dutton, Massey" formed part without in such name sufficiently distinguishing their name from the name of pltf. co.—**DUTTON, MASSEY & Co. (LIVERPOOL), LTD. v. DUTTON, MASSEY & Co., LTD.** (1923), 40 R. P. C. 413.

(c) *Adoption of Name of Promoter or Vendor.*

229. Business not previously carried on.—Pltf's. were a registered co. carrying on the business of a waxwork exhibition in London under the name of "Madame Tussaud & Sons, Ltd." Their exhibition was a very old established one. Deft., Louis Tussaud, was a wax-modeller, who had formerly been employed by pltf. co., but had never

carried on any business on his own account. He promoted a co., of which he was to be manager, to carry on an exhibition similar to that of pltf's., but in another part of London. It was proposed to register the new co. under the name of "Louis Tussaud, Ltd." Pltf's. moved for an injunction to restrain deft. from proceeding with the registration of the new co. under the proposed name or any other name so nearly resembling that of pltf. co. as to be calculated to deceive:—*Held*: that an injunction ought to be granted in similar terms to the order in *Hendriks v. Montagu*, No. 194, *ante*.

Semble: if deft. had previously carried on an exhibition in his own name, & had sold it with the goodwill to third parties, who had transferred it to the co., registration under the proposed name might have been allowed.—*TUSSAUD v. TUSSAUD* (1890), 44 Ch. D. 678; 59 L. J. Ch. 631; 62 L. T. 633; 38 W. R. 503; 6 T. L. R. 272; 2 Meg. 120.

Annotations:—*Consd.* *Fine Cotton Spinners & Doublers' Asscn. & Cash v. Harwood Cash*, [1907] 2 Ch. 184; *Waring & Gillow v. Gillow & Gillow* (1916), 32 T. L. R. 389. *Refd.* *Dutton, Massey (Liverpool) v. Dutton, Massey* (1923), 40 R. P. C. 413. *Mentd.* *Cowley v. Cowley* (1900), 83 L. T. 218.

230. —.]—A new co. with a title of which a personal name forms part has not the natural right of an individual born with that name to trade under that name where there is a possibility of confusion with an old co. An individual, not transferring a business & goodwill, cannot confer upon a co. a title to use his name as against persons liable to be damaged thereby.—*FINE COTTON SPINNERS & DOUBLERS' ASSOCN., LTD., & CASH (JOHN) & SONS, LTD. v. HARWOOD CASH & CO., LTD.*, [1907] 2 Ch. 184; 76 L. J. Ch. 670; 97 L. T. 45; 23 T. L. R. 537; 14 Mans. 285; 24 R. P. C. 533.

Annotations:—*Apld.* *Kingston, Miller v. Kingston*, [1912] 1 Ch. 575. *Consd.* *Waring & Gillow v. Gillow & Gillow* (1916), 32 T. L. R. 389; *Dorman v. Meadows*, [1922] 2 Ch. 332.

231. —.]—*KINGSTON, MILLER & CO., LTD. v. KINGSTON (THOMAS) & CO., LTD.*, No. 223, *ante*.

232. Business previously carried on—But goodwill parted with.]—*William Edgcumbe Rendle*, the patentee of an invention for glass-roofing, carried on business under the name of "W. Edgcumbe Rendle & Co." His son, John Edgcumbe Rendle, was taken into his father's glass-roofing business, & entered into an agreement not to carry on any opposition business. The father died, having by his will given the son an interest in the glass-roofing business. The son then started business on his own account under the name of "J. Edgcumbe Rendle & Co." He got into financial difficulties, & made an assignment for the benefit of his creditors of his business & of all his property. A co., of which he was the promoter & manager, was subsequently registered under the name of "J. Edgcumbe Rendle & Co., Ltd.," to carry on the business of glass-roofing in opposition to W. Edgcumbe Rendle & Co.

The trustees of the will of the father thereupon applied to the ct. for an injunction to restrain the co. & their manager from carrying on the business of glass-roofing under the name of "J. Edgcumbe Rendle & Co., Ltd.," or any other name calculated to mislead the public into the belief that such co. was carrying on or had succeeded to the business of W. Edgcumbe Rendle & Co.:—*Held*: an injunction must be granted as the son, who was not at the time carrying on the business of glass-roofing he having assigned all his interests to his creditors, had no right to lend his name to a co., which name from its being so like one already attached to an established business, would be calculated to deceive.—*RENDLE v. EDGCUMBE RENDLE (J.) & CO., LTD.* (1890), 63 L. T. 94.

233. —.]—*TUSSAUD v. TUSSAUD*, No. 229, *ante*.

234. —.]—*BRINSMEAD (JOHN) & SONS v. BRINSMEAD (T. E.) & SONS, LTD.* (1896), 13 T. L. R. 3, C. A.

Annotations:—*Refd.* *Re Brinsmead*, [1897] 1 Ch. 45; *Pinet v. Maison Louis Pinet*, [1898] 1 Ch. 179.

235. —.]—*L. M. Pinet*, trading as *Maison Pinet*, who carried on a small & recently established business in boots & shoes made for a special purpose, sold that business to deft. co. One of the objects of the co. was, by its memorandum of assocn., stated to be "to carry on business in England & elsewhere as bootmakers & shoe-makers." Pltf's. had for over forty years carried on business in the manufacture & sale of boots & shoes, their goods being commonly known as "Pinet's."

They accordingly applied for an interlocutory injunction to restrain deft. co. from carrying on business as manufacturers or vendors of boots or shoes under the name of "Maison Pinet, Ltd.," or under any other name or description of which the name "Pinet" formed part, & which was so arranged or contrived as, by colourable imitation of pltf's. trading style or otherwise, to be calculated to represent or lead to the belief that deft. co. were carrying on pltf's. business, & from in any other manner representing or acting so as to lead to such belief as aforesaid:—*Held*: (1) although the business of L. M. Pinet was not the same as pltf's., yet the co. formed to acquire it had no intention of restricting their operations in any way, & would probably develop that business as far as possible, & develop it at the expense of pltf's., & therefore, a case had been made out justifying the interference of the ct. at the present stage of the proceedings; (2) the interlocutory injunction claimed went beyond what pltf's. required for their protection, & must be limited as in the form in *Montgomery v. Thompson*, [1891] A. C. 217.—*PINET (F.) ET CIE v. MAISON PINET, LTD.* (1897), 77 L. T. 322; 14 T. L. R. 2, C. A.

236. — Previous fraudulent change of name.]—In 1892 deft., who was then known by the name of Louis Lesser St. Leger Forbes Gower, took by deed-poll the name of Louis Marius Pinet. This deed was registered in 1894. In 1893 he began to carry on under his new name the business of manufacturing a contrivance for increasing the apparent height of short persons, & boots & shoes specially made for this purpose. In 1897 he sold this business to a co., incorporated under the name of *Maison Pinet, Ltd.* The memorandum of assocn. enabled the co. to carry on a general boot & shoe-making business. F. Pinet & Cie, of Paris, brought an action against *Maison Pinet, Ltd.*, & on Oct. 26, 1897, the Ct. of Appeal granted an injunction restraining the deft. co. from carrying on business as manufacturers of boots & shoes under any name of which Pinet formed a part, without clearly distinguishing their boots & shoes from those made by pltf's. At this time it was supposed that Pinet was L. M. Pinet's original name. Deft. co. then entered into an agreement to sell their business to a new co., to be called *Maison Louis Pinet, Ltd.* F. Pinet & Cie. then brought this action against L. M. Pinet, both cos., & their directors, for an absolute injunction against the use of the name Pinet:—*Held*: deft., L. M. Pinet, having adopted the name Pinet for fraudulent purposes, pltf's. were entitled to an absolute injunction restraining him & both the cos. from using the name Pinet, or any description including that name, in connection with boots & shoes, & from purporting to sell to, or doing

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anything purporting to confer upon any other person the right to use that name in connection with boots & shoes.—*PINET (F.) & CIE. v. MAISON LOUIS PINET, LTD.*, [1898] 1 Ch. 179; 67 L. J. Ch. 41; 77 L. T. 613; 46 W. R. 506; 14 T. L. R. 87; 14 R. P. C. 933.

237. — Partial similarity of business—Different locality.]—Previously to the year 1904 two brothers had carried on a small business at Kilmarnock, Scotland, under the style of R. & J. P. Dunlop, the principal business of this firm being that of selling & repairing bicycles, tricycles, & motors. In 1904 the two brothers registered a co. called the Dunlop Motor Co. with a capital of £500. This co. took over from R. & J. F. Dunlop the motor business, & the purposes of the co. were the sale on commission & the repairing of motors, motor cycles, & the parts thereof, the actual business consisting principally in executing repairs & selling petrol. Pursuers, the Dunlop Pneumatic Tyre Co., of Regent Street, London, who deal in tyres, pumps, & other adjuncts of motors & other vehicles, sought an injunction to restrain the Dunlop Motor Co. from carrying on its business under the name of the "Dunlop Motor Co." :—*Held*: on the evidence (1) there was no proof that any one would be misled into thinking that the two cos. were the same; (2) pursuers had no exclusive use of the name of "Dunlop."—*DUNLOP PNEUMATIC TYRE CO., LTD. v. DUNLOP MOTOR CO.*, [1907] A. C. 430; 76 L. J. P. C. 102; 97 L. T. 259; 23 T. L. R. 717; 51 Sol. Jo. 715, II. L.

Annotations:—*As to (1) Follid. Waring & Gillow v. Gillow & Gillow* (1916), 32 T. L. R. 389. *Distd. Albion Motor Car Co. v. Albion Carriage & Motor Body Works* (1917), 34 R. P. C. 257. *As to (2) Refd. Waring & Gillow v. Gillow & Gillow* (1916), 32 T. L. R. 389.

(d) Restraint of User.

238. When granted—Both companies registered.]—There is nothing in 1862 Act to affect the right of a co. registered under a particular name to an injunction restraining another co. which, notwithstanding the prohibition of sect. 20 against identity of names, has been registered under an identical or a similar name, from carrying on its business under that name, if it is proved that that name is calculated to deceive, the principles applicable to individuals trading under identical or similar names applying to cos.—*MERCHANT BANKING CO. OF LONDON v. MERCHANTS' JOINT STOCK BANK* (1878), 9 Ch. D. 560; 47 L. J. Ch. 828; 26 W. R. 847.

Annotations:—*Refd. Guardian Fire & Life Assce. v. Guardian & General Insee.* (1880), 50 L. J. Ch. 253; *Accident Insee. v. Accident, Disease & General Insee. Corpn.* (1884), 54

L. J. Ch. 104; *Turton v. Turton* (1889), 42 Ch. D. 128; *Manchester Brewery Co. v. North Cheshire & Manchester Brewery Co.*, [1898] 1 Ch. 539; *Dutton, Massey (Liverpool) v. Dutton, Massey* (1923), 40 R. P. C. 413.

239. — Name fraudulently assumed.]—*GUARDIAN FIRE & LIFE ASSURANCE CO. v. GUARDIAN & GENERAL INSURANCE CO., LTD.*, No. 212, *ante*.

240. — Name innocently adopted.]—When a limited co. is incorporated under a name colourably resembling that in which an existing trader is carrying on business the ct. has jurisdiction to restrain the co. from using or carrying on business under the name, however innocently adopted, if of opinion that the name is calculated to divert customers of the established business to the new co., or to cause confusion by leading members of the public to suppose that the new co. is connected with, or a branch of, the existing trader's business.—*EWING v. BUTTERCUP MARGARINE CO., LTD.*, [1917] 2 Ch. 1; 86 L. J. Ch. 441; 117 L. T. 67; 33 T. L. R. 321; 61 Sol. Jo. 443; 34 R. P. C. 232, C. A.

Annotations:—*Refd. Albion Motor-Car Co. v. Albion Carriage & Motor Body Works* (1917), 33 T. L. R. 346; *Dutton, Massey (Liverpool) v. Dutton, Massey* (1923), 40 R. P. C. 413.

241. Whether granted on interlocutory application—No evidence of persons being deceived.]—*GENERAL REVERSIONARY INVESTMENT CO. v. GENERAL REVERSIONARY CO., LTD.* (1888), 1 Meg. 65.

242. Who may apply—Foreign company.]—A foreign co. trading in this country is entitled to restrain the use of a name so similar as to be calculated to deceive the customers.—*NATIONAL FOLDING BOX & PAPER CO. v. NATIONAL FOLDING BOX CO., LTD.* (1894), 43 W. R. 156; 13 R. 60.

243. Form of order—Signatories to memorandum only directors & shareholders.]—Where a co. is formed for a fraudulent purpose, the signatories to the memorandum are guilty of a fraudulent conspiracy to effect that purpose.

Where a motor-car manufacturing co. was registered in a name colourably resembling that of existing motor-car manufacturers with the fraudulent intention of obtaining the benefit of their reputation in that business, the co. & the signatories to the memorandum, who were the only directors & shareholders, were restrained from using the name in connection with that business, & the signatories were further restrained from allowing the co. to remain registered under that name.—*SOCIÉTÉ ANONYME DES ANCIENS ÉTABLISSEMENTS PANHARD ET LEVASSOR v. PANHARD LEVASSOR MOTOR CO., LTD.*, [1901] 2 Ch. 513; 70 L. J. Ch. 738; 85 L. T. 20; 50 W. R. 74; 17 T. L. R. 680; 45 Sol. Jo. 671.

PART III. SECT. 3, SUB-SECT. 3.—B. (d).

240 i. When granted—Name innocently adopted—Inadvertence of registrar.]—Pltf. co. had been carrying on business under the name "Vancouver-Westminster Investment Co." Shortly after its incorporation, F. began carrying on business under the name "Canadian National Estates." Pltf. after due notice under Companies Act, received a certificate Dec. 28, 1910, changing its name to "Canadian National Investors, Ltd." & thereafter Jan. 3, 1911 deft. co. was incorporated under the name, "Canadian National Estates, Ltd." & purchased the business already being carried on by F.:—*Held*: a co. incorporated under Companies Act which, by the inadvertence of the Registrar, has been given

a name so similar to that of a co. previously incorporated as to be calculated to deceive, may be restrained from carrying on business under such name.—*CANADIAN NATIONAL INVESTORS, LTD. v. CANADIAN NATIONAL ESTATES* (1911), 1 W. W. R. 87.—*CAN.*

b. Who may apply—Dominion company—Restraint of provincial company.]—Where pltf. co. had obtained incorporation under Dominion Companies Act, with a certain name, a co. subsequently formed under a Provincial Act with the same name, was restrained from operating under such name.—*SEMI-READY, LTD. v. SEMI-READY, LTD.* (1910), 15 B. C. R. 301.—*CAN.*

242 i. — Foreign company—Foreign company applying for registra-

tion in British Columbia—Same name as provincial company already registered.—Where a foreign co. applies to be registered in British Columbia, if its name is identical with that of a co. already incorporated in the province the application should be refused; if refusal is not discretionary with the registrar. The foreign co. may however in a proper case attack the name adopted by the domestic co. If the domestic co. in the adoption & use of its name has not been guilty of fraud the right of the foreign co. to compel it to change its name depends on the character of the name & the nature & extent of the foreign co.'s business in the province at the time the name was adopted by the domestic co.—*NORTHWEST TRADING CO., LTD. v. NORTHWEST TRADING CO., LTD.*, [1921] 1 W. W. R. 353.—*CAN.*

PART III.—COMPANIES UNDER COMPANIES (CONSOLIDATION) ACT, 1908, ETC. 71

SUB-SECT. 4.—CHANGE OF NAME.

See, now, 1908 Act, s. 8 (2)-(5).

Name similar to name of existing concern—Degree of similarity.—See No. 198, ante.

244. When complete—On issue of new certificate of incorporation.—When a co. changes its name, under 1862 Act, s. 13, the change is not complete till the new name is entered on the register & a certificate of incorporation issued under that sect.—SHACKLEFORD, FORD & CO. v. DANGERFIELD (1868), L. R. 3 C. P. 407; *sub nom.* SHACKLEFORD, FORD & CO., LTD. v. OWEN, SHACKLEFORD, FORD & CO., LTD. v. DANGERFIELD, 37 L. J. C. P. 151; 18 L. T. 289; 16 W. R. 675.

245. Restoration of original name—Name changed in pursuance of invalid resolution—Jurisdiction of court—Form of order.—An order was made altering the name of a limited co., & a certificate was issued by the Registrar of Joint Stock Companies that the co. had changed its name. It was then found that the resolutions upon which the order was based were bad. On motion to direct the registrar to restore the old name, & also to discharge the order:—*Held*: the ct. had no jurisdiction over the Registrar of Joint Stock Companies, he being an officer of the Board of Trade, & not of the ct.

Order: It appearing (stating the defects plainly), discharge the order, & give the co. liberty to apply to the Board of Trade as they may be advised to vacate the existing registration & to restore the original name.—*Re AUSTRALASIAN MINING CO., LTD.* (1893), 68 L. T. 437; 37 Sol. Jo. 440; 3 R. 579.

246. Combined with reduction of capital—Use of old & new names.—*Re GATLING GUN, LTD.*, No. 878, *post*.

247. Company registered as owner of trade mark—Change of name on trade marks register.—Where a limited co., being the registered owner of a trade mark, changes its name, it is the duty of the comptroller, on request, to substitute the new name for the old name on the register.—*Ex p. NEW ORMONDE CYCLE CO., LTD.*, [1896] 2 Ch. 520; 40 Sol. Jo. 654; *sub nom. Re NEW ORMONDE CYCLE CO.'S TRADE MARK*, 65 L. J. 785; 75 L. T. 50.

See, generally, TRADE MARKS, TRADE NAMES AND DESIGNS.

SUB-SECT. 5.—OTHER CASES.

248. Property in registered name—New name adopted—Use of old name by another.—Where the assets & goodwill of a co. in liquidation have been

sold to purchasers who register the concern so purchased under a fresh name, no injunction can be granted against the use of the original co.'s name by a person who does not represent himself as the successor of such co., & whose use of the name has been acquiesced in by the liquidator of the old co. & the purchasers of its goodwill.—*MONTREAL LITHOGRAPHING CO. v. SABISTON*, [1899] A. C. 610; 68 L. J. P. C. 121; 81 L. T. 135, P. C.

Annotation:—*Consd. Townsend v. Jarman* (1900), 69 L. J. Ch. 823.

249. Property in trade name—Incorporated in registered name—May be transferred.—A co. incorporated under 1862 Act, does not by the addition of the word "ltd." to the trade name of a business purchased & subsequently carried on by the co. prejudice the co.'s power to transmit to a purchaser from it the right to the original trade name.—*TOWNSEND v. JARMAN*, [1900] 2 Ch. 698; 69 L. J. Ch. 823; 83 L. T. 366; 49 W. R. 158.

Annotations:—*Reid. Pomeroy v. Scalé* (1906), 23 T. L. R. 170; *Boussod, Valadon v. Marchant* (1907), 25 R. P. C. 42. *Mentd. Leetham v. Johnstone-White*, [1907] 1 Ch. 322; *Dewes v. Fitch*, [1920] 2 Ch. 159.

250. — Non-compliance with 1862 Act, s. 41—Trading in name of former proprietor.—A limited co., which owned a number of shops, purchased a business belonging to an individual, & carried on at a particular shop. The co. continued to carry on the business at the shop in the name of the former proprietor, & they issued invoices & signed receipts in his name, the co.'s name being also painted over the door of the shop:—*Held*: the co. had a right to trade under the name of the former proprietor so long as they complied with the Companies Acts; & though the co. had been guilty of a breach of 1862 Act, s. 41, they were not thereby precluded from asking for an injunction to restrain the use by another person of the name of the former proprietor so as to be calculated to deceive. On appeal the case was settled upon terms.—*PEARKS, GUNSTON & TEE, LTD. v. THOMPSON, TALMEY & CO.* (1901), 17 T. L. R. 354; 18 R. P. C. 185, C. A.

Annotation:—*Apld. Randall v. British & American Shoe Co.*, [1902] 2 Ch. 354.

251. — — — Separate from corporate name.—The inadvertent omission of a limited co., carrying on a business under a trade name, to publish at the same time its corporate name in compliance with the provisions of 1862 Act, s. 41, will not prejudice the co.'s right to have the use of its trade name protected by injunction, & it makes no difference whether the co. itself created & established such trade name, or acquired it by purchase.—*RANDALL (H. E.), LTD. v. BRITISH & AMERICAN SHOE CO.*, [1902] 2 Ch. 354; 71 L. J. Ch.

PART III. SECT. 3, SUB-SECT. 4.

c. Effect of right to maintain action in old name.—Changing the name of a co. by statute does not affect its right to maintain actions in like manner as if the name had not been changed.—*PROVINCIAL INSURANCE CO. v. CAMERON* (1881), 31 C. P. 523.—CAN.

d. — Use of old name by mistake.—The deed of deft. co. described it by its original name of P. H. L. & B. R. Co., when in fact its name had then been changed:—*Held*: a sufficient *descriptio personæ* to enable the co. to take, though it might not be sufficient to sue in.—*GRAND JUNCTION RY. CO. v. MIDLAND RY. CO.* (1882), 7 A. R. 681.—CAN.

e. — Name only means of identification.—The name is merely a means of identification, & a change of name does not affect the identity of the co.

nor its continued existence as the original body corporate.—*ALLIANCE SECURITIES, LTD. v. POSNEKOFF*, [1922] 3 W. W. R. 1201.—CAN.

f. — Registering property in new name—Procedure.—Where a limited co. is the registered owner of land & the co.'s name having been changed, it is desired to transmit the title to the co. in its new name, there should be filed with the registrar along with the appln. for transmission: (1) the original instrument changing the name, such as supplementary letters patent issued by Dominion Govt.; or (2) proof of the original instrument by means of a copy thereof certified by the proper official or authority, such as the Secretary of State; or (3) the production of the original instrument along with a sworn copy thereof, the latter to be retained by the registrar & filed.—*Re LAND*

TITLES ACT, Re MACDONALD (A.) CO., LTD. & WESTERN GROCERS, LTD., [1922] 3 W. W. R. 662.—CAN.

PART III. SECT. 3, SUB-SECT. 5.

g. Duty to mention name in documents—Effect of non-compliance.—*Pltfs.*, a registered limited co., bought the business of the W. S. C. & S. Co. a partnership & registered themselves under Registration of Forms Act as a firm carrying on business in the name. Goods were supplied to deft. under a contract in the name of the W. S. C. & S. Co. in which the name of *pltf. co.* did not appear. In an action to recover the price of the goods:—*Held*: assuming the contract to be a document, within Companies Act, 1899, s. 67, it was not void or illegal.—*MORELAND METAL CO. v. COWLESHEAD* (1919), 19 S. R. N. S. W. 231.—AUS.

Sect. 3.—The name: Sub-sect. 5. Sect. 4: Sub-sect. 1.]

683; 87 L. T. 442; 50 W. R. 697; 18 T. L. R. 611; 10 Mans. 109.

See, now, 1908 Act, s. 63.

—.]—*See, generally, TRADE MARKS, TRADE NAMES AND DESIGNS.*

Construction of memorandum—Whether name considered.]—*See No. 326, post.*

SECT. 4.—REGISTRATION.

NOTE.—*Under 1844 Act, ss. 2, 7, a partnership, consisting at its formation or by subsequent admission except any admission subsequent on devolution or other act in law, of more than twenty-five members & established in England, or established in Scotland & having an office or place of business in England, for any commercial purpose or for any purpose of profit was required to be registered. See, now, 1908 Act, s. 1.*

SUB-SECT. 1.—COMPANIES REQUIRING REGISTRATION.

252. Existing companies—Company existing at passing of 1844 Act.]—The registration of existing cos. has never been compulsory, except for the short period during which 19 & 20 Vict. c. 47, s. 4, was in force.

A trade partnership of more than twenty-five persons, formed before the passing of the above Act, & formally registered under sect. 58 of that Act, but not otherwise registered, is not illegal, & a suit in equity may be instituted by some of the partners on behalf of themselves & all the others.—*WOMERSLEY v. MERRITT* (1867), L. R. 4 Eq. 695; 37 L. J. Ch. 19; 17 L. T. 43; 15 W. R. 1165.

253. — Company existing at commencement of 1862 Act.]—*MAY v. JACOBS* (1885), 1 T. L. R. 349, C. A.

254. — New members added after commencement of Act.]—An assocn., consisting of more than twenty persons, instituted in 1861, but having new members from time to time down to the present, is not an assocn. "formed after the commencement of the Act" within the meaning of the 1862 Act, & therefore does not require registration.—*SHAW v. SIMMONS* (1883), 12 Q. B. D. 117; 53 L. J. Q. B. 29; 32 W. R. 292, D. C.

Necessity for registration of existing companies registered under earlier Acts—As condition precedent to alteration of memorandum of association.]—*See Nos. 339, 4335-4339, post.*

— **As condition precedent to winding up under subsequent Acts.]—***See Nos. 6832, 7548, post.*
See, also, No. 3078, post.

255. Association of more than twenty persons—Subscribers to fund vested in trustees—Subscribers more than twenty in number—Trustees less than twenty in number—Trustees not acting as agents or directors.]—Shares in a number of telegraph cos. of the nominal amount of £400,000 were purchased by subscription & vested in trustees. Each subscriber received for every £90 subscribed a certificate for the nominal amount of £100, & a deferred coupon for one 4,200th part of the funds, the number of certificates being 4,200. The trusts of

the funds were declared by a deed between the trustees & a covenantee on behalf of the certificate holders. The trustees were to apply the income of the shares in payment of interest at 6 per cent. on the nominal amounts of the certificates, & apply the surplus in redeeming the certificates. It was provided that the trustees might at their discretion sell any of the shares if at a meeting of the trustees it was unanimously resolved to be for the interest of the certificate holders that shares to be specified in the resolution should be sold. The proceeds of every sale were to be applied in the redemption of certificates, unless the trustees, by an unanimous resolution confirmed by a meeting of certificate holders, determined to re-invest in submarine telegraph shares. Meetings of the certificate holders were to be held for the purpose of receiving reports from the trustees on the affairs of the trust, of appointing auditors, & of appointing new trustees in the place of trustees who should die, retire, or become incapable to act. After all the certificates had been redeemed the funds in hand were to be divided among the holders of the deferred coupons. The holders of the certificates were more than twenty in number:—*Held*: (1) the certificate holders did not form an assocn. within the meaning of 1862 Act, s. 4; (2) the object of the deed of settlement was not to authorise the carrying on of a business within the meaning of the above Act, but to provide for the management of a trust fund, & that even if the powers of selling the shares & reinvesting the proceeds could be considered to authorise the carrying on of a business, these provisions being merely subsidiary, & not forming any substantial part of the object, would not bring the case within the Act; (3) supposing the deed to authorise the carrying on of a business, such business was carried on only by the trustees, who carried it on as trustees, & not as agents or directors, & as they were fewer than twenty, the case was not within the Act.

(4) An ordinary partnership is a partnership composed of definite individuals bound together by contract between themselves to continue combined for some joint object, either during pleasure or during a limited time, & is essentially composed of the persons originally entering into the contract with one another. A co. or assocn., which I take to be synonymous terms, is the result of an arrangement by which parties intend to form a partnership which is constantly changing, a partnership to-day consisting of certain members & to-morrow consisting of some only of those members along with others who have come in, so that there will be a constant shifting of the partnership, a determination of the old & a creation of a new partnership, & with the intention that, so far as the partners can by agreement between themselves bring about such a result, the new partnership shall succeed to the assets & liabilities of the old partnership. This object as regards liabilities could not in point of law be attained by any arrangement between the persons themselves, unless the persons contracting with them authorised the change by a novation, or unless by special provisions in Acts of Parliament sanction was given to such arrangements (*JAMES, L.J.*).—*SMITH v. ANDERSON* (1880), 15 Ch. D. 247; 50 L. J. Ch. 39; 43 L. T. 329; 29 W. R. 21, C. A. *

Annotations:—As to (1) Refd. Re Jones, Clegg v. Ellison,

PART III. SECT. 4, SUB-SECT. 1.

h. Association of more than twenty persons.]—An assocn. consisting of more than twenty members must

panies Act (X of 1866).—*MADRAS HINDU MUTUAL BENEFIT PERMANENT FUND v. RAGAVA CHETTI* (1895), I. L. R. 19 Mad. 200.—*IND.*

k. —.]—*PANCHENA MANCHU NAYAR v. KUMARANCHATH*

PADMANABHAN NAYAR (1896), I. L. R. 20 Mad. 68.—*IND.*

l. — What is association.]—To constitute an "association" within the meaning of Companies Act, s. 4, the existence of a legal relation between

[1898] 2 Ch. 83. *As to* (2) **Folld.** *Wigfield v. Potter* (1881), 45 L. T. 612. *As to* (3) **Folld.** *Crowther v. Thorley* (1884), 50 L. T. 43. **Consd.** *Re Siddall* (1885), 29 Ch. D. 1. **Generally, Re** *Re Padstow Total Loss & Collision Assoe. Assoon.* (1882), 20 Ch. D. 137. **Mentd.** *Re Faure Electric Accumulator Co.* (1888), 40 Ch. D. 141; *Re Governments Stock Investment Co.*, [1891] 1 Ch. 649; *Re Macfadyen, Ex p. Vizianagaram Mining Co.*, [1908] 2 K. B. 817; *Kirkwood v. Gadd*, [1910] A. C. 422; *Kensington & Knightsbridge Electric Lighting Co. v. Notting Hill Electric Lighting Co.* (1918), 87 L. J. K. B. 565.

256. —————.]—A land society, consisting of more than twenty persons, was constituted by a deed of trust, made between the trustees & the members, incorporating the rules of the society. By the rules of the society its object was stated to be to purchase a freehold estate, & to divide it into lots, & to apportion them among the members ; but the right to get, win, sell, lease, or dispose of the coal or minerals was not to be conveyed, but to “ remain vested in the trustees, who shall have full power to sell, lease, get, or win the coals, at such price or prices, & in such manner as they may think best, the profits or proceeds of which shall be divided amongst the shareholders in the proportion,” etc. The trustees of the society were three in number.

In an action by the trustees of the society against a member to recover arrears of contributions & fines payable by him in respect of his lots:—*Held*: the society carried on no business other than the business of mining; & the business of mining was carried on by the trustees of the society as trustees only & not as agents or directors, & as they were fewer than twenty the society was not within the terms of 1862 Act, s. 4, so as to require registration.—*CROWTHER v. THORLEY* (1884), 50 L. T. 43; 48 J. P. 292; 32 W. R. 330, C. A.

Annotations :—*Distd. Re Thomas, Ex p. Poppleton* (1884), 14 Q. B. D. 379. *Folld. Re Siddall* (1885), 29 Ch. D. 1. *Refd. Re Jones, Clegg v. Ellison*, [1898] 2 Ch. 83; *Re Russell Institution, Figgins v. Baghino*, [1898] 2 Ch. 72.

257. ————.]—Where an assocn. is formed of more than twenty persons who are to contribute sums of money to be applied in relieving cases of sickness, etc., amongst them, the balance being distributable among the members at the end of each year, the persons inviting & receiving the subscriptions & managing the affairs of the assocn. are trustees of the amounts received by them to the extent that they are liable to account. Such an assocn. is not an illegal assocn. within 1908 Act, s. 1.

There was no assocn. here for the purpose of carrying on a business. If there was any business it was carried on by trustees for the members (PARKER, J.).—*Re ONE & ALL SICKNESS & ACCIDENT ASSURANCE ASSOCN.* (1909), 25 T. L. R. 674.

258. — Association projected by less than twenty—Subsequently increased to more than twenty—Business carried on by committee of less than twenty as agents.]—An assocn. projected by less than twenty persons, but subsequently increasing in number, as soon as it consists of more than twenty persons comes within the prohibition in sect. 4 of 1862 Act; & this is so, notwithstanding that the business of the assocn. is carried on by a committee of less than twenty persons, as agents of the assocn.—*Re THOMAS, Ex p. POPPLETON* (1884), 14 Q. B. D. 379; 54 L. J. Q. B. 336; 51 L. T. 602; 33 W. R. 583, D. C.

—.]—*See, also, Nos. 252, 254, ante.*

259. Carrying on business—Deed of settlement providing for management of trust fund.]—SMITH v. ANDERSON, No. 255, *ante*.

260. — Other than mining—Land society—
Right to work minerals remaining vested in
trustees.]—CROWTHER v. THORLEY, No. 256, *ante*.

See, also, Nos. 257, 258, ante.

261. Company formed for "any purpose of profit"—Land company.]—A co. was formed under a deed of settlement, stating that the co. was formed for the purpose of purchasing land & erecting thereon dwellings to be allotted to members of the co., & also of raising a fund out of which sums of money should be paid to or applied for the benefit of members being allottees of land. The deed provided that the directors should from time to time, & as the funds should admit of, purchase land for the purposes of the co. to be divided among shareholders who should have paid the full amount of their shares; the shareholders by whom the allotments of land should be taken, & the allotments which they should take, being determined by lot in a manner therein provided. Each allotment was to be conveyed to the shareholder entitled to it, charged with a rentcharge at the rate of £5 per cent. on the sum expended in the purchase & improvement of the land allotted, such rentcharges to be in their turn expended in the purchase of other land, to be allotted in a similar manner. There were powers for the directors, instead of allotting, to sell for the benefit of the co. any land which they might have purchased, & either to retain for the benefit of the co. or to sell or mortgage the rentcharges secured on the allotments as they might see fit. Whenever the funds of the co. should exceed the amount necessary to provide allotments for all the shareholders a dividend was to be declared out of the clear profits:—*Held*: this was not a co. established "for a commercial purpose or for any purpose of profit," within 1844 Act, s. 2, & it was not entitled to be registered under that Act.—*R. v. WHITMARSH* (1850), 15 Q. B. 600; 16 L. T. O. S. 108; 117 E. R. 586; *sub nom. R. v. WHITMARSH, Re NATIONAL LAND CO.*, 19 L. J. Q. B. 469; *sub nom. R. v. JOINT STOCK COMPANIES REGISTRAR, Re NATIONAL LAND CO.*, 15 Jur. 7.

Annotations:—*Consd.* *Bear v. Bromley* (1852), 18 Q. B. 271. *Apld.* *Moore v. Rawlins* (1859), 6 C. B. N. S. 289. *Consd.* *Smith v. Anderson* (1880), 15 Ch. D. 247. *Reid.* *Re Padstow Total Loss & Collision Assoce. Assocn.* (1882), 20 Ch. D. 137; *Re Jones, Clegg v. Ellison*, [1898] 2 Ch. 83; *Re Russell Institution, Figgins v. Baghino*, [1898] 2 Ch. 72. *Mentd.* *Hambro v. Hull & London Fire Insee.* (1858), 28 L. J. Ex. 62.

262. — — —.]—A co. was constituted in 1851, & regulated by a deed of settlement which, amongst other things, provided, by clause 2, that the object & purpose of the co. should be to enable each member to become the possessor of a freehold, copyhold, or leasehold house, to be held, first as tenant to the co., & afterwards as absolute owner thereof; & by clause 5, that the business of the co. should be to take on lease or to purchase, either for years or in fee, land or ground of freehold, copyhold, or leasehold tenure, & to erect houses thereon, & to finish & complete any houses that may have been begun, & to take down & rebuild or repair any existing houses, etc.; & to make & sell bricks, & to purchase & sell all kinds of building materials, & to contract for & to perform all kinds of work in the building business in relation thereto. The co. was not enrolled as a benefit building

more than twenty persons giving rise to joint rights or obligations or mutual rights & duties is absolutely necessary. Where more than twenty persons enter into an agreement by which a fund is

created & it is clear from the agreement that the only proprietors of the fund are the two organisers & the other persons have entered into no contract with each other, the parties to such

agreement do not form an as ocn.
of which registration is necessary under
above sect.—NEELAMEGA SASTRI v.
APPIAH SASTRI (1906), I. L. R. 29
Mad. 477.—IND.

Sect. 4.—Registration: Sub-sect. 1.]

society, nor registered under 1844 Act:—*Held*: it was not clear from the language of clause 5 that the co. were to carry on the business of a builder & of making & selling bricks, at a profit, & therefore that it did not appear that the co. was established for any commercial purpose or purposes of profit, within the above Act, so as to require registration to entitle them to sue a member for arrears of subscription to the co.—*MOORE v. RAWLINS* (1859), 6 C. B. N. S. 289; 28 L. J. C. P. 247; 33 L. T. O. S. 205; 23 J. P. 566; 5 Jur. N. S. 941; 141 E. R. 467.

Annotations:—*Distd.* *Crowther v. Thorley* (1883), 48 L. T. 644. *Reid.* *Re East Kongsberg Co., Bigg's Case* (1865), L. R. 1 Eq. 309; *Re Asiatic Banking Corp., Ex p. Collum* (1869), 39 L. J. Ch. 59; *Re Jones, Clegg v. Ellison*, [1898] 2 Ch. 83; *Re Russell Institution, Figgins v. Baghino*, [1898] 2 Ch. 72.

See, also, Nos. 268, 269, *post*.

263. — Loan society.]—A society, consisting of more than 25 members, raised money by subscription amongst its shareholders, & out of the money so raised made loans to its members at interest. Upon such loans, premiums also were payable by monthly instalments, & fines were incurred for default in payments. All the money arising from interest, premiums & fines went into the general fund of the society:—*Held*: the society was not a co. "established for any purpose of profit" within the meaning of 1844 Act, s. 2, & therefore it did not require to be registered under that Act.—*BEAR v. BROMLEY* (1852), 18 Q. B. 271; 7 Ry. & Can. Cas. 507; 21 L. J. Q. B. 354; 19 L. T. O. S. 60; 16 J. P. 710; 16 Jur. 450; 118 E. R. 101.

Annotations:—*Reid.* *Re Padstow Total Loss & Collision Assce. Asscn.* (1882), 20 Ch. D. 137; *Shaw v. Benson* (1883), 11 Q. B. D. 563; *Re Jones, Clegg v. Ellison*, [1898] 2 Ch. 83.

See, also, Nos. 270, 271, *post*.

264. Association for acquisition of gain—Farming partnership.]—A. & 45 other persons hired land, upon which there was a stone building, the lower part of which was used for feeding bullocks, & the upper story for storing the produce of the land. The rent of the land was £473 10s. *per annum*, & the tenants paid tithes & other taxes. The value of the building was £6 *per annum*. The business of the farm was conducted by a manager on behalf of himself & all the other partners. The partnership was not registered under 1862 Act:—*Held*: this was an illegal asscn. under 1862 Act, s. 4.—*HARRIS v. AMERY* (1865), L. R. 1 C. P. 148; *Hop. & Ph.* 294; *Har. & Ruth.* 357; 35 L. J. C. P. 89; 13 L. T. 504; 30 J. P. 56; 12 Jur. N. S. 165; 14 W. R. 199.

Annotations:—*Reid.* *Womersley v. Merritt* (1867), L. R. 4 Eq. 695; *Smith v. Anderson* (1880), 15 Ch. D. 247. *Mentd.* *Thorpe v. Priestnall* (1896), 60 J. P. 821; *Scott v. Solomon*, [1905] 1 K. B. 577; *Wheatley v. Smithers*, [1906] 2 K. B. 321; *Kensington & Knightsbridge Electric Lighting Co.*

265 i. Association for acquisition of gain—Mutual Assurance Society.]—A fund was formed by a number of persons over 20 in number, the object being, according to the prospectus & rules to provide for the widows, children, & other relatives of the subscribers. The management was vested in a board of directors elected by the subscribers from amongst their own number. Subscriptions at fixed rates according to tables were paid by the subscribers to secure the provision of pensions for their widows, children, & relatives. The moneys so subscribed were invested in Govt. 4 per cent. securities, & in the course of management a large reserve fund was accumulated & so invested, the

interest annually payable in respect of which amounted in the year 1888 to upwards of R.46,000, but there was nothing to show that such reserve was larger than sound principles of management required. The rules provided for abatements of subscriptions according to a graduated scale, which might be granted or withheld from year to year by the directors according to their opinion as to the condition of the fund. A subscriber to the fund was under no obligation to continue his subscription, but might stop it at pleasure, subject in certain contingencies to forfeiture of the benefit of past payments. Fines were also provided for unpunctuality in payments of subscriptions:—*Held*: no business

v. Notting Hill Electric Lighting Co. (1918), 87 L. J. K. B. 565; *Dennis v. Hutchinson*, *Trafford v. Hutchinson*, [1922] 1 K. B. 693.

265. — Mutual marine insurance association.]

—A mutual asscn. by members for insurance of their own ships comes within 1862 Act, s. 4, & ought to be registered.

Semble: a co. which ought to be, but is not, registered under 1862 Act, is not an "unregistered co.," that can be wound up under s. 199 of that Act.—*Re ARTHUR AVERAGE ASSOCN. FOR BRITISH, FOREIGN & COLONIAL SHIPS, Ex p. HARGROVE & Co.* (1875), 10 Ch. App. 542; *sub nom. Re ARTHUR AVERAGE ASSOCN., Ex p. CORY & HAWKSLEY*, 44 L. J. Ch. 569; 32 L. T. 713; 23 W. R. 939; 2 Asp. M. L. C. N. S. 570, L. JJ.

Annotations:—*Consd.* *Re South Wales Atlantic S.S. Co.* (1876), 2 Ch. D. 763. *Appl.* *Re Padstow Total Loss & Collision Assce. Asscn.* (1882), 45 L. T. 774. *Reid.* *Sykes v. Beadon* (1879), 11 Ch. D. 170; *Marine Mutual Insce. Asscn. v. Young* (1880), 43 L. T. 441; *Smith v. Anderson* (1880), 15 Ch. D. 247; *Wigfield v. Potter* (1881), 45 L. T. 612; *Re National Debenture & Assets Corp.* (1891), 60 L. J. Ch. 533. *Mentd.* *Re Haycock's Policy* (1876), 1 Ch. D. 611.

266. — —.]—A mutual marine insurance asscn. was formed in 1867 of more than twenty members, such members, by the rules, to be owners or part owners of ships, for the purpose of providing an indemnity to its members against the loss, either total or partial, of their ships, & against damages for liabilities incurred in respect of their ships, & also a mutual guarantee for each other's solvency, & managed by a committee under rules & regulations:—*Held*: (1) it was an asscn. formed for the purpose of carrying on a business for the acquisition of gain, although not by the asscn. itself, by the individual members thereof, within the meaning of 1862 Act, s. 4; & not being registered, was by that sect. prohibited; (2) the diminution of a loss is a "gain" within the meaning of that sect.—*Re PADSTOW TOTAL LOSS & COLLISION ASSURANCE ASSOCN.* (1882), 20 Ch. D. 137; 45 L. T. 774; 30 W. R. 326, C. A.; *sub nom. Re PADSTOW TOTAL LOSS & COLLISION ASSURANCE ASSOCN., Ex p. BRYANT*, 51 L. J. Ch. 344, C. A.

Annotations:—*As to* (1) *Folld.* *Jennings v. Hammond* (1882), 9 Q. B. D. 225. *Appl.* *Shaw v. Benson* (1883), 11 Q. B. D. 563. *Reid.* *Re Ilfracombe Permanent Mutual Benefit Bldg. Soc.*, [1901] 1 Ch. 102; *Marris v. Thompson* (1902), 86 L. T. 759. *Generally Mentd.* *Re Bowling & Welby's Contract*, [1895] 1 Ch. 663.

See, also, No. 253, *ante*.

267. — Association for investment of members' subscriptions.]—A govt. securities trust, or combination of more than twenty persons, formed on the principle of investing the subscriptions of the members & dividing the capital fund & profits among themselves by means of certificates convertible by annual drawings by lot into preference dividend bonds bearing interest, with a bonus, is an "asscn. for the acquisition of gain," within the meaning of 1862 Act, s. 4, & is,

was carried on, having for its object the acquisition of gain by the asscn. or the individual members thereof. Where the substantial purpose of an asscn. is not to carry on a business for gain, the fact that gain may accrue incidentally or may arise from merely subsidiary provisions does not make registration necessary.—*KRAAL v. WHYMPER* (1890), 1 L. R. 17 Calo. 786.—IND.

265 ii. — Mutual Insurance Club.]—A mutual Insurance Club is an association for the acquisition of gain so as to require registration under Companies Act, 1899, sect. 4, if it consists of more than ten members.—*ROBERTS v. SNOW* (1906), 9 Nfld. L. R. 216.—NFLD.

therefore, unless registered under that sect., an illegal assocn.

A member of such an assocn., which had never been registered under the above Act, but which was regulated by a trust deed, brought an action against the trustees named in the deed to have the trust administered by the ct., & to make the trustees liable for alleged breaches of trust whereby part of the trust funds had been lost. A demurrer by one of the defts., a retired trustee, was allowed, on the ground that the assocn. was illegal, & that the trust deed therefore constituted an illegal contract which the ct. would not enforce.—*SYKES v. BEADON* (1879), 11 Ch. D. 170; 48 L. J. Ch. 522; 40 L. T. 243; 27 W. R. 464.

Annotations:—*Dttd. Smith v. Anderson* (1880), 15 Ch. D. 247. *Consd. Wigfield v. Potter* (1881), 45 L. T. 612. *Refd. Jeffrey v. Bamford*, [1921] 2 K. B. 351. *Mttd. Howard v. Refuge Friendly Soc.* (1886), 54 L. T. 644; *Macnee v. Persian Investment Corpn.* (1890), 38 W. R. 596.

See, also, No. 255, *ante*.

268. — Land society.—An assocn. consisting of more than twenty persons, was constituted by a deed & not registered under 1862 Act, s. 4. The object of the society was to purchase an estate, subdivide it into allotments & roads, & divide the allotments among the members according to certain rules, & was managed by a committee, consisting of two trustees, a president, & five other members, who were paid for their services such sum as the members in annual meeting should determine, & the total number of members was 21.

The allotments were offered by auction to the members who had executed the constitution deed, each allotment being offered at the proportion of the first cost of the estate, & allotted to the member bidding the highest premium above such proportion of first cost:—*Held*: the society was not an assocn. for the purpose of carrying on a business that had for its object the acquisition of gain within the meaning of the above Act, & did not require to be registered.—*WIGFIELD v. POTTER* (1881), 45 L. T. 612; 46 J. P. 485, D. C.

Annotations:—*Distd. Crowther v. Thorley* (1883), 48 L. T. 644. *Apprvd. Re Siddall* (1885), 29 Ch. D. 1.

269. — — — — ——In 1873 an assocn. of more than twenty persons was formed for the object, as stated in its deed of settlement, of purchasing a freehold estate & reselling it in allotments to the members of the assocn. The deed was executed by all the members, the name of each, the number of his allotment, the total amount he was to pay, & the amount of his monthly payment to be made in respect of it, being specified on a sched. to the deed. The property was vested in trustees, & its management was vested in a president, vice-president, treasurer, secretary & a committee. The deed contained provisions for the conveyance to the members of their allotments when they had paid up the whole amount payable in respect of them & for forfeiture & sale of the allotments of defaulting members. Powers were given to the committee to make roads, drains, etc., on the land & powers were given to the trustees of borrowing money on mtge. with the consent of a general meeting. When all mtges. had been paid off & all the allotments had been conveyed, the society was to come to an end. The society was not registered under 1862 Act:—*Held*: the society

was not an assocn. formed for the purpose of carrying on any business that had for its object the acquisition of gain & was not made illegal by 1862 Act, s. 4.—*Re SIDDALL* (1885), 29 Ch. D. 1; 54 L. J. Ch. 682; 52 L. T. 114; 33 W. R. 509; 1 T. L. R. 209, C. A.

Annotations:—*Refd. Re Jones, Clegg v. Ellison*, [1898] 2 Ch. 83; *Re Russell Institution, Figgins v. Baghino*, [1898] 2 Ch. 72.

See, also, Nos. 256, 261, 262, *ante*.

270. — Loan society.—Persons to a number exceeding twenty had formed themselves into a society, the object of which was to raise by monthly subscriptions & payments payable by the members in respect of their shares, a fund for the purpose of making advances to members. From the rules of the society it appeared that there were 400 shares in the society of £10 each, & that no member could hold more than twenty shares. From time to time as soon as the fund in hand amounted to a certain sum it was put up for sale by auction amongst the members, the highest bidder receiving the amount on loan from the society at interest. No member could receive on loan more than the nominal amount of the share or shares held by him, but ultimately every member, who did not withdraw his share under the rule providing for such withdrawal, was to have advanced or allotted to him out of the funds accruing to the society, the sum of £10 for every share held by him. This society was not registered under 1862 Act:—

Held: the society was illegal by reason of 1862 Act, s. 4, which prohibits the formation of any co., assocn., or partnership consisting of more than twenty persons for the purpose of carrying on any business, other than banking, that has for its object the acquisition of gain by the co., assocn., or partnership, or by the individual members thereof, unless registered as a co. under the Act.—*JENNINGS v. HAMMOND* (1882), 9 Q. B. D. 225; 51 L. J. Q. B. 493; 31 W. R. 40, D. C.

Annotations:—*Apprvd. Shaw v. Benson* (1883), 11 Q. B. D. 563. *Consd. Marrs v. Thompson* (1902), 86 L. T. 759. *Refd. Phillips v. Davies* (1888), 5 T. L. R. 98.

271. — — — — ——A society of more than twenty members, the object of whose business is, from a fund created by the contributions of its members, to lend money, not generally, but only to members of the assocn., upon approved security, carries on the business of money-lending which has for its object the acquisition of gain by the individual members thereof, within the meaning of 1862 Act, s. 4, & such an assocn., unless registered as a co. under that Act, is illegal.—*SHAW v. BENSON* (1883), 11 Q. B. D. 563; 52 L. J. Q. B. 575; 49 L. T. 651, C. A.

Annotations:—*Consd. Marrs v. Thompson* (1902), 86 L. T. 759. *Refd. Phillips v. Davies* (1888), 5 T. L. R. 98.

See, also, No. 263, *ante*.

272. — — — — — Society specially authorised by Treasury—Under Friendly Societies Act, 1875 (c. 60), s. 8 (5).—A society which has been registered under the above Act pursuant to the special authority of the Treasury, is excepted from the provisions of 1862 Act, s. 4.—*PEAT v. FOWLER* (1886), 55 L. J. Q. B. 271; 34 W. R. 366; 2 T. L. R. 369, D. C.

273. Formed in pursuance of some other Act of Parliament—Building society—Not incorporated

270 i. — Loan Society.—Persons more than twenty in number paid each a certain sum monthly to a stakeholder. The sum total of the subscriptions was then paid over as a loan free of interest to one of the subscribers chosen by casting lots, & he was thereupon required to execute a bond with a surety obliging him to continue his monthly subscriptions to the end of

the period for which the arrangement was agreed to hold good—that period being as many months as there were subscribers. The bonds in question were executed in favour of the stakeholder & the subscribers. The business was not registered. A suit was brought on one of such bonds to recover the amount payable for subscription on account of the period

subsequent to its execution:—*Held*: (1) the obligees carried on business which had for its object the acquisition of gain within Companies Act, 1882, s. 4, & accordingly constituted an illegal assocn.; (2) the suit was not maintainable.—*RAMASAMI BHAGAVATHAR v. NAGENDRAYAN* (1895), 1 L. R. 19 Mad. 31.—IND.

Sect. 4.—Registration: Sub-sects. 1, 2 & 3.]

under Building Societies Act, 1874 (c. 42).]—A building society was established in 1868 under Building Societies Act, 1836 (c. 32), but had never been incorporated under any subsequent Act. In 1900 the society was found to be insolvent, & a petition was presented by two creditors to wind it up. *Semble*: although in a literal sense the society was, in the words of sect. 4 of 1862 Act, “formed in pursuance of some other Act of Parliament,” the word “formed” in that sect. means formed & having its existence recognised under the provisions “of some other Act,” & therefore the society, not having been incorporated under Building Societies Act, 1874 (c. 42), was an illegal society, & consequently the ct. had no jurisdiction to make a winding-up order.—*Re ILFRACOMBE PERMANENT MUTUAL BENEFIT BUILDING SOCIETY*, [1901] 1 Ch. 102; 70 L. J. Ch. 66; 84 L. T. 146; 17 T. L. R. 44; 45 Sol. Jo. 103.

See, generally, BUILDING SOCIETIES, Vol. VII., pp. 453 *et seq.*

274. — Friendly society — Not registered under Friendly Societies Act, 1896 (c. 25).]—The trustees of an unregistered assocn. of more than twenty persons formed for mutual insurance against death & accident sued the late treasurer for moneys of the society which he had converted to his own use:—*Held*: the society was not rendered illegal by 1862 Act for want of registration, & plffs. were not precluded from maintaining the action by reason of non-registration under that Act or the above Act.

I prefer to base my judgment on the fact that the society comes within the exception of a co. formed under another Act of Parliament. This is a friendly society for all intents & purposes, & it was intended to be a friendly society. I think that the Friendly Societies Acts do contemplate the existence of friendly societies which are not, in fact, registered (*CHANNELL, J.*).—*MARRS v. THOMPSON* (1902), 86 L. T. 759; 18 T. L. R. 565, D. C.

See, generally, FRIENDLY SOCIETIES.

Banking companies.]—See Part IV., post.

Unregistered companies—Winding up.]—See Part VII., Sect. 2, post.

Effect of non-registration—On criminal liability of members & servants.]—See Part XIV., Sect. 2, sub-sect. 1, post.

SUB-SECT. 2.—COMPANIES CAPABLE OF REGISTRATION.

See, now, 1908 Act, s. 149.

275. Liability of members changed by registration.]—Bill by shareholders in an assocn., which, by its prospectus & statutes, professed to be a *Société en Commandite*, having its seat in Paris, but which was in fact carried on exclusively in England,—the naming Paris as its seat being merely colourable, & with a view to make the assocn. an English partnership with limited liability, similar to the partnership *en commandite* usual in France,—against the *Conseil de Surveillance* & the *Gérant*, for an account & payment, & to have the partnership property secured. The statutes contained the provisions usual with *sociétés en commandite* for the absolute limitation of liability of all members who should not com-

promise their character of simple *commanditaires*, & for making the shares payable to bearer. The number of shareholders considerably exceeded 25. It did not appear that the co. was registered under the 1844 Act. A demurrer was overruled, it appearing by the bill that defts. had obtained plffs.’ money upon the faith of the representations contained in the prospectus & statutes, & intended to misapply it.

Semble: such a co. could not be registered under 1844 Act, because registration would subject parties who had taken shares in it on the faith of the prospectus, & believing it was to be a *société en commandite*, to a totally different class of liabilities.—*BUTT v. MONTEAUX* (1854), 1 K. & J. 98; 3 Eq. Rep. 190; 24 L. J. Ch. 99; 24 L. T. O. S. 106; 3 W. R. 82; 69 E. R. 385.

276. Banking company constituted under statute—Registration after suspension of payment.]—A joint stock banking co., constituted under Country Bankers Act, 1826 (c. 46), became insolvent, & in Nov., 1857, stopped payment, but no resolution was passed for dissolving it. In the following month it was registered under Joint Stock Banking Cos. Act, 1857, in pursuance of a resolution come to after the stoppage:—*Held*: the registration was valid, for that in order to bring a co. within sect. 6 of the Act, it is not necessary that it should continue to carry on business up to the time of its registration.—*Re NORTHUMBERLAND & DURHAM DISTRICT BANKING CO.* (1858), 2 De G. & J. 357; 27 L. J. Ch. 356; 31 L. T. O. S. 107; 4 Jur. N. S. 419; 6 W. R. 527; 44 E. R. 1028.

Annotations:—Consd. Re National Debenture & Assets Corpn., [1891] 2 Ch. 505. *Reid. Re Nassau Phosphate Co.* (1876), 2 Ch. D. 610. *Mentd. Hill v. Hill* (1886), 55 L. T. 769; *Wenlock v. River Dee Co.* (1887), 36 Ch. D. 674; *Young v. South African & Australian Exploration & Development Syndicate*, [1896] 2 Ch. 268.

277. Company proposing to do business in England—& to be managed in England—Though all subscribers & directors resident abroad.]—(1) Where the requisite number of persons & the requisite forms of appln. are presented to the registrar of joint stock cos. under the provisions of 1862 Act, though the persons applying for registration of a co. may be foreigners, & though there may be many circumstances tending to show that the co. sought to be registered is, in several respects, a foreign co., he is not bound to refuse it registration.

(2) If there are in it shares in conformity with the statute, though there may be others of a different kind, & though the principal business seems likely to be transacted abroad, he may still grant it registration.

(3) A co. having many of its shares transferable by delivery, but having also many “nominative shares,” i.e. shares which are the same as the ordinary joint stock shares in cos. in this country, applied for registration. The seven shareholders who made the application were all resident abroad, & the first directors nominated were foreigners, & only one of them appeared to have even a temporary residence in England. The arts. of assocn. referred in several places to the English law, & especially to 1862 Act. There was an office of the co. in Westminster, but it was doubtful whether any general meeting was intended to be held in London, or other place in England. The registrar granted it registration:—*Held*: he was lawfully entitled to do so, he was

PART III. SECT. 4, SUB-SECT. 2.

m. Insurance company—Capital under statutory amount.]—Application was made for the registration of a co.

the object of which was the carrying on of insurance business of all kinds. The Registrar refused to register the co., as its capital was under £50,000:—*Held*: the co. was entitled to be

registered, but could not carry on an insurance business until its capital amounted to £50,000.—*SCALES v. COMPANIES REGISTRAR*, [1920] N. Z. L. R. 821.—N.Z.

not bound to refuse the registration, & the registration having been thus actually made, the usual legal consequences of registration arose.

(4) A co. by its arts. of assocn. authorised the issue of two classes of shares, first "nominative" or ordinary shares, & secondly shares on which 50 per cent. having been paid, the holder should be entitled to a scrip certificate enabling him to pass the shares by mere delivery of such certificate:—*Held*: this was an irregular provision which would have entitled the registrar to refuse a certificate of incorporation, but which does not vitiate an actual incorporation.

(5) The memorandum of assocn. of a co. intended to be registered under the 1862 Act, may be signed exclusively by foreigners resident abroad, but they thereby contract to make themselves liable to the laws of England, & the Cos.' Acts in particular. & a petition to wind up such a company may be presented by a foreigner resident abroad.—*REUSS (PRINCESS) v. BOS* (1871), L. R. 5 H. L. 176; 40 L. J. Ch. 655; 24 L. T. 641, H. L.; *affg.* S. C. *sub nom.* *Re GENERAL CO. FOR PROMOTION OF LAND CREDIT* (1870), 5 Ch. App. 363, L. J.

Annotations:—*As to* (1) *Consd.* *Re Capital Fire Insee. Assocn.* (1882), 21 Ch. D. 209. *Reid.* *Re Tumacacori Mining Co.* (1874), L. R. 17 Eq. 534; *Re Nassau Phosphate Co.* (1876), 2 Ch. D. 610. *Generally, Mentd.* *Matthaei v. Galitzin* (1874), 22 W. R. 700.

278. Irregular provision in articles—Share transferable by mere delivery of scrip certificate.]—*REUSS (PRINCESS) v. BOS*, No. 277, *ante*.

279. Company "duly constituted by law"—Company formed to be wound up only—Not for carrying on business.]—A co. formed by agreement of the members not to carry on any business but for the purpose only of being registered in order to be wound up, is not a co. "duly constituted by law" within 1862 Act, s. 180, & cannot be registered under that section.—*R. v. JOINT STOCK COMPANIES REGISTRAR, Ex p. JOHNSTON*, [1891] 2 Q. B. 598; 61 L. J. Q. B. 3; 65 L. T. 392; 39 W. R. 708; 7 T. L. R. 720, C. A.

Annotation:—*Reid.* *Hammond v. Prentice*, [1920] 1 Ch. 201.

280. — Private partnership.]—In 1887 C. & seven other persons formed a private partnership, & immediately afterwards C. conveyed to the eight partners certain real estate to hold unto & to the use of the grantees as part of the joint stock assets of the partnership. Shortly afterwards the business was converted into a limited liability co., & the registrar of joint stock cos. gave a certificate of incorporation as of the date of the formation of the partnership. There was no deed of conveyance of the property to the incorporated co., but in 1891, the co. conveyed it by deed to a new co., which in 1902 agreed to sell it to a purchaser. Upon the purchaser's contention that the legal estate was outstanding in the eight grantees:—*Held*: the partnership was not a "co. duly constituted by law" within the meaning of 1862 Act, s. 180, so as by sect. 193 of that Act to vest the legal estate in the incorporated co.; & the legal estate was therefore left in the grantees or the survivor of them in trust for the co.; but, the legal estate in the grantees was, in view of the undisturbed possession of the new co. since 1891, barred & extinguished by operation of the Real Property Limitation Acts, 1833 & 1874, & the vendors had therefore shown a good title.—*Re CUSSONS, LTD.* (1904), 73 L. J. Ch. 296; 11 Mans. 192.

281. Whether a trade union—Regulation of

trade not a main object of company.]—Sect. 1 of 1900 Act does not make the certificate of the registrar of companies conclusive that the co. in respect of which he has granted a certificate is validly registered & is not in reality a trade union. The section only deals with ministerial acts.

The mere fact that in its memorandum & arts. of assocn. a co. has power to enter into an arrangement for the regulation of the output of, & the price to be obtained for, goods—this not being one of the main objects of the co.—does not constitute the co. a trade union, & as such incapable of registration under the above Act.—*BRITISH ASSOCN. OF GLASS-BOTTLE MANUFACTURERS, LTD. v. NETTLEFOLD* (1911), 27 T. L. R. 527.

Annotation:—*Folld.* *Performing Right Soc. v. London Theatre of Varieties*, [1922] 1 K. B. 539.

282. — Society for acquisition of performing rights—No restriction on exercise of members' trade or business.]—Pltf. society, which was registered under Cos. Acts as a co. limited by guarantee, was formed for the purpose of enforcing on behalf of its members, being the composers, authors, publishers or proprietors of musical, literary or dramatic works, who alone were eligible as members, all rights & remedies in respect of the public performance of their works. By the arts. of assocn. every member who was a publisher undertook during the period of his membership to assign to the society his interest present & future in the performing rights of any works which had been or should thereafter be published by him, & invested the society with the sole right to authorise or forbid the public performance of any such works. In 1916 a firm of music publishers, being members of pltf. society, assigned by deed to the society the performing right of every song the right of performance of which they then possessed or should thereafter acquire, to be held by the society for the period of the assignors' membership. Subsequently a certain song was written, & the copyright in it, together with the right of performance, was assigned by the author to the firm. Defts., music hall proprietors, permitted this song to be publicly sung in their music hall without the consent of pltf. society, who sued defts. for infringement of their performing rights. Pltfs. claimed an injunction & damages, but they ultimately abandoned their claim for damages:—*Held*: pltf. society was not a trade union.

Beyond doubt applt. assocn. is not a trade union. "The imposition of restrictive conditions on the conduct of a trade or business & the provision of benefits to members" are not "the principal objects" of the combination which it has formed, nor is either of them. Neither is, in my opinion, even an incidental consequence of its operations (*LORD SUMNER*).—*PERFORMING RIGHT SOCIETY, LTD. v. LONDON THEATRE OF VARIETIES, LTD.*, [1924] A. C. 1; 93 L. J. K. B. 33; 40 T. L. R. 52; 68 Sol. Jo. 99, H. L.

See, generally, TRADE & TRADE UNIONS.

Evidence of capacity to be registered.]—*See* No 311, *post*.

SUB-SECT. 3.—DISCRETION OF REGISTRAR TO REFUSE.

283. Where company *prima facie* within Act—Objects of company considered by registra

PART III. SECT. 4, SUB-SECT. 3.
n. Refusal to register—Foreign company.]—*Ex p. NEW VANCOUVER COAL MINING & LAND CO.* (1890), 9 B. C. R. 571.—CAN.

o. — Illegal objects.]—An application by persons seeking incorporation as an assocn. of land surveyors, under R. S. Sask. c. 79, for a certificate entitling them to become incorporated,

was refused because the purposes & objects of the proposed assocn., as stated by the applts., went beyond what was intended by the Act, in that it was proposed that the assocn. should

Sect. 4.—Registration: Sub-sects. 3, 4, 5 & 6. Sect. 5.]
contrary to public policy.]—*Ex p. EXECUTORS & TRUSTEE Co.* (1856), 20 J. P. 36.

284. — Foreign company.] —REUSS (PRINCESS) *v. Bos*, No. 277, *ante*.

See, generally, Part XII., post.

285. — Duty to require proof that signatories to memorandum sui juris.]—*Re NASSAU PHOSPHATE Co.*, No. 303, *post*.

286. Compliance with statutory requirements as to memorandum.]—The memorandum of assocn. of the E. Co. contained an objects clause with thirty sub-clauses enabling the co. to carry on almost every conceivable kind of business which the co. could adopt. Sub-clause 1 authorised the co. to acquire, take over, work, & develop any licences, concessions, estates, plantations, & properties, & in particular four specified licenses to collect rubber, balata, & other like substances from the Crown lands of a British Colony; & sub-clause 12 authorised the co. to buy or otherwise acquire in any way & hold, sell, or deal with or in any stocks or shares of any co.; & the objects clause concluded with a declaration that every sub-clause should be construed as a substantive clause & not limited or restricted by reference to any other sub-clause or by the name of the co., & that none of such sub-clauses or the objects specified therein should be deemed subsidiary or auxiliary merely to the objects mentioned in the first sub-clause.

The E. Co. underwrote & had allotted to it shares in the A. Co., & these shares were transferred to the L. Co. All three cos. being in liquidation, the liquidator of the A. Co., settled the L. Co. on the A. list of contributories & the E. Co. on the B. list in respect of these shares. On application by the liquidator of the E. Co., to vary the B. list by striking out that co.'s name, on the ground that the underwriting was *ultra vires* of the co.:—*Held*: the memorandum must be construed according to its literal meaning, & the underwriting was *intra vires*.

The objects of the co. & the powers of the co. to be exercised in effecting the objects are different things. Powers are not required to be, & ought not to be, specified in the memorandum. The 1908 Act intended that the co., if it be a trading co., should by its memorandum define the trade, not that it should specify the various acts which it should be within the power of the co. to do in carrying on the trade. The third schedule of the Act contains model forms of memoranda of assocn. These ought to be followed. Sect. 118, sub-sect. 1, enacts that these forms "or forms as near thereto as circumstances admit" shall be used in all matters to which those forms refer. There has grown up a pernicious practice of registering memoranda of assocn. which, under the clause relating to objects, contain paragraph after paragraph not specifying or delimiting the proposed trade or purpose, but confusing power with purpose & indicating every class of act which the corpn. is to have power to do. Such a memorandum is not, I think, a compliance with the Act.

exercise control over & discipline persons who were not members thereof. —*Re STEWART* (1912), 22 W. L. R. 192. —**CAN.**

p. — —.]—The objects of a co. were to grant loans to bondholders on approved security at certain rates of interest. The application of a bondholder for a loan was, however, not to be considered unless he drew one of the first three horses in a horse race nominated by the Board of

Directors:—*Held*: such arrangement contravened the Lottery Law & the Registrar of Companies had therefore rightly refused to register the co. — *LEVY v. COMPANIES' REGISTRAR*, [1915] T. P. D. 297. — **S. AF.**

PART III. SECT. 4. SUB-SECT. 4.

q. Recitals in deed of association —*Prima facie* evidence of registration.] — Evidence of registration of a co. was defective but the deed of assocn. of the

The Act throws upon the registrar a great responsibility when it provides, as it does, that his certificate of incorporation "shall be conclusive evidence that all the requirements of this Act in respect of registration & of matters precedent & incidental thereto have been complied with." Before registering a memorandum of assocn. the registrar ought to consider whether the requirements of the Act have been complied with & to refuse registration if he conceives that they have not, bearing in mind that if he does not take that course he may put the ct. in the position in which your Lordships find yourselves in the present case — a position in which you must assume that all requirements in respect of matters precedent & incidental to registration have been complied with & confine yourselves to the construction of the document (*LORD WRENBURY*). — *COTMAN v. BROUGHAM*, [1918] A. C. 514; 87 L. J. Ch. 379; 119 L. T. 162; 62 Sol. Jo. 534; *sub nom. Re ANGLO-CUBAN OIL, BITUMEN & ASPHALT Co., LTD.*, *COTMAN v. BROUGHAM*, 34 T. L. R. 410, H. L.; *affg. S. C. sub nom. Re ANGLO-CUBAN OIL, BITUMEN & ASPHALT Co., LTD.*, [1917] 1 Ch. 477, C. A.

Refusal to register—On account of proposed name of company.]—*See Sect. 3, sub-sect. 2, ante.*

SUB-SECT. 4.—PROOF OF REGISTRATION.

287. Admissibility of evidence — In general.]—*R. v FRANKLAND*, No. 295, *post*.

288. By share certificates under seal.]—In an action against a joint stock co. for breach of contract to employ & pay for services, the certificates for shares issued under its seal are sufficient evidence as against the co. that it is registered. — *MOSTYN v. CALCOTT HALL MINING Co.* (1858), 1 F. & F. 334.

Effect of registrar's certificate of incorporation.] —*See Sect. 6, post.*

SUB-SECT. 5.—EFFECT OF REGISTRATION.

289. Company registered as unlimited under 1856 Act—Re-registered under 1862 Act as limited company.]—A co. thus registered & re-registered remains the same throughout, & although the shares are fully paid-up, the Ct. of Bkpcy. can make a call upon the shareholders at the time of the second registration to discharge debts which were due from the co. at that time. — *Re LIVERPOOL TRADESMAN'S LOAN Co., LTD.*, *Ex p. STEVENSON* (1862), 32 L. J. Ch. 96; 7 L. T. 453; 11 W. R. 131, L. JJ.

Annotations:—*Consd. Lanyon v. Smith* (1863), 3 B. & S. 938. *Appld. Garnett & Moseley Gold Mining Co. v. Sutton* (1865), 34 L. J. Q. B. 118.

290. Company registered under 1844 Act — Registered under 1856 Act as limited company.]—Where a joint stock co. registered under 1844 Act, subsequently registers itself as an incorporated co. with limited liability under 1856 Act, & liquidators are appointed to wind it up, who

co. which recited the registration & incorporation of the co. was put in evidence:—*Held*: the recitals in the deed were only *prima facie* evidence of the registration. — *REEVES v. GREENE* (1869), 6 W. W. & A'B. 87. — **AUS.**

PART III. SECT. 4, SUB-SECT. 5.

r. Registration condition precedent to commencement of business.]—Registration is a condition precedent to the commencement of business. —

proceed to make a call for the purpose, the liability of a shareholder in the original co. to that call is not limited to the amount of his shares.—**GARNET & MOSELEY GOLD MINING CO. v. SUTTON** (1865), 6 B. & S. 326; 5 New Rep. 336; 34 L. J. Q. B. 118; 13 W. R. 412; 122 E. R. 1216; Ex. Ch.

Annotations:—**Reid. Re Exhall Mining Co., Bleckly's Case** (1867), 15 W. R. 1104; **Re Breech-Loading Armoury Co., Calisher's Case** (1868), L. R. 5 Eq. 214. **Mentd. Re Sheffield & Hallamshire, etc. Soc., Fountain's Case, Swift's Case** (1865), 4 De G. J. & Sm. 699.

291. Existing company authorised to register—Industrial society previously unlimited.—A society was formed in 1861, under the Acts then in force for the regulation of industrial & provident societies, & carried on business as a co. with unlimited liability till Mar. 1863, when it was registered, under 25 & 26 Vict. c. 87, with limited liability; & it was subsequently ordered to be wound up:—**Held**: persons who had been members of the society before its liability was limited, but whose shares were fully paid up, could not be made contributories in respect of debts incurred previous to the registration.

Cos. Act, 1862, s. 194, has no application to a case of pure contribution between the members of a co., whose liability, *inter se*, must be wholly regulated by the contract of partnership.—**Re SHEFFIELD & HALLAMSHIRE, ETC., SOCIETY, LTD., FOUNTAIN'S CASE, SWIFT'S CASE** (1865), 4 De G. J. & Sm. 699; 6 New Rep. 75; 34 L. J. Ch. 593; 12 L. T. 335; 29 J. P. 677; 11 Jur. N. S. 553; 46 E. R. 10, 90, L. C.

Annotations:—**Apud. Re Chatham Co-op. Industrial Soc., Re Companies Act (1862) (1864)**, 10 L. T. 842. **Reid. Re West London & General Permanent Bldg. Soc.**, [1894] 2 Ch. 352.

See, now, 1908 Act, s. 261.

292. Rights & powers of company—Not co-extensive with rights of corporation at common law.—**ASHBURY RAILWAY CARRIAGE & IRON CO. v. RICKE**, No. 6, *ante*.

293. As from what date.—**JUBILEE COTTON MILLS, LTD. (OFFICIAL RECEIVER & LIQUIDATOR) v. LEWIS**, No. 75, *ante*.

On winding up.—See Nos. 7515, 7651, 7652, 7664, *post*.

On power to reduce capital under deed of settlement.—See Sect. 10, sub-sect. 3, D., *post*.

Effect of provisional registration—Under 1844 Act—On power to change name.—See No. 197, *ante*.

As issue of shares subscribed for on memorandum of association.—See Nos. 1936, 2011, *post*.

294. Irregular registration—On liability of shareholders to contribute.—The shareholders in a company which has been completely registered are liable to contribute, though the registration may have been irregularly obtained.—**BIRD'S CASE** (1850), 15 Jur. 30.

295. — Legal rights in property.—Colliery cos. in any county of England may lawfully be carried on, without registration, on the cost-book principle.

If the co. is incorporated, it must be by a writing

under the statute made within a few years past, & a trade corp'n. under the statute differs from a corp'n. for public purposes & from a corp'n. by prescription, so that evidence admissible to prove the existence of such last-mentioned corpns. would not necessarily be admissible to prove a modern charter or a recent registration.

A co. intending to be registered may fail to fulfil some of the conditions required for a valid registration, & though they would violate 1862 Act by carrying on business without registration, the directors & shareholders would not lose their legal rights as owners of property, neither would that property be placed out of the protection of the law, because the imperfect registration failed to make them a corp'n.—**R. v. FRANKLAND** (1863), Le & Ca. 276; 1 New Rep. 375; 32 L. J. M. C. 69; 7 L. T. 799; 27 J. P. 260; 9 Jur. N. S. 388; 11 W. R. 346; 9 Cox, C. C. 273, C. C. R.

Annotations:—**Mentd. R. v. Webb** (1893), 9 T. L. R. 199; **Jeffrey v. Bamford**, [1921] 2 K. B. 351.

— **On jurisdiction to wind up.**—See No. 320, *post*.

— **Informality in registration of articles—Whether articles operative.**—See No. 321, *post*.

296. — Provision in articles entitling registrar to refuse to register—Does not vitiate incorporation.—**REUSS (PRINCESS) v. BOS**, No. 277, *ante*.

— **Effect of registrar's certificate.**—See Sect. 6, *post*.

297. Court will not go behind register & memorandum.—**SALOMON v. SALOMON & CO., SALOMON & CO. v. SALOMON**, No. 11, *ante*.

Compare No. 74, *ante*.

SUB-SECT. 6.—REGISTRATION FEES.

See No. 152, *ante*, No. 4202, *post*.

SECT. 5.—THE REGISTERED OFFICE.

See 1908 Act, s. 62.

298. Whether "usual or last known place of abode"—Of company's officers—**Taxes Management Act, 1880 (c. 19), s. 52.**—B. was the manager of a co. having its registered office in the City of London. The co. did no business, & B., who resided at W., was very rarely in attendance at the office. Various notices relating to demands for income tax under Income Tax Act, 1842 (c. 35), sched. E. were addressed to B. at the office of the co., but in fact such notices never were delivered to him & he knew nothing of them. In Jan. 1913 a distress was levied upon B.'s premises at W. B. sued for damages for wrongful distress:—**Held**: there was no rule of law which made the office of the co. the "usual or last known place of abode" of the manager or other official of the co.; no valid assessment had been made upon B. in respect of the income tax for the year for which

POWELL REES v. ANGLO-CANADIAN (1912), 16 O. L. R. 490; 8 D. L. R. 994.—CAN.

a. Partnership subsequently registered as company.—Continuous accounts—Apportionment of payments to debts of partnership & company respectively.—**PITNER LIGHTING CO. OF IRELAND v. GEDDIS & PICKERING**, [1912] 2 I. R. 163.—IR.

PART III. SECT. 4, SUB-SECT. 6.

t. Dominion company—Power of provincial legislature to require registra-

tion fees—Penalties for carrying on business before registration.—**HARMER v. MACDONALD (A.) CO., LTD.**, [1917] 1 W. W. R. 153.—CAN.

PART III. SECT. 5.

a. Duty to register particulars of.—**GILLET v. NATIONAL BENEFIT LIFE & PROPERTY ASSURANCE CO.** (1917), 17 S. R. N. S. W. 298.—AUS.

b. Change of head office—Power to change—How exercised.—The Act incorporating a co. provided that the head office might be changed from O.

to such other place as might be determined by the shareholders at any one of the general meetings. At the general annual meeting a resolution was passed authorising the directors to consummate arrangements for the removal of the head office from O. to T. The directors made the change, & the subsequent annual meetings were held at T., at the first of which so held, the by-law referring to the place of holding the annual meetings was amended by substituting T. for O.:—**Held**: the change was effectually made.—**UNION FIRE INSURANCE CO.**

Sect. 5.—The registered office. Sect. 6.]

the same was demanded & in respect of the non-payment of which the distress was levied; the proceedings taken to recover the amount assessed were unlawful; & B. was entitled to damages for the wrongful distress.—*BERRY v. FARROW*, [1914] 1 K. B. 632; 83 L. J. K. B. 487; 110 L. T. 104; 30 T. L. R. 129.

Annotation:—*Mentd. G. W. Ry. v. Bater*, [1922] 2 A. C. 1.

See, generally, INCOME TAX.

Service of process at.—*See Sect. 33, sub-sect. 6, post.*

Service of demand of payment by creditor—As condition precedent to compulsory winding up.—*See No. 5766, post.*

Domicil, residence or nationality of company—Whether depending on registered office.—*See Part II., ante.*

SECT. 6.—THE CERTIFICATE OF INCORPORATION.

See, now, 1908 Act, s. 17.

299. Whether effective—Though registered deed defective—1844 Act, s. 25.]—A certificate of complete registration granted by the registrar of joint stock cos. pursuant to 1844 Act, s. 7, incorporates the co., according to s. 25, notwithstanding the deed omits some of the provisions required by schedule A to be inserted therein.—*BANWEN IRON CO. v. BARNETT* (1849), 8 C. B. 406; 19 L. J. C. P. 17; 14 L. T. O. S. 154; 14 Jur. 112; 137 E. R. 567.

Annotations:—*Refd. Re Independent Assce., Bird's Case* (1850), 1 Sim. N. S. 47; *Re Nassau Phosphate Co.* (1876), 2 Ch. D. 610. *Mentd. Dewhurst v. Clarkson* (1854), 18 Jur. 693.

300. Whether conclusive—As to due compliance with statutory requirements.]—*OAKES v. TURQUAND & HARDING, PEEK v. TURQUAND & HARDING, Re OVEREND, GURNEY & Co.*, No. 1, *ante.*

301. ———.]—*JUBILEE COTTON MILLS LTD. (OFFICIAL RECEIVER & LIQUIDATOR) v. LEWIS*, No. 75, *ante.*

302. ——— Invalid alteration of memorandum.]—The memorandum of assocn. of a co., when brought to the office of the registrar of joint stock cos. for registration, was objected to by him as going beyond the prospectus, whereupon the bearer of it then & there, without any communication with the persons who had signed it, made alterations to remove the objections of the registrar, who at once registered it in the altered form:—*Held*: (1) although the conduct of the registrar, in knowingly registering a document which had been thus altered, was most censurable, the co. was duly constituted, the certificate of registration being, under 1862 Act, s. 18, conclusive evidence that the requisitions of the Act had been complied with; (2) a person who before the registration of a co. applies for shares on the

faith of a prospectus ought to be treated as having become aware of any variations between the prospectus & memorandum at the earliest practicable time.

Therefore, where the prospectus of a co. stated that copies of the memorandum & arts. of assocn. could be seen at the office of the solrs. of the co., P., who applied for shares on June 27, 1865, the day on which the co. was registered, received an allotment on July 18, 1865, received a dividend on his shares in Feb. 1866, & took out a summons to have his name removed from the register of shareholders of the co. in Jan. 1867, upon the ground of a material variation between the memorandum of assocn. & the prospectus, on the faith of which he applied for his shares, was held to be too late in his appln., although he swore that he was, until Dec. 1866, more than six months after an order had been made to wind up the co., ignorant of the variation of which he complained.

Where the memorandum & arts. of assocn. are not in existence at the time of appln., I think that, at the very latest, when he [the appct. for shares] receives his allotment of shares, he ought to satisfy himself that there is nothing in the memorandum or arts. of assocn. to which he desires to make any objection (*CAIRNS, L.J.*).

(3) The description of the business of a co. as contained in the memorandum of assocn. will be interpreted with reference to the words of the prospectus, & if possible, held to apply to operations of the same nature as those mentioned in the prospectus.—*Re BARNED'S BANKING CO., PEEL'S CASE* (1867), 2 Ch. App. 674; 36 L. J. Ch. 757; 16 L. T. 780; 15 W. R. 1100, L. J.J.

Annotations:—*As to* (1) *Distd. Re National Debenture & Assets Corp.*, [1891] 2 Ch. 505. *Consd. Boaler v. Brodhurst* (1892), 8 T. L. R. 398; *Moosa Goolam Ariff v. Ebrahim Goolam Ariff* (1912), 28 T. L. R. 505. *Refd. Re Nassau Phosphate Co.* (1876), 45 L. J. Ch. 584; *Re Laxon*, [1892] 3 Ch. 555; *Ladies' Dress Assocn. v. Pulbrook* (1899), 68 L. J. Q. B. 871; *Re Jubilee Cotton Mills*, [1923] 1 Ch. 1. *As to* (2) *Consd. Oakes v. Turquand & Harding, Peek v. Same, Re Overend, Gurney* (1867), L. R. 2 H. L. 325; *Downes v. Ship* (1868), L. R. 3 H. L. 343. *Refd. Langham v. East Wheel Rose Consolidated Silver-Lead Mining Co.* (1868), 37 L. J. Ch. 253; *Re Snyder Dynamite Projectile Co.*, *Skelton's Case* (1893), 68 L. T. 210.

303. ——— Subscribers to memorandum not sui juris.]—The certificate of incorporation of a co., given by the registrar under 1862 Act, s. 18, is sufficient to incorporate the co., notwithstanding the fact of any of the statutory seven subscribers to the memorandum of assocn. being persons not *sui juris*.

Where an order had been made on petn. for the compulsory winding-up of a co. whose memorandum of assocn. had been subscribed by seven persons under 1862 Act, s. 6, & registered in the usual way, a second petn., subsequently presented under sect. 199, for winding up the company as unregistered, on the ground that one of the seven subscribers was an infant & that the previous order was therefore invalid, was dismissed with costs.

Semble: it is not the duty of the registrar to require evidence as to whether the several subscribers to a memorandum of assocn. brought to

v. O'GARA, UNION FIRE INSURANCE Co. v. SHOOLBRED (1883), 4 O. R. 359.—*CAN.*

c. Books required to be kept at.—The only books which a co., under Act 31 of 1909, must keep at its registered office are the lists of directors & of shareholders & the register of mtges.—*WAYNE v. EGNEP*, [1921] W. L. D. 91.—*S. AF.*

PART III. SECT. 6.

300 i. Whether conclusive—As to due compliance with statutory requirements

—*As to prior assent of shareholders.*—The certificate of incorporation of a co. under Act No. 228 is conclusive evidence of the prior assent of the shareholders to registration, as well as of all other preliminaries to registration.—*A.-G. v. PRINCE OF WALES GOLD MINING CO.* (1868), 5 W. W. & A'B. 208.—*AUS.*

d. — Mining company.—A liability co. will be held unincorporated if 5 per cent. of its capital, in money or money's worth, has not been paid up at the time of registration.—

THOMAS v. NICHOLSON (1890), 16 V. L. R. 861.—*AUS.*

e. — As to capacity of company to be registered.—A certificate of registration of a co. under Companies Act, 1862, Part VII., is conclusive evidence that the co. is one authorised to be registered.—*Re ENNIS & WEST CLARE RY. CO.* (1879), 3 L. R. Ir. 94.—*IR.*

f. — For all purposes.—The certificate of incorporation of a company given by the Registrar under the Indian Companies Act, 1882, is

him for registration are *sui juris*, & if the memorandum of assocn. of a co. capable of being incorporated under 1862 Act is brought to him for registration after having been signed by seven persons, he is bound, under 1862 Act, s. 17, to register it.—*Re NASSAU PHOSPHATE CO.* (1876), 2 Ch. D. 610; 45 L. J. Ch. 584; 24 W. R. 692.

Annotations:—Consd. Re National Debenture & Assets Corpn., [1891] 2 Ch. 505; *Re Laxon*, [1892] 3 Ch. 555. *Reid. Hill v. Hill* (1886), 55 L. T. 769; *Dennison v. Jeffs*, [1896] 1 Ch. 611.

See, also, No. 319, *post*.

304. ——— Conclusive until set aside.]—

Although the certificate of incorporation of a co. may be liable to be set aside on proceedings being taken for that purpose it is in the meantime, under 1862 Act, s. 18, conclusive evidence that the co. is legally established & competent to sue.—*HILL (GEORGE) & CO. v. HILL* (1886), 55 L. T. 769; 51 J. P. 246; 35 W. R. 137; 3 T. L. R. 144.

Annotation:—Mentd. Smith v. Hancock, [1894] 1 Ch. 209.

See, also, No. 310, *post*.

305. ——— Memorandum not signed by seven persons.]—Re NATIONAL DEBENTURE & ASSETS CORPN., No. 320, *post*.

306. ———.]—Re LAXON & CO., No. 319, *post*.

307. ——— Validity of memorandum.]—COTMAN v. BROUGHAM, No. 286, *ante*.

308. ——— As to capacity of company to be registered—Discretion of registrar.]—REUSS (PRINCESS) v. BOS, No. 277, *ante*.

309. ——— Trade union.]—BRITISH ASSOCN. OF GLASS-BOTTLE MANUFACTURERS, LTD. v. NETTLEFOLD, No. 281, *ante*.

310. ———.]—The Secular Society, Ltd., was registered as a co. limited by guarantees under 1862 to 1893 Acts. The main object of the co., as stated in its memorandum of assocn., was "to promote . . . the principle that human conduct should be based upon natural knowledge, & not upon supernatural belief, & that human welfare in this world is the proper end of all thought & action":—*Held*: assuming that this object involved a denial of Christianity, (1) it was not criminal, inasmuch as the propagation of anti-Christian doctrines, apart from scurrility or profanity, did not constitute the offence of blasphemy; & (2) it was not illegal in the sense of rendering the co. incapable in law of acquiring property by gift, & a bequest "upon trust for the Secular Society, Ltd." was valid.

It was argued before us that the society could not have been properly incorporated if its objects were illegal, & that as the certificate is conclusive to show that the co. is one authorised to be registered & duly registered, it follows that it cannot for any purpose be contended that the objects are illegal. In my opinion this argument is an attempt to extend the effect of these enactments beyond their fair meaning & manifest object. What the Legislature was dealing with was the validity of the incorporation, & it is for the purpose of incorporation, & for this purpose only, that the certificate is made conclusive (LORD FINLAY, C.).

By [1908 Act, s. 17] the society's certificate of registration is made conclusive evidence that the society was an association authorised to be registered—that is, an association of not less than

seven persons associated together for a lawful purpose. The section does not mean that all or any of the objects specified in the memorandum, if otherwise illegal, would be rendered legal by the certificate. On the contrary, if the directors of the society applied its funds for an illegal object they would be guilty of misfeasance & liable to replace the money, even if the object for which the money had been applied were expressly authorised by the memorandum. The section does, however, preclude all His Majesty's lieges from going behind the certificate or from alleging that the society is not a corporate body with the status & capacity conferred by the Acts (LORD PARKER OF WADDINGTON).

Even if all the objects of the co. were illegal it would not follow that while the certificate of incorporation remained unrevoked the co. would be unable to receive money. If, by oversight, or by mistake a co. were incorporated for wholly illegal objects, the right course to follow, where its capacity to receive money was questioned in legal proceedings, would be to direct an adjournment till proper steps had been taken to revoke the incorporation (LORD BUCKMASTER).—*BOWMAN v. SECULAR SOCIETY, LTD.*, [1917] A. C. 406; 86 L. J. Ch. 568; 117 L. T. 161; 33 T. L. R. 376; 61 Sol. Jo. 478, H. L.; *affg. S. C. sub nom. Re BOWMAN, SECULAR SOCIETY, LTD. v. BOWMAN*, [1915] 2 Ch. 447, C. A.

Annotations:—Generally, Mentd. Cotman v. Brougham, [1918] A. C. 514; *Bourne v. Keane*, [1919] A. C. 815; *Re Tetley, National Provincial & Union Bank of England v. Tetley*, [1923] 1 Ch. 258.

311. ———.]—Where a co. or partnership had been formed in Apr. 1889, by twelve persons with the primary object of acquiring & carrying on a particular partnership business, & had been registered in the same month under Part VII. of 1862 Act, & a certificate given by the registrar under s. 192 of that Act, stating that the co. was incorporated as a ltd. co. under Cos. Acts:—*Held*: such certificate was conclusive evidence that it was a co. authorised to be registered under Part VII. even if the co. had been formed for the mere purpose of being so registered.—*HAMMOND v. PRENTICE BROTHERS, LTD.*, [1920] 1 Ch. 201; 89 L. J. Ch. 91; 122 L. T. 307; 84 J. P. 25; 36 T. L. R. 98; 64 Sol. Jo. 131; 18 L. G. R. 73.

312. ——— Registration of friendly society as limited company.]—Where a registered friendly society, in avowed exercise of the powers of Friendly Societies Act, 1896 (c. 25), s. 71, passed a special resolution to convert itself into a co. under Cos. Acts, with a memorandum of assocn. annexed thereto, & obtained registration of itself as a co., & a member of the co., who had been a member of the friendly society, suing on behalf of himself & all other the members of the co., moved for an injunction to restrain the co. from exercising any of the powers enumerated in the memorandum of assocn. in excess of those allowed by the Friendly Societies Act, 1896 (c. 25):—*Held*: the action was misconceived & the motion ought to be refused.

Qu.: whether, notwithstanding the certificate of incorporation, the validity of the special resolution & of the registration could have been successfully impeached by a member of the old friendly society in a properly constituted action.—

conclusive for all purposes.—*MOOSA GOOLAM ARIFF v. EBRAHIM GOOLAM ARIFF* (1912), 28 T. L. R. 505.—INJ.

g. ——— Of authority of Registrar to sign it.]—A certificate of the incorporation of an English co. purporting to be under the hand of the Registrar of

Joint-stock Companies in England is sufficient proof of the incorporation of the co., without proof of the signature of the Registrar or the official character of the person appearing to have signed it.—*SHAW, SAVILL, & ALBION CO., LTD. v. TIMARU HARBOUR*

BOARD (1888), 6 N. Z. L. R. 456.—N.Z.

h. ———.]—OSLER v. BOWELL (1878), 43 U. C. R. 40.—CAN.

k. ———.]—LYELL HYDRAULIC SLUICING CO., LTD. v. HARCOURT (1904), 23 N. Z. L. R. 168.—N.Z.

Sect. 6.—The certificate of incorporation. Sect. 7: Sub-sects. 1, 2 & 3.]

MCGLADE v. ROYAL LONDON MUTUAL INSURANCE SOCIETY, LTD., [1910] 2 Ch. 169; 79 L. J. Ch. 631; 103 L. T. 155; 26 T. L. R. 471; 54 Sol. Jo. 505; 17 Mans. 358, C. A.

See, generally, FRIENDLY SOCIETIES.

Operation of—As issue of shares subscribed for on memorandum of association.]—See No. 383, post.

Repeal of certificate—On writ of sci. fa.]—See CROWN PRACTICE, Vol. XVI., p. 246, No. 441.

SECT. 7.—THE MEMORANDUM AND ARTICLES OF ASSOCIATION.

SUB-SECT. 1.—IN GENERAL.

313. Memorandum—Is charter of company.]—ASHBURY RAILWAY CARRIAGE & IRON CO. v. RICKE, No. 6, ante.

314. Contents—Articles—Everything connected with scope & objects of company.]—Re ANGLO-GREEK STEAM CO., No. 159, ante.

315. ——— Memorandum—Objects not powers.]—COTMAN v. BROUGHAM, No. 286, ante.

See, further, Sub-sect. 8, post.

Notice of contents.]—See Sub-sect. 7, A., post.

Memorandum differing from prospectus—Right of applicant for shares to repudiate.]—See Sect. 8, sub-sect. 4, A., post.

——— Conduct amounting to waiver.]—See No. 787, post.

Provision in articles for reference of disputes to arbitration—Submission in writing.]—See No. 341, post.

SUB-SECT. 2.—SIGNATURE.

316. Signature by agent—Principal not liable as contributory.]—To fix a party as a contributory to a joint stock co. in consequence of his name appearing as subscribed to the arts. of assocn., it is necessary that such subscription should be in his own handwriting; & where a party's name was subscribed by an agent:—*Held*: he was not a contributory.—*Re GENERAL STEAM PRINTING & PUBLISHING CO., LTD., RICHARDSON'S CASE* (1861), 4 L. T. 589.

317. ——— Authority by deed under seal unnecessary.]—A man's name may be subscribed to the memorandum of assocn. of a co. by his agent & it is not necessary that the agent should be authorised to sign his principal's name by deed under seal.—*Re WHITLEY PARTNERS, LTD.* (1886), 32 Ch. D. 337; *sub nom. Re WHITLEY PARTNERS, CALLAN'S CASE*, 55 L. J. Ch. 540; 54 L. T. 912; 34 W. R. 505; 2 T. L. R. 541, C. A.

Annotations:—Consd. Bevan v. Webb, [1901] 2 Ch. 59. Rejd. *Re Schmidt's Trade Mk., Jackson v. Napper* (1886), 35 Ch. D. 162; *Dennison v. Jeffs*, [1896] 1 Ch. 611.

PART III. SECT. 7, SUB-SECT. 1.

315 i. Contents — Memorandum — Objects not powers.]—NORTH AMERICAN LIFE ASSURANCE CO. v. SILVER'S, LTD., [1921] 2 W. W. R. 540; 16 Alta. L. R. 435.—CAN.

315 ii. ——— No limit to number of objects—How broadly may be stated.]—Under Act 31 of 1909 no limit is placed on the number of objects, & it is not necessary for a co. to have a main object; where in the memorandum of assocn. of a proposed limited co. the objects of the co. were stated in the broadest manner, comprising the carrying on of any agency,

financial, commercial, industrial, mining, or farming business in any part of the world, while it also provided that the objects specified in each paragraph of the clause stating the objects, were not to be limited or restricted in any way by the terms of any other paragraph of the said clause:—*Held*: the memorandum was in accordance with above Act.—*Re STANDARD*, [1921] T. P. D. 203.—S. AF.

315 iii. ——— Objects in extenso.]—The memorandum of assocn. of a co. must set out its objects *ad longum* & not by a mere reference to another document.—*ROYAL EXCHANGE BUILD-*

318. Who may be signatories — Foreigners resident abroad.]—REUSS (PRINCESS) v. BOS, No. 277, ante.

319. ——— Infant—Registration not avoided by subsequent avoidance of contract.]—Infants are "persons" within 1862 Act, s. 6, & can therefore be signatories to the memorandum of assocn. Subsequent avoidance of the infant's contract does not invalidate the registration of the co. or any intermediate acts affecting the rights of third persons.

The certificate of incorporation is not conclusive to prevent the objection that the memorandum was not signed by seven persons.—*Re LAXON & Co.*, [1892] 3 Ch. 555; 61 L. J. Ch. 667; 67 L. T. 85; 40 W. R. 621; 8 T. L. R. 666; 3 R. 99.

Annotations:—*Rejd. Ladies' Dress Assocn. v. Pulbrook* (1900), 69 L. J. Q. B. 705; *Re Royal Naval School, Seymour v. Royal Naval School*, [1910] 1 Ch. 806.

See, also, No. 303, ante, No. 7666, post.

Liability of signatories—In respect of shares subscribed for.]—See Sect. 12, sub-sect. 4, B., post.

——— Company formed for fraudulent purpose.]—See No. 243, ante.

——— Signature by agent.]—See Nos. 316, 317, ante.

Liability of members generally, see Sect. 9, post.

320. Absence of signature—Signed by one subscriber twice—In different names—Incorporation invalid.]—On a petition for the compulsory winding up of a co. the evidence showed that, although the memorandum of assocn. purported to be signed by seven persons, only six of them had signed, one of them having also signed for a non-existent person:—*Held*: the co. had not been duly incorporated, the certificate of incorporation was not conclusive so as to prevent the ct. from taking cognisance of the fact of non-incorporation, & there was no jurisdiction to make a winding-up order.—*Re NATIONAL DEBENTURE & ASSETS CORPN.*, [1891] 2 Ch. 505; 60 L. J. Ch. 533; 64 L. T. 512; 39 W. R. 707; 7 T. L. R. 485, C. A.

Annotations:—*Distd. Re Laxon*, [1892] 3 Ch. 555; *Ladies' Dress Assocn. v. Pulbrook*, [1900] 2 Q. B. 376; *Re Walker & Smith* (1903), 72 L. J. Ch. 572. *Consd. Moosa Goolam Ariff v. Ebrahim Goolam Ariff* (1912), 28 T. L. R. 505; *Bowman v. Secular Soc.*, [1917] A. C. 406; *Hammond v. Prentice*, [1920] 1 Ch. 201. *Rejd. Young v. South African & Australian Exploration & Development Syndicate*, [1896] 2 Ch. 268. *Mentd. Re British Asahan Plantations Co.* (1892), 36 Sol. Jo. 363; *Salomon v. Salomon, Salomon v. Salomon* (1896), 66 L. J. Ch. 35.

See, now, 1908 Act, s. 17.

321. ——— Unsigned articles acted on for many years—Operative.]—A mere informality in the registration of arts. of assocn. which have been adopted & for a long course of years acted upon by the co. will not render those arts. invalid or in-operative.

The Cos. Ordinance of Hong Kong, 1865, s. 14, provides that the memorandum of assocn. may be accompanied, when registered, by arts. signed by the subscribers to the memorandum of assocn., & by sect. 15, in the absence of such arts., the

INGS, GLASGOW, PROPRIETORS, [1911] 11 S. C. 1337.—SCOT.

PART III. SECT. 7, SUB-SECT. 2.

1. Who may be signatories—Infant.]—The infancy of a signatory causes the co. to have no legal existence at the time of the registration of its declaration of incorporation.—*HAMILTON & FLAMBOROUGH ROAD CO. v. TOWNSEND, HAMILTON & FLAMBOROUGH ROAD CO. v. FLATT* (1886), 13 A. R. 534.—CAN.

m. Liability of signatories.]—A shareholder who subscribes the memorandum of assocn. attends meeting of

regulations of Table A of 1862 Act, become those of the co.:—*Held*: arts. registered, but not signed, & acted upon for many years by the co., were valid & effectual.—*HO TUNG v. MAN ON INSURANCE CO., LTD.*, [1902] A. C. 232; 71 L. J. P. C. 46; 85 L. T. 617; 18 T. L. R. 118; 9 Mans. 171, P. C.

Annotation:—*Reid. Re Walker & Smith* (1903), 51 W. R. 491.

Signature of printed copy.—*See No. 1182, post.*

SUB-SECT. 3.—CONSTRUCTION.

322. Memorandum—General rule of construction.—I am called upon to construe this memorandum & also the articles of assocn. In doing so I must bear in mind the well established rule of law that no extension of the terms of the memorandum of assocn. can be permitted, that beyond those terms duly construed no lawful authority exists & nothing can be done under or in relation to the subject comprehended in the instrument. I wholly repudiate the notion that I am at liberty to adopt what has sometimes been called a "liberal construction." I have no more right to do that on the one hand than I am at liberty on the other hand to adopt a more rigorous or more strict construction than the express stipulations of the instrument require. What the law requires & what I am called upon to do is to put a just construction, & no other, upon these instruments (*BACON, V.-C.*).—*LONDON FINANCIAL ASSOCN. v. KELK* (1884), 26 Ch. D. 107; 53 L. J. Ch. 1025; 50 L. T. 492.

Annotations:—*Mentd. Re Harrison* (1886), 55 L. J. Ch. 768; *Re Oxford Bldg. Soc., Ex p. Smith* (1886), 56 L. J. Ch. 98; *Re Liverpool Household Stores Asscn.* (1890), 59 L. J. Ch. 616; *Oppenheimer v. Frazer & Wyatt*, [1907] 2 K. B. 50.

323. ————*]*—*COTMAN v. BROUGHAM*, No. 286, *ante*.

324. ———— *Effect of general words.*—In this case, as in many other cases, you have a variety of general words added which, if they are to be construed by themselves, would give powers to carry on almost any possible business which could be suggested. These must be taken within certain limits, & those limits are, that they must be regarded as ancillary to the purport of the scheme for which the co. was formed (*BAGGALLAY, L.J.*).—*Re GERMAN DATE COFFEE CO.* (1882), 20 Ch. D. 169; 51 L. J. Ch. 564; 46 L. T. 327; 30 W. R. 717, C. A.

Annotations:—*Reid. Re International Cable Co.* (1890), 2 Meg. 183; *Re Coolgardie Consolidated Gold Mines* (1897), 76 L. T. 269; *Stephens v. Mysore Reefs (Kangundy) Mining Co.*, [1902] 1 Ch. 745; *Pedlar v. Road Block Gold Mines of India*, [1905] 2 Ch. 427; *Butler v. Northern Territories Mines of Australia* (1906), 96 L. T. 41; *Re Anglo-Cuban Oil, Bitumen, & Asphalt Co.*, [1917] 1 Ch. 477. *Mentd. Re Bristol Joint Stock Bank* (1890), 44 Ch. D. 703; *Cotman v. Brougham*, [1918] A. C. 514.

shareholders, & takes part in the election of directors cannot subsequently repudiate his shares on the ground of misrepresentation.—*PALMERSTON BREWERY CO., LTD. v. WOLLERMAN* (1884), 2 N. Z. L. R. 223.—N.Z.

PART III. SECT. 7, SUB-SECT. 3.

n. Memorandum — What objects within memorandum.—Coal mining cos. entered into a deed for the purpose of forming an assocn. to maintain & depend the commercial & industrial interests of the parties thereto & to fix & maintain prices without intent to act in any way to the detriment of the public generally:—*Held*: the debt. co. had power under its memorandum of assocn. to become a party to such

assocn. of employers; irregularity in the making of levies, or that they were not required; that the conditions made by one co. on becoming party to the deed did not affect the validity of the deed as regards the other cos., notwithstanding the effect this execution might have regarding that particular co.—*PREMIER COAL MINING CO. v. PROPRIETARY COAL MINES OF W. A., LTD.* (1915), 17 W. A. L. R. 86.—AUS.

o. — Objects — Must be either expressly conferred—Or by reasonable implication.—The objects which a co. may legitimately pursue must be ascertained from the memorandum of assocn., & the powers which the co. may lawfully use in furtherance of

325. ————*]*—Notwithstanding a declaration, contained in the objects clause of a memorandum of assocn., "that the objects specified in each paragraph of this clause shall be in nowise limited or restricted by reference to or inference from the terms of any other paragraph or the name of the co.," wide powers given in general words will be construed as ancillary only to a specific object mentioned in the first paragraph.—*STEPHENS v. MYSORE REEFS (KANGUNDY) MINING CO., LTD.*, [1902] 1 Ch. 745; 71 L. J. Ch. 295; 86 L. T. 221; 50 W. R. 509; 18 T. L. R. 327; 9 Mans. 199.

Annotations:—*Consd. Pedlar v. Road Block Gold Mines of India*, [1905] 2 Ch. 427; *Butler v. Northern Territories Mines of Australia* (1906), 96 L. T. 41. *Reid. Cotman v. Brougham*, [1918] A. C. 514.

326. ———— *Effect of name of company.*—The name of a co. is important in construing the objects defined in the memorandum of assocn.

A co. was registered under the name of the Mid-Northamptonshire Bank, Ltd. In addition to wide & general objects, the memorandum of assocn. stated particularly numerous objects of diverse character in fifteen paragraphs. The first three paragraphs related to banking, discounting, & money-lending, & borrowing respectively; others referred to purchasing & developing land, investing & dealing in shares & securities, & promoting cos. The co. commenced business as a country bank in Northamptonshire, with an office in London. After a short time its name was changed to the Crown Bank, Ltd.; it gave up its country offices, ceased to do banking business, & carried on in London, in addition to some land speculation & business connected with promoting a foreign co., the business of investing in shares & securities. On a petition by a shareholder to wind up the co. on the ground that its main objects had failed:—*Held*: the co. was not carrying on a business authorised by the memorandum of assocn., & it was just & equitable that the co. should be wound up.—*Re CROWN BANK* (1890), 44 Ch. D. 634; 59 L. J. Ch. 739; 62 L. T. 823; 38 W. R. 666.

Annotation:—*Reid. Re Amalgamated Syndicate*, [1897] 2 Ch. 600.

327. ———— *Whether terms implied—Equal rights of shareholders.*—There is no condition implied in a memorandum of assocn. that all shareholders are to be on an equality unless the memorandum itself shows the contrary.—*ANDREWS v. GAS METER CO.*, [1897] 1 Ch. 361; 66 L. J. Ch. 246; 76 L. T. 132; 45 W. R. 321; 13 T. L. R. 199; 41 Sol. Jo. 255, C. A.

Annotations:—*Consd. Re Welsbach Incandescent Gas Light Co.*, [1904] 1 Ch. 87; *Sidebottom v. Kershaw, Leese*, [1905] 1 Ch. 154. *Reid. Re Colmer*, [1897] 1 Ch. 524; *Welton v. Saffery* (1897), 66 L. J. Ch. 362; *Allen v. Gold Reefs of West Africa*, [1900] 1 Ch. 656.

328. ———— *Where ambiguous—Interpretation by articles.*—One of the objects of a co. was

these objects must either be expressly conferred or derived by reasonable implication from the provisions of such memorandum.—*FIRE VALLEY ORCHARDS, LTD. v. SLY* (1914), 20 B. C. R. 23.—CAN.

p. — Terms implied — Power to enter into agreements usual in particular business.—A trading co. may, even in the absence of express provision in its powers therefor, enter into whatever agreements or covenants are usual in the particular business it is authorised to carry on in connection with any matter in which it is directly interested and which tends to promote its corporate objects.—*NATIONAL LAND & LOAN CO., LTD. v. RAT PORTAGE LUMBER CO., LTD.*,

Sect. 7.—The memorandum and articles of association: Sub-sects. 3 & 4, A.]

stated by its memorandum of assocn. to be "to borrow money by the issue of debentures, debenture stocks, bonds, mortgages, obligations, & other securities for money upon all or any part of the co.'s undertakings, revenues, & property, including uncalled capital." By the contemporaneous arts. of assocn. the directors were empowered to borrow for the purposes of the co. to a limited amount, & to "raise or secure the repayment of such moneys in such manner & upon such terms & conditions in all respects as they think fit, & in particular, but without prejudice to such generality, by the issue of debentures of the co. charged upon all or any part of the property of the co., including the uncalled capital thereof":—*Held*: although *prima facie* the word "issue," as used in the memorandum, suggested a written security, yet, having regard to the fact that some of the securities therein mentioned were not necessarily required to be in writing, the word was ambiguous in its meaning; the memorandum & articles being contemporaneous documents, the latter might be looked at to interpret the former.—*Re TILBURY PORTLAND CEMENT CO., LTD.* (1893), 62 L. J. Ch. 814; 69 L. T. 495; 37 Sol. Jo. 683; 3 R. 709.

329. — By reference to prospectus—Objects of company.]—*Re BARNED'S BANKING CO., PEEL'S CASE*, No. 302, *ante*.

330. — Modification by articles—Confined to matter contained in 1862 Act, s. 12.]—By the memorandum of assocn. of a co. limited by shares it was stated that the objects of the co. were the cultivation of lands in Ireland & other similar purposes there specified, & to do all such other things as the co. might deem incidental or conducive to the attainment of any of these objects, & that the capital of the co. was £1,050,000, divided into 140,000 A shares of £5 each, & 3,500 B shares of £100 each. By the 8th of the contemporaneous arts. of assocn. it was provided that the capital produced by the issue of B shares should be invested, & that the income, & so far as necessary the capital, should be applied so as to make good to the holders of A shares a preferential dividend of £5 per cent. on the amounts paid up on the A shares. Subject to this the B fund was to belong to the owners of B shares. The profits of the co., after paying the £5 per cent. dividend to the A shareholders were to be applied in payment of a non-cumulative dividend of £5 per cent. to the B shareholders, & the surplus was to be divided rateably between the A shareholders & the B shareholders according to the amounts paid up

on their respective shares:—*Held*: art. 8 was invalid, as it purported to make the B capital applicable to purposes not within the objects of the co. as defined by the memorandum of assocn., & in a way not incidental or conducive to the attainment of those objects, & the directors must be restrained from acting upon it. The arts. of assocn. of a co. cannot, except in the cases provided for by 1862 Act, s. 12, modify the memorandum of assocn. in any of the particulars required by the Act to be stated in the memorandum.

It is only as regards matters affecting shareholders *inter se*, & which are not required by the Act to be stated in the memorandum, that the arts. can be read as a contemporaneous document with the memorandum for the purpose of adding to the memorandum.—*GUINNESS v. LAND CORPN. OF IRELAND* (1882), 22 Ch. D. 349; 52 L. J. Ch. 177; 47 L. T. 517; 31 W. R. 341, C. A.

Annotations:—*Consd. Re South Durham Brewery Co.* (1885), 31 Ch. D. 261. *Reid. Trevor v. Whitworth* (1887), 12 App. Cas. 409; *Re Barrow Haematite Steel Co.* (1888), 39 Ch. D. 582; *Re Bridgewater Navigation Co.* (1888), 39 Ch. D. 1; *Lee v. Neuchatel Asphalte Co.* (1889), 41 Ch. D. 1; *Re Pyle Works* (1890), 44 Ch. D. 534; *British & American Trustee & Finance Corp. v. Couper*, [1894] A. C. 399; *Verner v. General & Commercial Investment Trust*, [1894] 2 Ch. 239; *McIlquham v. Taylor*, [1895] 1 Ch. 53; *Andrews v. Gas Meter Co.*, [1897] 1 Ch. 361.

331. — As to matters not required to be stated in memorandum—Confined to matters affecting shareholders *inter se*.]—*GUINNESS v. LAND CORPN. OF IRELAND*, No. 330, *ante*.

See, now, 1908 Act, ss. 7, 41.

332. — Arts. of assocn. can be read for the purpose of explaining the memorandum in respect of a matter which need not appear in the latter—for example, the borrowing of money by a railway co.—but not for the purpose of showing that borrowing means the granting of perpetual annuities, for that is not borrowing, nor is it a purpose subsidiary to the general objects of such a co.—*Re SOUTHERN BRAZILIAN RIO GRANDE DO SUL RY. CO., LTD.*, [1905] 2 Ch. 78; 74 L. J. Ch. 392; 92 L. T. 598; 53 W. R. 489; 21 T. L. R. 451; 49 Sol. Jo. 446; 12 Mans. 323.

333. — Whether articles incorporated—Rights in memorandum defined by reference to articles.]—The rights, privileges & restrictions of the preference shareholders were defined by the arts., & those provisions of the arts. must be treated as incorporated in the memo (*LINDLEY, M.R.*).—*COLLINS v. BIRMINGHAM BREWERIES, LTD.* (1899), 15 T. L. R. 180, C. A.

Annotation:—*Reid. Re Welsbach Incandescent Gas Light Co.* (1903), 89 L. T. 645.

— What objects within memorandum.]—*See, generally*, Sect. 31, *post*.

[1917] 3 W. W. R. 269; 36 D. L. R. 97.—**CAN.**

q. — General rule of construction—Objects—Name of company may be looked at.]—In construing the memorandum of assocn. of a co. its name is an important element & the word "co-operative" in the title of a co. is an indication that its purpose is to carry on business amongst its members only.—*MCGREGOR v. PIHAMA CO-OPERATIVE DAIRY CO., LTD.* (1907), 26 N. Z. L. R. 933.—**N.Z.**

r. — Effect of general words—Extension of objects by.]—A co. whose express powers are limited to the powers necessary to carry on a saw-milling business, & which has power under its memorandum of assocn. to insure its plant, etc., against loss by fire, & itself in respect of accidents to its workmen, & whose memorandum of assocn. also contains the usual general power to do such things as are incidental or conducive to the

objects of the co., has no power to join a mutual insurance co. whose members agree mutually to insure each other as sawmill-proprietors against accidents.—*WAIRARAPA SAWMILLERS' ACCIDENT INSURANCE CO. v. MANAWATU SAWMILLING CO., LTD.* (1912), 31 N. Z. L. R. 1200.—**N.Z.**

s. — In object clause—Ancillary to dominant objects.]—General words used in the objective clauses of arts. of assocn. of a co. must be construed as ancillary to the dominant objects of the co. which are to be discovered from the context of the arts. of assocn.—*S. A. SECURITIES, LTD. v. NICHOLAS*, [1911] T. P. D. 450.—**S. AF.**

t. Articles of association—"Month"—*Acts Shortening Act, 1867.]—*By the arts. of assocn. of a co., Table A of sched. I. of Companies Act, 1863, was excluded, but many of the regulations were nearly coincident with those contained in Table A.

By the arts. a clear month's notice

of a case was necessary. The word "month" was used in other arts.:—*Held*: the word "month" with regard to the validity of a case, must be taken to mean a calendar month in accordance with Acts Shortening Act, 1867, s. 11.—*BROADWATER TIN MINING CO. v. OLIVER* (1874), 4 Q. S. C. R. 91.—**AUS.**

a. — Whether mandatory or directory—Quorum of directors.]—Art. 60 of a co.'s arts. of assocn. provided that the number of directors should be not less than ten, nor more than twenty, of whom at least one-fifth should be natives. Art. 61 named as first directors seventeen persons, of whom one only was a native. Art. 64 provided that there should be no meeting of directors unless three European directors were present. Art. 65 provided that the continuing directors might act notwithstanding any vacancy in the directory:—*Held*: though the provision of Art. 60, as to the pro-

334. Where memorandum & articles at variance—Rules of construction applicable.]—Where there is a variance between the memorandum & arts. of assocn. of a joint stock co., limited, the memorandum does not necessarily control the arts., but the ordinary principles of construction, with regard to contemporaneous documents, must be applied; that construction must, if possible, be adopted which will make them consistent with each other, & any ambiguity of expression in the one may be explained by reference to the other.—*Re PHOENIX BESSEMER STEEL CO.* (1875), 44 L. J. Ch. 683; 32 L. T. 854.

Annotations:—Reid. Re Pyle Works (1890), 44 Ch. D. 534. *Mentd. Fowler v. Broad's Patent Night Light Co.*, [1893] 1 Ch. 724; *Newton v. Anglo-Australian Investment Co. Debenture-Holders, etc.*, [1895] A. C. 244; *Re Russian Spratts Patent, Johnson v. Russian Spratts Patent*, [1898] 2 Ch. 149.

See, also, No. 337, post, & see, further, Sub-sect. 8, B. (c), post.

SUB-SECT. 4.—ALTERATION.

A. The Memorandum.

See, now, 1908 Act, s. 7.

335. How far allowed.]—Borrowing money is not increase of capital within 1856 Act.

The memorandum of assocn., although capable of being varied in details, cannot be departed from as to the general constitution of a co.—*BRYON v. METROPOLITAN SALOON OMNIBUS CO., LTD.* (1858), 3 De G. & J. 123; 27 L. J. Ch. 685; 32 L. T. O. S. 5; 4 Jur. N. S. 1262; 6 W. R. 817; 44 E. R. 1215, L. J.

Annotations:—Apld. Hutton v. Scarborough Cliff Hotel Co. B. (1865), 2 Drew. & Sm. 521. *Consd. General Auction Estate & Monetary Co. v. Smith*, [1891] 3 Ch. 432. *Reid. Farmer v. Scottish North American Trust*, [1912] A. C. 118. *Mentd. Hale v. Metropolitan Saloon Omnibus Co.* (1859), 7 W. R. 316.

336. Resolution varying constitution of company.]—The power given by 1862 Act, s. 50, to a general meeting by special resolution, to modify the regulations of the co., is limited to altering the regulations relating to the management of the co., but not to altering its constitution. Therefore, where a general meeting altered the arts. of assocn. by inserting power to issue new shares with preferential dividend no such power existing before:—*Held*: such alteration was an alteration in the constitution of the co., the intention of all parties to the original contract being that all shareholders should stand *pari passu* with

regard to the receipt of dividends, & the ct. granted an injunction restraining the issue of preference shares.—*HUTTON v. SCARBOROUGH CLIFF HOTEL CO., LTD. B.* (1865), 2 Drew. & Sm. 521; 13 L. T. 57; 11 Jur. N. S. 849; 13 W. R. 1059; 62 E. R. 717; *sub nom. HUTTON v. BERRY*, 6 New Rep. 376.

Annotations:—Apld. Melhado v. Hamilton (1873), 28 L. T. 578. *Consd. Harrison v. Mexican Ry.* (1875), L. R. 19 Eq. 358. *Dbtd. British & American Trustee & Finance Corpn. v. Couper*, [1894] A. C. 399. *Consd. McIlquham v. Taylor*, [1895] 1 Ch. 53. *Dbtd. & N.F. Andrews v. Gas Meter Co.*, [1897] 1 Ch. 361. *Reid. Re Irrigation Co. of France, Fox's Case* (1870), 23 L. T. 453; *Re Bangor & Portmadoc Slate & Slab Co.* (1875), L. R. 20 Eq. 59; *Ashbury v. Watson* (1885), 30 Ch. D. 376; *Re South Durham Brewery Co.* (1885), 31 Ch. D. 261, C. A.; *Re Bridgewater Navigation Co.* (1888), 39 Ch. D. 1; *Re Hyderabad (Deccan) Co.* (1896), 75 L. T. 23; *Re Colmer*, [1897] 1 Ch. 524; *Welton v. Saffery*, [1897] A. C. 299; *Sidebottom v. Kershaw, Leese*, [1920] 1 Ch. 154.

337. —.]—An attempt to alter the rights of holders of the original capital which is one of the things required by 1862 Act, s. 8, to be inserted in the memorandum is *ultra vires*.—*Re SOUTH DURHAM BREWERY CO.* (1885), 31 Ch. D. 261; 55 L. J. Ch. 179; 53 L. T. 928; 34 W. R. 126; 2 T. L. R. 146, C. A.

Annotations:—Reid. Re Barrow Haematite Steel Co. (1888), 39 Ch. D. 582; *Re Bridgewater Navigation Co.* (1888), 39 Ch. D. 1; *British & American Trustee & Finance Corpn. v. Couper* (1894), 70 L. T. 882; *McIlquham v. Taylor*, [1895] 1 Ch. 53; *Andrews v. Gas Meter Co.*, [1897] 1 Ch. 361; *Re Welsbach Incandescent Gas Light Co.*, [1904] 1 Ch. 87. *Mentd. Rainford v. Keith & Blackman Co.*, [1905] 2 Ch. 147.

338. —.]—By the memorandum of assocn. of a limited co. it was declared that the capital was to be divided into preference & ordinary shares & that the preference shares should have a priority in respect of dividend over the ordinary shares. In 1872 the co. passed special resolutions, altering the priority as between the preference & ordinary shares. The resolutions were acted upon until 1883, dividends were from time to time paid in accordance with them, & no question as to their validity was raised by any of the shareholders. In 1883 the co. passed a resolution restoring the appln. of the capital as originally prescribed by the memorandum of assocn.:—*Held*: assuming the resolutions of 1872 to have been ratified by every member of the co., as to which there was not sufficient evidence, yet the resolutions were invalid, inasmuch as they altered a condition contained in the memorandum of assocn. within 1862 Act, s. 12, & therefore the net revenue should be applied in the manner prescribed by the memorandum.—*ASHBURY v.*

portion of native directors, standing by itself, would have been mandatory, the other arts. showed it to be directory only.—*NEW ZEALAND NATIVE LAND SETTLEMENT CO. v. RHODES'S TRUSTEES, SAME v. MCBETH* (1889), 7 N. Z. L. R. 19.—N.Z.

b. — *Not expressly excluding Table A—But exclusion by inconsistency.*—A co. arts. of assocn. which do not expressly exclude Table "A" provided that a person becoming entitled to a share by reason of the death of the owner should not before being registered as a member in respect of the share be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the co.:—*Held*: this provision in the arts. was inconsistent with regulation 71 of Table "A" & regulation 71 could not, in terms of Companies Act, s. 13, be regarded as part of the arts. nor was it material to this question that the provision in the arts. was in terms identical with regulation 28 of Table "A".—*HESLINGTON v. HOTEL CECIL* (1920), W. L. D. 44.—S. AF.

PART III. SECT. 7, SUB-SECT. 4.—A.

c. *How far allowed—"Conditions"*—*Companies Act, 1903, Section 20 (2).*—The word "conditions" does not refer solely to those conditions prescribed as necessary by sect. 15 of above Act, but to all other conditions inserted in the memorandum of assocn. by the co., & these cannot be altered.—*WRIGHT v. DAIRYMAN & FARMERS' UNION JOURNAL CO., LTD.* (1908), 27 N. Z. L. R. 181.—N.Z.

336 i. Resolution varying constitution of company.]—Provisions of the memorandum of assocn. as to a preferential dividend & implied provision as to an equal distribution of capital are "conditions" within the meaning of Cos. Act, 1882, s. 12, & therefore a resolution purporting to alter the same is *ultra vires* & ineffectual.—*MILFORD HAVEN FISHING CO. v. JONES* (1895), 22 R. (Ct. of Sess.) 577.—SCOT.

336 ii. — Company's (memorandum of association) Act, 1890—Petition to court.]—A shipping co. registered as a ltd. co. under Cos. Acts, presented a

petn. under the Cos. (Memorandum of Assocn.) Act 1890, sect. 1 (1) for the alteration of the form of its constitution by substituting a memorandum & arts. of assocn. for its contract of co-partnery. The leading object of the co., as stated in the proposed memorandum, was to purchase, hire or build ships, & employ them in carrying passengers, goods, etc., between Leith & London. In addition to the leading object, twenty-one other objects were mentioned & the last art. provided that the various businesses or objects specified shall be regarded as independent objects & in no wise restricted by reference to the name of the co. or to the businesses or objects contained in any other paragraph.

The petrs. having restricted a power to lend money taken in one of the arts. of assocn. to lending to customers & others having dealings with the co., the ct. granted the prayer of the petn.—*Re LONDON & EDINBURGH SHIPPING CO., LTD.*, [1909] S. C. 1.—SCOT.

d. *Jurisdiction of court—Discretion—Principles of exercise.*—In an

Sect. 7.—The memorandum and articles of association: Sub-sect. 4, A. & B.; sub-sect. 5, A.]

WATSON (1885), 30 Ch. D. 376; 54 L. J. Ch. 985; 54 L. T. 27; 33 W. R. 882; 1 T. L. R. 639, C. A. *Annotations*:—*Re* South Durham Brewery Co. (1885), 31 Ch. D. 261; *Re* Bridgewater Navigation Co. (1888), 39 Ch. D. 1; *Re* Hyderabad (Deccan) Co. (1896), 75 L. T. 23; *Andrews v. Gas Meter Co.*, [1897] 1 Ch. 361; *Re* Welsbach Incandescent Gas Light Co., [1904] 1 Ch. 87; *Re* Garden Village (Hull), [1923] 1 Ch. 230.

339. Jurisdiction of court—Company registered under 1856 Act.]—*Re* NITROPHOSPHATE & ODAMS CHEMICAL MANURE CO., LTD., [1893] W. N. 141. *Annotations*:—*Re* Coplago Mining Co. (1899), 6 Mans. 320; *Re* Euphrates & Tigris Steam Navigation Co. (1904), 73 L. J. Ch. 175.

340. — Unlimited company without capital or shares.]—The High Ct. has jurisdiction to wind up a registered unlimited co. which has no shares & no capital, & therefore has jurisdiction to sanction an alteration of its memorandum of assocn.

The N. Insurance Assocn. was registered in Feb. 1876 as an unlimited co., its object being the mutual insurance of iron steamships insured with the co. by members of the co. Upon appln. under 1890 (Memorandum of Association) Act for an alteration in its memorandum enlarging the scope of its operations, the question arose whether there was any ct. competent to wind up such a co. as this, which had no capital paid-up or credited as paid up:—*Held*: upon a consideration of 1862 Act, & 1890 (Winding-up) Act, the ct. had jurisdiction to wind up this assocn., & therefore to sanction an alteration of the memorandum of assocn.—*Re* NORTH OF ENGLAND IRON STEAMSHIP INSURANCE ASSOCN., [1900] 1 Ch. 481; 69 L. J. Ch. 211; 82 L. T. 598; 48 W. R. 604; 16 T. L. R. 172; 44 Sol. Jo. 230; 7 Mans. 364.

Alteration of objects.]—See Sect. 31, sub-sect. 9, *post*.

Reorganisation of capital.]—See Sect. 10, sub-sect. 4, *post*.

B. The Articles of Association.

See Sect. 30, sub-sect. 2, C., *post*.

SUB-SECT. 5.—EFFECT.

A. As between Company and Members.

See 1908 Act, s. 14 (1).

341. Whether constitute contract—General rule.]

—The true interpretation of the apparently conflicting decisions & *dicta* on sect. 16 of 1862 Act, re-enacted by sect. 14 (1) of 1908 Act, is that though arts. of assocn. can neither constitute a contract between a co. & an outsider nor give any individual member special contractual rights beyond those of the members generally, they do in fact constitute a contract between a co. & its members in respect of their ordinary rights as members.

(2) An art. providing for the reference of disputes to arbn. is a sufficient submission in writing

within the Arbitration Act, 1889 (c. 49), ss. 4, 27.—**HICKMAN v. KENT OR ROMNEY MARSH SHEEP-BREEDERS' ASSOCN.**, [1915] 1 Ch. 881; 84 L. J. Ch. 688; 113 L. T. 159; 59 Sol. Jo. 478.

Annotation:—*As to* (2) *Appld.* Anglo-Newfoundland Development Co. v. R., [1920] 2 K. B. 214.

See, also, No. 1609, *post*.

342. — In writing—1867 Act, s. 25.]—By the arts. of assocn. of a mining co. it was provided that the co. should, immediately after incorporation, enter into an agreement with the vendor of the mine for the purchase of the mine; the price to be £2,000 in cash, & 3,200 fully-paid shares to be allotted to the vendor or his nominees. The arts. were signed by the vendor & six other persons, & were duly registered.

The directors allotted the 3,200 shares to the vendor or his nominees, & for a short time worked the mine, but no further agreement was made with the vendor. The co. was then ordered to be wound up. A firm to whom 10 of the vendor's shares were allotted had requested that they might be registered in the name of one of the members of the firm, which was done; & he was afterwards placed on the list as a contributory in respect of 10 shares not fully-paid:—*Held*: the arts. of assocn. did not constitute a contract in writing between the vendor & the co. within the above Act, & the 10 shares could not be considered as fully-paid.—*Re* TAVARONE MINING CO., PRITCHARD'S CASE (1873), 8 Ch. App. 956; 42 L. J. Ch. 768; 29 L. T. 363; 21 W. R. 829, L. JJ.

Annotations:—*Distd.* *Re* Appletreewick Lead Mining Co. (1874), L. R. 18 Eq. 95. *Foll'd.* *Re* Malaga Lead Co., Firmstone's Case (1875), L. R. 20 Eq. 524. *Consd.* *Hickman v. Kent or Romney Marsh Sheep-Breeders' Assocn.*, [1915] 1 Ch. 881. *Re* *Eley v. Positive Government Security Life Assce.* (1875), 1 Ex. D. 20. *Ment'd.* *Re* Imperial Rubber Co., *Bush's Case* (1874), 22 W. R. 685.

343. —.]—The arts. of assocn. of a co. registered under 1862 Act, provided that the co. should have "a first & permanent lien & charge, available at law & in equity on every share for all debts due from the holder thereof." A shareholder deposited his share certificates with a bank as security for the balance, due, & to become due, on his current account, & the bank gave the co. notice of the deposit. The certificates stated that the shares were held subject to the arts. of assocn.:—*Held*: the co. could not claim priority over advances by the bank, in respect of moneys which became due from the shareholder to the co., after notice of the deposit with the bank.—**BRADFORD BANKING CO., LTD. v. BRIGGS & CO., LTD.** (1886), 12 App. Cas. 29; 56 L. J. Ch. 364; 56 L. T. 62; 35 W. R. 521; 3 T. L. R. 170, H. L.

Annotations:—*Foll'd.* *Miles v. New Zealand Alford Estate Co.* (1886), 32 Ch. D. 266. *Consd.* *West v. Williams*, [1899] 1 Ch. 132; *Hickman v. Kent or Romney Marsh Sheep-Breeders' Assocn.*, [1915] 1 Ch. 881; *Mackereth v. Wigan Coal & Iron Co.*, [1916] 2 Ch. 293. *Re* *Union Bank of Scotland v. National Bank of Scotland* (1886), 12 App. Cas. 60, n.; *Newfoundland Government v. Newfoundland Ry.* (1887), 13 App. Cas. 199; *Bank of Africa v. Salisbury Gold Mining Co.*, [1892] A. C. 281; *Boaler v. Broadhurst* (1892), 8 T. L. R. 398; *Rainford v. Keith & Blackman Co.*, [1905] 2 Ch. 147; *Deeley v. Lloyds Bank*, [1912] A. C. 756.

application under Act No. 1482, s. 80, for the confirmation by the ct. of alterations in the memorandum of assocn. of a co., the ct. will not sanction an alteration which has for its purpose merely the explaining or interpreting of existing arts. The ct. is not bound to confirm every alteration passed by the co. in conformity with Act. No. 1482, ss. 77 & 78, but the ct. has a discretion & should exercise such discretion in sanctioning only such alterations which will in a reasonable substantial way, enable the co. to

attain the object set out in sect. 80.—*Re* AUSTRALIAN WIDOWS FUND LIFE ASSURANCE SOCIETY (1898), 24 V. L. R. 613.—AUS.

e. — *Petition to confirm memorandum—Unlimited company becoming limited—Registration necessary to give jurisdiction.]—*A co. registered as an unlimited co., passed a special resolution that the co. should be registered as a limited co., & approving a memorandum of assocn. altering its existing constitution. The memorandum was

headed "Company Limited by Shares"; it set forth the name of the co. as concluding with the word "Limited"; & it expressly provided "The liability of the shareholders is limited." In a petition for confirmation of this memorandum:—*Held*: the petition was premature; the co. must be registered as a limited co. before the ct. could confirm a memorandum embodying the limitation of liability.—**ROYAL EXCHANGE BUILDINGS, GLASGOW, PROPRIETORS**, [1911] S. C. 1337.—SCOT.

344. —.]—The accounts of a co. showed an excess of receipts over expenditure to a large amount which was said to be available for payment of a dividend, but this profit had been applied in extending the co.'s works, being purposes for which the capital & not the revenue of the co. was applicable. An ordinary general meeting called to receive a report of the directors, "to declare a dividend & to transact the ordinary business of the co.," confirmed certain resolutions passed by the board of directors, the effect of which was to authorise the raising of further capital, & the payment of the dividends already earned, not in cash, but by means of the issue to the shareholders entitled to the dividends of debentures charged on the co.'s property to the amount of the dividends. The arts. of assocn. did not authorise the payment of dividends in this manner. On motion by a dissentient shareholder for an injunction to restrain the co. from paying the dividends by means of debentures:—*Held*: as the arts. constitute not merely a contract between the shareholders & the co., but between each individual shareholder & every other, & as by these arts. the payment of dividends should be in cash, & no steps had been taken under sect. 50 of 1862 Act, to alter the arts. so as to enable the payment to be made in the manner proposed, it was beyond the power of the majority of the shareholders present at a general meeting to bind the minority to accept payment of their dividends otherwise than in cash.—*WOOD v. ODESSA WATERWORKS CO.* (1889), 42 Ch. D. 636; 58 L. J. Ch. 628; 37 W. R. 733; 5 T. L. R. 596; 1 Meg. 265.

Annotations:—*Consd.* *Hickman v. Kent or Romney Marsh Sheep-Breeders' Assocn.*, [1915] 1 Ch. 881. *Refd.* *Salmon v. Quin & Axtens*, [1909] 1 Ch. 311.

345. — **Remuneration of directors—Company registered under 1856 Act.**—The declaration alleged that defts. were a co. incorporated under 1856 Act, & that by the arts. of assocn. it was agreed that each director should receive £50 *per annum*, without naming any fund out of which it was to be paid:—*Held*: nevertheless, the action was well brought against the co. by pltf., an ex-director.

The question is, what was the effect of those articles? It is agreed by them that £50 *per annum* shall be given to the director, & that amounts to a contract between the director & the co. (*MARTIN, B.*)—*ORTON v. CLEVELAND FIRE BRICK & POTTERY CO., LTD.* (1865), 3 H. & C. 868; 11 Jur. N. S. 531; 13 W. R. 869; 159 E. R. 776.

Annotation:—*Dbtd.* *Re Peruvian Guano Co., Ex p. Kemp*, [1894] 3 Ch. 690.

346. —.]—A co. whose arts. of assocn. provided that the directors' remuneration should be at a certain rate, altered these arts. by special resolution, which purported to make the altered rate of remuneration effective from a date prior to the special resolution:—*Held*: though the arts. did not constitute a contract between the co. & the directors but only pointed out the terms on which the directors were serving, & though these terms could be altered by a special resolution altering the arts., still the alteration could have effect only for the future, & the directors were entitled to remuneration at the old rate until the arts. were altered.

The arts. do not themselves constitute a contract, they are merely the regulations by which provision is made for the way the business of the co. is to be carried on. A person who acts as director with those arts. before him enters into a

contract with the co. to serve as a director, the remuneration to be at the rate contemplated by the arts. The person who does this has before him, as one of the stipulations of the contract, that it shall be possible for his employer to alter the terms upon which he is to serve, in which case he would have the option of continuing to serve, if he thought proper, at the reduced rate of remuneration. Those terms, however, could be altered only as to the future. In so far as the contract on those terms had already been carried into effect, it is incapable of alteration by the co. (*LORD HALSBURY, C.*).

It would be absurd to hold that one of the parties to a contract could alter it as to service already performed under it. The co. has power to alter the arts., but the directors would be entitled to their salary at the rate originally stated in the arts. up to the time the arts. were altered (*LORD ESHER, M.R.*)—*SWABEY v. PORT DARWIN GOLD MINING CO.* (1889), 1 Meg. 385, C. A.

Annotations:—*Apld.* *Re International Cable Co., Ex p. Official Liquidator* (1892), 66 L. T. 253. *Distd.* *Inman v. Ackroyd & Best*, [1901] 1 K. B. 613. *Refd.* *Re Anglo Austrian Printing & Publishing Union, Isaacs' Case*, [1892] 2 Ch. 158; *Allen v. Gold Reefs of West Africa*, [1900] 1 Ch. 656; *Moriarty v. Regents' Garage & Engineering Co.*, [1921] 2 K. B. 766.

347. —.]—N. was one of the seven first directors of a limited co., the arts. of assocn. of which provided as follows: "The qualification of a director shall be the holding of shares of the co. of the nominal value of £250. A first director may act before acquiring his qualification, but shall in any case acquire the same within one month from his appointment, & unless he shall do so, he shall be deemed to have agreed to take the said shares from the co. & the same shall be forthwith allotted to him accordingly. The board shall be entitled to receive by way of remuneration in each year £5,000, to be divided among the directors in such proportions as they shall from time to time agree, or in default of agreement, equally. The office of a director shall be vacated if he cease to hold the due qualification."

The co. was wound up within a year & a half of its incorporation. During that time N. attended meetings of the board of directors, but never acquired any qualification shares. In an action by N.'s assignee for the remuneration due to N.:—*Held*: (1) N. had not vacated the office of director, as he could not be said to have ceased to hold a qualification which in fact he never possessed; (2) the contracts implied by the arts.—on the part of N. to take the qualification shares, & on the part of the co. to pay remuneration—were not interdependent, & N. having acted as director, was entitled to remuneration; (3) the remuneration was not apportionable, & could not be claimed except for a whole year.—*SALTON v. NEW BEESTON CYCLE CO.*, [1899] 1 Ch. 775; 68 L. J. Ch. 370; 80 L. T. 521; 47 W. R. 462; 16 T. L. R. 25; 43 Sol. Jo. 380; 6 Mans. 238.

Annotations:—*As to* (3) *Consd.* *Re Central de Kaap Gold Mines* (1899), 69 L. J. Ch. 18. *Apld.* *Inman v. Ackroyd & Best*, [1901] 1 K. B. 613. *Foldd.* *Re London & Northern Bank, McConnell's Claim*, [1901] 1 Ch. 728. *Distd.* *Moriarty v. Regent's Garage & Engineering Co.*, [1921] 1 K. B. 423.

Remuneration of directors under arts., *see, generally*, Sect. 28, sub-sect. 3, B. (b), *post*.

— **Qualification of directors.**—*See, generally*, Sect. 28, sub-sect. 2, C., *post*.

348. — **Reference to arbitration.**—*HICKMAN v. KENT OR ROMNEY MARSH SHEEP-BREEDERS' ASSOCN.*, No. 341, *ante*.

Liability of signatories.—*See* Sub-sect. 6, *post*.

Sect. 7.—The memorandum and articles of association: Sub-sect. 5, A., B. & C.; sub-sect. 6, A. (a) & (b) i.]

How far members affected with notice.]—See Sub-sect. 7, B., post.

Conversion of friendly society into company.]—See No. 312, ante, No. 1201, post.

Effect of prospectus.]—See Sect. 8, post.

B. As between Company & Non-Members.

349. Cannot constitute contract—General rule.]

—**HICKMAN v. KENT OR ROMNEY MARSH SHEEP-BREEDERS' ASSOCN., No. 341, ante.**

350. — Promoters—Not parties to articles.]—

MELHADO v. PORTO ALEGRE RY. CO., No. 146, ante.

351. — Solicitor—Appointed by articles.]—

Arts. of assocn. contained a clause in which it was stated that pltf. should be solr. to the co., & should transact all the legal business of the co., including parliamentary business, for the usual & accustomed fees & charges, & should not be removed from his office, unless for misconduct. The arts. were signed by seven members of the co., & were duly registered, & the co. incorporated under 1862 Act. Pltf. acted as solr. to the co. for some time, but ultimately the co. ceased to employ him & employed other solrs. Pltf. brought an action against the co. for breach of contract in not employing him as solr. to transact their legal business on the terms of the arts.:—**Held:** the arts. of assocn. were a matter between the shareholders *inter se*, or the shareholders & the directors, & did not create any contract between pltf. & the co.—**ELEY v. POSITIVE GOVERNMENT SECURITY LIFE ASSURANCE CO. (1876), 1 Ex. D. 88; 45 L. J. Q. B. 451; 34 L. T. 190; 24 W. R. 338, C. A.**

Annotations:—Folld. Browne v. La Trinidad (1887), 37 Ch. D. 1; Boston Deep Sea Fishing & Ice Co. v. Ansell (1888), 59 L. T. 345. Apld. Re Dale & Plant (1889), 61 L. T. 206. Consd. Re Famatina Development Corpn., [1914] 2 Ch. 271. Folld. Hickman v. Kent or Romney Marsh Sheep-Breeders' Assocn., [1915] 1 Ch. 881. Reid. Re Rotherham Alum & Chemical Co. (1883), 25 Ch. D. 103; Re Anglo-Austrian Printing & Publishing Union, Isaacs' Case, [1892] 2 Ch. 158; Re Olympia, [1898] 2 Ch. 153; Baring-Gould v. Sharpington Pick & Shovel Syndicate, [1899] 2 Ch. 80. Mentd. Davey v. Shannon (1879), 4 Ex. D. 81; Gandy v. Gandy (1885), 30 Ch. D. 57.

352. — Employed by promoter before formation.]—Re ROTHERHAM ALUM & CHEMICAL CO., No. 147, ante.

353. — Director—Appointed before formation of company—Under agreement with trustee on behalf of company.]—Before the formation of a co. an agreement was entered into between B. & a person as trustee for the intended co., by which it was stipulated, *inter alia*, that B. should be a director & should not be removable till after 1888. The sixth clause of the arts. provided that the directors should adopt & carry in effect the agreement with or without modification, & that subject to such modification, if any, the provisions of the agreement should be construed as part of the arts.

The agreement was acted upon, but no contract adopting it was entered into between pltf. & the co.:—**Held:** treating the agreement as embodied in the arts., still there was no contract between B. & the co. that he should not be removed from being a director, the arts. being only a contract between the members *inter se*, & not between the co. & B.

Qu.: whether a stipulation that a director shall not be removable will be enforced by the ct.—**BROWNE v. LA TRINIDAD (1887), 37 Ch. D. 1; 57 L. J. Ch. 292; 58 L. T. 137; 36 W. R. 289; 4 T. L. R. 14, C. A.**

Annotations:—Folld. Boston Deep Sea Fishing & Ice Co.

v. Ansell (1888), 59 L. T. 345. Apld. Re Dale & Plant (1889), 61 L. T. 206. Folld. Baring-Gould v. Sharpington Pick & Shovel Syndicate (1898), 67 L. J. Ch. 622; Boschoek Proprietary Co. v. Fuke, [1906] 1 Ch. 148. Consd. Re Famatina Development Corpn., [1914] 2 Ch. 271. Folld. Hickman v. Kent or Romney Marsh Sheep-Breeders' Assocn., [1915] 1 Ch. 881. Reid. Bainbridge v. Smith (1889), 60 L. T. 879; Re Anglo-Austrian Printing & Publishing Union, Isaacs' Case, [1892] 2 Ch. 158; Southern Counties Deposit Bank v. Rider & Kirkwood (1895), 73 L. T. 374; Re Olympia, [1898] 2 Ch. 153; Re State of Wyoming Syndicate, [1901] 2 Ch. 431; Automatic Self-Cleansing Filter Syndicate Co. v. Cuninghame, [1906] 2 Ch. 34; Plantations Trust v. Bila (Sumatra) Rubber Lands (1916), 114 L. T. 676.

354. — Under agreement with promoter.]—The promoter of pltf. co. agreed with deft. that he should be employed as managing director of the intended co. for five years at a yearly salary. By the arts. of assocn. it was provided that deft. should be managing director for five years at the yearly salary mentioned in the agreement, payable quarterly. Afterwards the co. by a written instrument adopted the agreement between the promoter & deft. Deft., on behalf of the co., contracted for the construction of certain fishing-smacks, & unknown to the co., took a commission from the ship-builders on the contract. Several months afterwards pltf. co., at an extraordinary meeting, passed a resolution dismissing deft. from his office on the ground of other alleged acts of misconduct, which they were not able to substantiate in the action, being at that time ignorant of his receipt of the commission from the shipbuilders. Deft. was a shareholder in an ice co. & a fish-carrying co., which paid, in addition to the ordinary dividends, bonuses to shareholders who were owners of fishing-smacks & who employed the cos. in supplying ice & carrying for them. Deft. employed these cos. in respect of pltf.'s smacks, & received bonuses as if the smacks were his own. Pltf. co. brought an action against deft. for an account of commissions & bonuses received by him, & for damages for alleged breaches of duty; & deft. counterclaimed for wrongful dismissal & for the salary for the quarter which had expired before his dismissal:—**Held:** (1) the receipt of a commission from the shipbuilding co. was good ground for dismissal, although it was not discovered till after the dismissal had taken place, & although it happened several months previously, & might have been an isolated act; (2) deft. must account to pltf. for the bonuses received from the ice & carrying co., as they had been paid in respect of pltf.'s smacks, although pltf. could not themselves have received the bonuses, not being shareholders of the cos.; (3) the contract between pltf. & deft. was contained in the agreement between the promoter & deft. as adopted by the co., & was not modified by the arts. of assocn.; (4) the salary was consequently payable yearly & not quarterly, & therefore, deft. having been dismissed for misconduct, was not entitled to any part of the unpaid salary for the current year of his service. **Qu.:** if pltf. co. had not formally adopted the agreement by a separate instrument, whether the arts. might not have been taken as evidence that the parties had agreed to a modification of the agreement by making the payment of the salary quarterly.—**BOSTON DEEP SEA FISHING & ICE CO. v. ANSELL (1888), 39 Ch. D. 339; 59 L. T. 345, C. A.**

Annotations:—As to (2) Reid. Costa Rica Ry. v. Forwood, [1901] 1 Ch. 746; Adams v. Morgan, [1923] 2 K. B. 234. As to (3) Reid. Re Famatina Development Corpn., [1914] 2 Ch. 271. As to (4) Reid. Healey v. Soc. Anon. Française Rubastie, [1917] 1 K. B. 946. Generally, Mentd. Erskine, Oxenford v. Sachs, [1901] 2 K. B. 504; Swale v. Ipswich Tannery (1906), 11 Com. Cas. 88; General Billposting Co. v. Atkinson, [1908] 1 Ch. 537; Federal Supply &

Cold Storage Co. of South Africa v. Angehrn & Piel (1910), 80 L. J. P. C. 1; *Taylor v. Oakes, Roncoroni* (1922), 127 L. T. 267; *Rhodes v. Macalister* (1923), 29 Com. Cas. 19.

See, also, No. 346, *ante*.

355. — Undisclosed principal—Partner of member.]—T., the manager & part owner of a ship became a member of a mutual insurance assocn., & took out a policy with such assocn. in respect of the ship. The arts. of assocn. gave power to the committee, in order to provide funds for the business of the assocn. from time to time to direct sums to be paid by the members rateably. By the policy which was made by the assocn. under their seal, the assocn. agreed with T., that the members thereof should according to the arts. of assocn. pay & make good losses & damages to the ship occasioned by the risks insured against, subject to a proviso that the assocn. should be liable only to the extent of so much of the funds as they were able to recover from the members liable for the same & which were applicable for the purpose of paying claims under the policy. Certain contributions to the funds of the assocn. having, in accordance with the arts., become payable by T. in respect of the ship, & T. being bkpt., the assocn. sued N., another part owner of the ship, for such contributions as an undisclosed principal of T.:—*Held*: the effect of the arts. of assocn. & the policy being that the liability for such contributions was imposed on members only, N., not being a member of the assocn., could not be sued for such contributions as an undisclosed principal of T.—*UNITED KINGDOM MUTUAL STEAMSHIP ASSURANCE ASSOCN. v. NEVILL* (1887), 19 Q. B. D. 110; 56 L. J. Q. B. 522; 35 W. R. 746; 3 T. L. R. 658; 6 Asp. M. L. C. 226, n., C. A.

Annotations:—*Fold*. *Ocean Iron Steamship Insee. Assocn. v. Leslie* (1887), 22 Q. B. D. 722, n. *Distd.* *Great Britain 100 A 1 Steamship Insee. Assocn. v. Wyllic* (1889), 22 Q. B. D. 710. *Consd.* *Montgomerie v. United Kingdom Mutual Steamship Assocn.*, [1891] 1 Q. B. 370. *Distd.* *British Marine Mutual Insee. v. Jenkins*, [1900] 1 Q. B. 299. *Mentd.* *Tyser v. Shipowners' Syndicate* (1895), 65 L. J. Q. B. 238.

Adoption by articles of contract made before formation of company.]—See Sect. 31, sub-sect. 5, B. (c), *post*.

Article inserted by solicitor for own benefit.]—See No. 3622, *post*.

C. As between Members.

356. Constitute contract.]—*BROWNE v. LA TRINIDAD*, No. 353, *ante*.

357. —.]—*WOOD v. ODESSA WATERWORKS Co.*, No. 344, *ante*.

See, also, No. 355, *ante*, No. 436, *post*, & compare No. 1433, *post*.

Whether capable of alteration—Affecting rights of classes of shareholders.]—See Sect. 15, sub-sect. 1, *post*.

SUB-SECT. 6.—LIABILITY OF SIGNATORIES.

A. In respect of Shares Subscribed for.

(a) In General.

358. To take up number subscribed for—Memorandum subscribed for both ordinary & paid-up shares.]—B. subscribed to the memorandum of assocn. of a co. for 450 ordinary shares & 138 paid-up shares:—*Held*: he was a contributory in respect of the 450 shares, but not of the 138 paid-up shares:—*Semble*: decision would have been otherwise if he had subscribed for 138 paid-up shares only.—*Re SOUTH OF FRANCE Co.*, DE

BEVILLE'S (BARON) CASE (1868), L. R. 7 Eq. 11; 38 L. J. Ch. 18; 17 W. R. 90.

Annotations:—*Fold*. *Re China Steamship & Labuan Coal Co.*, *Drummond's Case* (1869), 4 Ch. App. 772; *Re Heyford Co.*, *Pell's Case* (1869), 17 W. R. 1054. *Consd.* *Re Baglan Hall Colliery Co.* (1870), 5 Ch. App. 346. *Distd.* *Ilfracombe Ry. v. Nash* (1870), 22 L. T. 209. *Consd.* *Re Church & Empire Fire Insee.*, *Pagin & Gill's Case* (1877), 6 Ch. D. 681. *Mentd.* *Re Carribean Co.*, *Crickmer's Case* (1875), 44 L. J. Ch. 595.

359. — Memorandum subscribed for paid-up shares only.]—*Re SOUTH OF FRANCE Co.*, DE *BEVILLE'S (BARON) CASE*, No. 358, *ante*.

360. — & pay in money or money's worth.]—*Re HEYFORD IRONWORKS Co.*, *FORBES & JUDD'S CASE*, No. 385, *post*.

361. — As & when calls made under articles—Apart from express agreement.]—A subscriber of the memorandum of assocn. of a co. limited by shares is, in the absence of any provision in the articles of association, or of an express agreement between him & the co., to the contrary, not liable to make any payment in respect of the shares for which he subscribes, except as & when calls are made upon him in accordance with the provisions of the articles.—*ALEXANDER v. AUTOMATIC TELEPHONE Co.*, [1900] 2 Ch. 56; 69 L. J. Ch. 428; 82 L. T. 400; 48 W. R. 546; 16 T. L. R. 339; 44 Sol. Jo. 407, C. A.

362. — Memorandum knowingly signed for more than intended number—Additional shares not allotted.]—*Re N. H. E. Co., LTD.* (1914), 138 L. T. Jo. 35.

(b) Discharge of Obligation to take Shares.

i. In General.

363. By allotment of directors' qualification shares.]—Before the formation of a co., at a preliminary meeting, certain persons "agreed to hold 100 shares each, & also to execute the arts. & memorandum of assocn., when ready, & act as directors of the co." A few days afterwards they signed the memorandum of assocn. for 21 shares each, & they also signed the arts. of assocn. By two of the clauses of these articles it was provided that the subscribers of the memorandum should be directors, until directors were appointed, & that no shareholder was entitled to be a director unless he held at least 100 shares in the co. The co. was afterwards wound up in bkpcy.:—*Held*: considering the aforesaid resolution & the arts. of assocn., they were liable to be placed on the list of contributories in respect of 100 shares each, in which number, however, the 21 shares for which they had subscribed the memorandum of assocn. would be included.—*Re GREAT NORTHERN & MIDLAND COAL Co., LTD.*, *CURRIE'S CASE* (1863), 3 De G. J. & Sm. 367; 2 New Rep. 145; 32 L. J. Ch. 421; 8 L. T. 472; 11 W. R. 675; 46 E. R. 677, L. JJ.

Annotations:—*Distd.* *Re Llanharry Hematite Iron Ore Co.*, *Roney's Case*, *Stock's Case* (1864), 4 De G. J. & Sm. 426. *Consd.* *Re Pelotas Coffee Co.*, *Karuth's Case* (1875), L. R. 20 Eq. 506. *Reid.* *Re Disderl* (1870), 40 L. J. Ch. 248; *Re Western of Canada Oil, Lands, & Works Co.*, *Carling, Hespeler & Walsh's Cases* (1875), 1 Ch. D. 115; *Re Anglo-Austrian Printing & Publishing Union, Isaacs' Case*, [1892] 2 Ch. 158. *Mentd.* *Waterhouse v. Jamieson* (1870), L. R. 2 Sc. & Div. 29.

364. By allotment under subsequent application—Application for larger number of shares.]—Where a party signs the memorandum of assocn. of a co. for x shares, & afterwards applies for, & is allotted, y shares, a number greater than x , the shares for which he signed the memorandum form part of the allotment, & he will not be liable as a contributory for x & y shares.—*Re FREEN &*

Sect. 7.—The memorandum and articles of association: Sub-sect. 6, A. (b) ii. & (c) & B.; sub-sect. 7, A.]

others for working the mine. F., on the co.'s being formed, signed the memorandum of assocn. for 1,000 £2 shares, & 1,000 shares were afterwards allotted to him. In the share-ledger of the co. was an entry debiting F. with £2,000 for the shares & crediting him with £2,000, described as paid by F. & the others. F. afterwards sold the 1,000 shares. On the co.'s being wound up:—*Held*: F. had done nothing to exempt him from the liability he had incurred by signing the memorandum to pay for the 1,000 shares in cash, & he was a contributory in respect of 1,000 shares.—*Re PEN 'ALLT SILVER LEAD MINING CO., LTD., FRASER'S CASE (1873), 42 L. J. Ch. 358; 28 L. T. 158; 21 W. R. 642.*

(c) Termination of Obligation.

388. Where shares subscribed for not allotted—All shares allotted to other members—Some not taken up.]—E. signed the memorandum of assocn. of a co. as the holder of ten shares, & acted for a short time as a director of the co. Other directors were then appointed, & E. never afterwards had anything to do with the co. No shares were ever allotted to him, & his name was never on the register. All the shares in the co. were allotted to other persons, but the allotment of some was not final, & they were not taken up:—*Held*: E.'s name ought to have been on the register, & he was a contributory in respect of ten shares.—*Re LONDON, HAMBURGH & CONTINENTAL EXCHANGE BANK, EVANS'S CASE (1867), 2 Ch. App. 427; 36 L. J. Ch. 501; 16 L. T. 252; 15 W. R. 543, L. JJ.*

Annotations:—*Consd. Re South Blackpool Hotel Co., Migotti's Case (1867), L. R. 4 Eq. 238. Distd. Re Imperial Land Credit Co., Ex p. Eve (1868), 37 L. J. Ch. 844. Consd. Ex p. London & Colonial Co., Tooth's Case (1868), 19 L. T. 599. Follid. Re Masons' Hall Tavern Co., Ex p. Nokes (1868), 37 L. J. Ch. 624. Expld. Re China S.S. & Labuan Coal Co., Drummond's Case (1869), 4 Ch. App. 772. Consd. Re Tyddyn Sheffrey Slate Quarries Co. (1869), 20 L. T. 105; Re United Service Co., Hall's Case (1870), 5 Ch. App. 707; Re Tal y Drws Slate Co., Mackley's Case (1875), 1 Ch. D. 247; Re Argyle Coal & Cannell Co., Ex p. Watson (1885), 54 L. T. 233. Reid. Re Burslem Paper Mills Co., Key's Case (1868), 16 W. R. 1103; Re Baglan Hall Colliery Co. (1870), 5 Ch. App. 346; Re Heyford Ironworks Co., Forbes & Judd's Case (1870), 5 Ch. App. 270; Re Imperial Land Co. of Marseilles, Levick's Case (1870), 40 L. J. Ch. 180; Re Robinson & Preston's Brewery Co., Sidney's Case (1871), L. R. 13 Eq. 228; Re Pen' Allt Silver Lead Mining Co., Fothergill's Case (1873), 8 Ch. App. 270; Re London & Provincial Consolidated Coal Co. (1877), 5 Ch. D. 525.*

389. ———.]—The memorandum of assocn. of a co. was subscribed by M., but he took no further part in the management, & was never treated as a shareholder. His name never appeared on the register of members of the co., & the entire share capital was allotted to other persons:—*Held*: he was not liable as a contributory.—*Re TAL Y DRWS SLATE CO., MACKLEY'S CASE (1875), 1 Ch. D. 247; 45 L. J. Ch. 158; 33 L. T. 460; 24 W. R. 92.*

Annotations:—*Consd. Re London & Provincial Consolidated Coal Co. (1877), 5 Ch. D. 525; Re Argyle Coal & Cannell Co., Ex p. Watson (1885), 54 L. T. 233.*

390. ——— Shares surrendered—Under power in articles—Withdrawal by director after payment of deposit.]—Where the directors of a co. have power to accept the surrender of shares, they may accept the surrender of the shares of a subscriber of the memorandum of assocn. whose name has

not been entered on the share register pursuant to 1862 Act, s. 23.

S., a subscriber of the memorandum of assocn. of a co., who was also a director, applied for the number of shares for which he had subscribed, & paid the deposit on them. Before any shares had been allotted to him or his name had been entered on the share register, he withdrew from the office of director, & applied to have his appln. for shares cancelled. The directors, who had power under the arts. to accept the surrender of shares, cancelled the appln. & returned the deposit. The co. was afterwards wound up:—*Held*: the surrender of the shares was valid, & S. was not a contributory.—*Re NATAL INVESTMENT CO., SNELL'S CASE (1869), 5 Ch. App. 22; 21 L. T. 445; 18 W. R. 30, L. J.*

Annotations:—*Distd. Re United Service Co., Hall's Case (1870), 5 Ch. App. 707. Consd. Re London & Provincial Consolidated Coal Co. (1877), 5 Ch. D. 525. Follid. Re Dronfield Silkstone Coal Co. (1880), 17 Ch. D. 76. Consd. Bellerby v. Rowland & Marwood's S.S. Co., [1901] 2 Ch. 265. Reid. Re County Palatine Loan & Discount Co., Teasdale's Case (1873), 9 Ch. App. 54; Re St. James's Bank, Colville's Case (1879), 48 L. J. Ch. 633; Kichbaum v. City of Chicago Grain Elevators, [1891] 3 Ch. 459.*

See, also, No. 2941, post.

391. ——— Release approved by company at general meeting.]—H., a director of a co., subscribed the memorandum of assocn. for 500 shares, of which 250 were never allotted to him. The arts. of the co., after a series of clauses relating to the forfeiture of shares, empowered the directors to accept from any member the surrender & forfeiture of any shares, but they also in terms prohibited the purchasing or dealing in any shares. Subsequently by a deed, approved of at a general meeting to which the seal of the co. was attached, H. was released by the co. from his liability to take the 250 unallotted shares, & indemnified against all liability. The co. was afterwards wound up:—*Held*: the release was invalid, & H. was a contributory for the 250 shares.—*Re UNITED SERVICE CO., HALL'S CASE (1870), 5 Ch. App. 707; 39 L. J. Ch. 730; 23 L. T. 331; 18 W. R. 1058, L. JJ.*

Annotations:—*Consd. Re London & Provincial Consolidated Coal Co. (1877), 5 Ch. D. 525. Reid. Re Robinson & Preston's Brewery Co., Sidney's Case (1871), L. R. 13 Eq. 228.*

392. ——— Deposit returned—No power in articles to accept surrender.]—Upon the formation of a co. nine persons signed the memorandum of assocn. At a preliminary meeting, attended by four of these persons, a resolution was passed that no shares be allotted to three of the signatories to the arts., & with their consent the deposit money was repaid to them. The arts. contained no power to accept surrenders of shares:—*Held*: the directors had no power to remit the shares; & all those who had signed the arts. were liable as contributories upon the winding-up.—*Re LONDON & PROVINCIAL CONSOLIDATED COAL CO. (1877), 5 Ch. D. 525; sub nom. Re LONDON & PROVINCIAL CONSOLIDATED COAL CO., HADLEY, NORRIS & JACOB'S CASE, 46 L. J. Ch. 843; 36 L. T. 545.*

Annotation:—*Consd. Re Argyle Coal & Cannell Co., Ex p. Watson (1885), 54 L. T. 233.*

See, also, No. 362, ante, & generally, Sect. 26, post.

393. ——— Lapse of time.]—L. signed the memorandum of assocn. of a co. for fifty shares in Jan., 1866. The co. was registered on Jan. 18, 1866. Directors were appointed on Feb. 24, 1866. The co. was wound up on Sept. 23, 1867. L.'s

name had not, up to that time, been placed on the list of shareholders:—*Held*: notwithstanding the lapse of time, L. must be made a contributory.—*Re IMPERIAL LAND CO. OF MARSEILLES, LTD., LEVICK'S CASE* (1870), 40 L. J. Ch. 180; 23 L. T. 838.

Annotations:—*Follid. Re Robinson & Preston's Brewery Co., Sidney's Case* (1871), L. R. 13 Eq. 228. *Consd. Re London & Provincial Consolidated Coal Co.* (1877), 5 Ch. D. 525. *Reid. Re Tal y Drws Slate Co., Mackley's Case* (1875), 1 Ch. D. 247; *Re Argyle Coal & Cannell Co., Ex p. Watson* (1885), 54 L. T. 233.

394. ———.]—S. in 1865 agreed to become a director of a co., & signed the memorandum of assocn. for 200 shares. The arts. of assocn. empowered the directors to decline to commence business unless two-thirds of the capital were subscribed. S. attended the first meeting of the directors, & having unsuccessfully opposed a resolution to commence business before two-thirds of the capital had been subscribed, stated that he should resign his directorship, but, at the request of the directors, postponed his resignation till a further day, when it was accepted. The co. carried on business & made some dividends, but was in Feb. 1870, ordered to be wound up. S. was not treated as a member of the co. after his resignation, & no shares were allotted to him, & his name was never placed on the list of shareholders:—*Held*: he was not by the lapse of time, & by the circumstances of the case, exonerated from liability to take the shares for which he had subscribed the memorandum of assocn.—*Re ROBINSON & PRESTON'S BREWERY CO., SIDNEY'S CASE* (1871), L. R. 13 Eq. 228.

Annotations:—*Reid. Re Tal y Drws Slate Co., Mackley's Case* (1875), 1 Ch. D. 247; *Re London & Provincial Consolidated Coal Co.* (1877), 5 Ch. D. 525; *Re Argyle Coal & Cannell Co., Ex p. Watson* (1885), 54 L. T. 233.

———.]—*See, also*, No. 367, *ante*.

395. By duly registered transfer only.]—A person who has signed a memorandum of assocn. cannot get rid of his liability as shareholder except by means of a duly registered transfer of his particular shares.—*Re ARGYLE COAL & CANNELL CO., LTD., Ex p. WATSON* (1885), 54 L. T. 233; 2 T. L. R. 213.

B. Other Cases.

396. Alteration of memorandum & articles after signature—Subscriber not bound.]—The substitution of one sheet in the arts. of assocn. of a co. for another, after they had been signed, is to be distinguished from such an alteration by erasure or otherwise as would be apparent on the instrument itself, & such a substitution throws upon the co. the onus of proving that the two sheets were substantially the same, when a question arises whether a person who signed before the substitution is or is not a contributory. If the evidence in this respect fails, his name will be removed from the list.—*Re UNITED KINGDOM SHIPOWNING CO., LTD., FELGATE'S CASE* (1865), 2 De G. J. & Sm. 456; 11 L. T. 613; 11 Jur. N. S. 52; 13 W. R. 305; 46 E. R. 451, L. JJ.

397. As to matters not required to be stated therein—Not irrevocably bound.]—*Re NEW BUXTON LIME CO., DUKE'S CASE*, No. 366, *ante*.

398. Company limited by guarantee.]—In the winding-up of a co., limited by guarantee, a member is only liable to be placed on the list of contributories in respect of the amount which by the memorandum of assocn. of the co. he has undertaken to contribute in the event of its being

wound up. Although he may be sued for sums which he is only bound to pay under the arts. of assocn., he is not liable as a contributory in respect of such sums.—*Re BANGOR & NORTH WALES MUTUAL MARINE PROTECTION ASSOCN., BAIRD'S CASE*, [1899] 2 Ch. 593; 68 L. J. Ch. 521; 80 L. T. 870; 47 W. R. 695; 43 Sol. Jo. 605; 7 Mans. 160.

399. Company formed for fraudulent purpose—Guilty of fraudulent conspiracy.]—*SOCIÉTÉ ANONYME DES ANCIENS ÉTABLISSEMENTS PANHARD ET LEVASSOR v. PANHARD LEVASSOR MOTOR CO., LTD.*, No. 243, *ante*.

400. Misrepresentation by promoter — Not ground for rescission.]—L. signed the memorandum of assocn. of a co. before its incorporation for 250 shares. After its incorporation he sought to escape from liability on the shares on the ground that he was induced to sign the memorandum by the misrepresentation of a promoter of the co.:—*Held*: (1) assuming the misrepresentation was made & acted on, L. was nevertheless liable on the shares, because the co. before it came into existence could not appoint an agent, & was therefore not liable for the acts of the promoter; (2) by signing the memorandum L., on the registration of the co. became bound, not only as between himself & the co., but also as between himself & the other persons who should become members.—*Re METAL CONSTITUENTS, LTD. LURGAN'S (LORD) CASE*, [1902] 1 Ch. 707; 7 L. J. Ch. 323; 86 L. T. 291; 50 W. R. 492; 9 Mans. 196.

See, also, No. 439, *post*.

Surrender of shares.]—*See* Nos. 390, 391, 392 *ante*, No. 829, *post*.

SUB-SECT. 7.—NOTICE OF CONTENTS.

A. When Presumed.

401. Reference in prospectus.]—A person who would otherwise be entitled to set aside a contract on the ground of fraud, cannot do so if, after discovering the fraud, he has acted in a manner inconsistent with the repudiation of the contract. Where, therefore, a person was induced to take shares in a co. on the faith of representation contained in the prospectus, which he afterwards discovered to be false, & subsequently to the discovery instructed his broker to sell the shares:—*Held*: his name could not be removed from the register.

Semble: if a prospectus of a co. states that the arts. of assocn. may be seen at a certain place a person taking shares on the faith of the prospectus, & without inspecting the arts., must be held to do so with notice of the contents of such arts., provided they do not contain anything incompatible with the prospectus.—*Re HOP MALT EXCHANGE & WAREHOUSE CO., Ex BRIGGS* (1866), L. R. 1 Eq. 483; 35 Beav. 27; 35 L. J. Ch. 320; 14 L. T. 39; 12 Jur. N. S. 32; 55 E. R. 900.

Annotations:—*Consd. Central Ry. of Venezuela v. KIL* (1867), L. R. 2. H. L. 99. *Distd. Re Cheltenham & Swansea Ry. Carriage & Waggon Co., Little's Case* (1869), L. T. 162. *Consd. Re Murray, Dickson v. Murray* (1885), 57 L. T. 223. *Reid. Re Russian Vyksounsky Ironworks Co., Ex p. Stewart* (1866), 35 L. J. Ch. 738; *Impe Ottoman Bank v. Trustees, Executors & Securities Ins. Corp.* (1895), 13 R. 287. *Mentd. Re Metropolitan C Consumers' Assocn., Ex p. Edwards* (1891), 64 L. T. 56.

Memorandum differing from prospectus.]—Sect. 8, sub-sect. 4, *post*.

& previously to the allocation of the shares. He had been one of the seven signatories required for the memorandum of assocn., where his name was

entered for the statutory single share:—*Held*: deceased had incurred no liability to the co. except as a party to the memorandum of assocn., by

which he became bound to take share.—*MOLLESON & GRIGOR FRASER'S TRUSTEES* (1881), 8 R. of Sess. 630; 18 Sc. L. R. 486.—*Sc*

Sect. 7.—The memorandum and articles of association: Sub-sect. 7, A. & B.]

402. Applicant for shares—Duty to inspect.]—*Re* ANGLO-GREEK STEAM CO., No. 159, *ante*.

403. ———.]—*Re* BARNED'S BANKING CO., *PEEL'S CASE*, No. 302, *ante*.

404. ———.]—OAKES *v.* TURQUAND & HARDING, *PEEK v. TURQUAND & HARDING, Re* OVEREND, GURNEY & CO., No. 1, *ante*.

405. ——— Agreeing to be bound—Neglect to examine no bar to rescission.]—(1) Where a person believes that he has been misled, by representations which are false or deceptive, into taking shares in a proposed co. it is his duty to raise the objection at an early period, & to be guilty of no needless delay.

(2) The same rules as to false or deceptive representations which are applicable to contracts between individuals are also applicable to contracts between an individual & a co., though allowance must be made for exaggerations. No mis-statement or concealment of any material facts or circumstances ought to be permitted in a prospectus issued to invite persons to become shareholders in a projected co. The public are, in such a case, entitled to have the same opportunity of judging of everything material to a knowledge of the true character of the undertaking as the promoters themselves possess.

(3) The expression of a fact will often amount to misrepresentation.

(4) Where there has been fraudulent misrepresentation, or wilful concealment of facts, by which a person has been induced to enter into a contract, it is no answer to his claim to be relieved from it, that he might have known the truth by proper inquiry.

(5) The phrase "available capital of the co." is not a true, but is a deceptive description of capital which may be raised under the borrowing powers conferred upon directors.

(6) Where a prospectus described a contract for the construction of a line of railway as entered into at "a price considerably within the available capital of the co.," & the facts were, that from the nominal capital of £500,000 were to be deducted £50,000 as the price of purchasing the concession to make the railway, & the contract price for making it was £420,000, the representation was held to be untrue & deceptive.

(7) A prospectus of a railway co. stated that "the engineer's report, maps, plans, etc., may be inspected, & further information obtained at the offices of the co." An applt. for shares signed the printed form of appln. in which as usual, it was stated that he agreed to be bound by the conditions & regulations contained in the memorandum & arts. of assocn. An examination of all these papers would have afforded him the information, the want of which he alleged as a ground for rescinding his contract. Trusting to the representations he did not examine all:—*Held*: his neglect to do so was no answer to his demand to be relieved from the contract.

(8) A bill was filed to rescind the contract on the ground of there having been misrepresentations of facts. Relief was given in the ct. below on

only some of the alleged grounds. An appeal was brought against the decree:—*Held*: it was open to resp. to sustain the decree on any or all of the grounds stated in his bill.

(9) A prospectus omitted to state that a deposit of £20,000 out of a capital of £500,000, had been made, & was liable to forfeiture if the works were not commenced by a certain day:—*Held*: this was no ground for a charge of improper concealment.

(10) A grant from a foreign govt. of the right to make a railroad reserved to the *concessionnaires* a certain number of shares. This was not mentioned in the prospectus. The *concessionnaires* having sold their rights to the co.:—*Held*: this was no improper omission.

(11) The prospectus stated that the foreign govt. had promised a free grant of 30,000 acres to the contractors of the railroad, but it omitted the qualification that the grant only extended to lands in the province through which the lines should pass not belonging to private individuals:—*Held*: not to be an unfair statement, because such a qualification must be implied.

(12) For the same reason, a statement was held to be not unfair, that the foreign govt. had guaranteed £9 per cent. on the money expended on the railroad, though the qualification was omitted that the guarantee was limited to the event of the railroad not producing that amount without default of the co.

(13) A statement that the contractor agreed to pay £2 10s. per cent. on paid-up capital, but which omitted to mention that his liability was limited to £20,000:—*Held*: to be an improper statement.

(14) *Seem*: several mis-statements taken together may give a right to relief, which none of them standing alone would have been sufficient to warrant.—CENTRAL RY. CO. OF VENEZUELA (DIRECTORS, ETC.) *v.* KISCH (1867), L. R. 2 H. L. 99; 36 L. J. Ch. 849; 16 L. T. 500; 15 W. R. 821, H. L.; *reusg.* S. C. *sub nom.* KISCH *v.* CENTRAL RY. CO. OF VENEZUELA, LTD. (1865), 3 De G. J. & Sm. 122, L. JJ.

Annotations:—As to (1) Consd. Estates Investment Co., Ex p. Ashley, Scholey v. Central Ry. of Venezuela (1870), 39 L. J. Ch. 354; *Re Estates Investment Co., McNicoll's Case* (1870), L. R. 10 Eq. 503; *Re Scottish Petroleum Co.* (1883), 23 Ch. D. 413. *Reid. Re Canadian Native Oil Co., Fox's Case* (1868), L. R. 5 Eq. 118; *Re Estates Investment Co., Ex p. Pawle* (1869), 38 L. J. Ch. 318; *Newlands v. National Employers' Accident Asscn.* (1885), 54 L. J. Q. B. 428; *As to (2) Consd. Ross v. Estates Investment Co.* (1866), L. R. 3 Eq. 122; *Re Overend Gurney, Oakes v. Turquand & Harding, Peek v. Turquand & Harding* (1867), L. R. 2 H. L. 325; *Re Reese River Silver Mining Co., Smith's Case* (1867), 2 Ch. App. 604; *Scott v. Snyder Dynamite Projectile Co.* (1892), 67 L. T. 104. *Reid. Denton v. Macnall* (1866), L. R. 2 Eq. 352; *Henderson v. Lacon* (1867), L. R. 5 Eq. 249; *Re Madrid Bank, Wilkinson's Case* (1867), 36 L. J. Ch. 489; *Re Anglo-Danubian Steam Navigation & Colliery Co., Walker's Case* (1868), L. R. 6 Eq. 30; *Chester v. Spargo* (1868), 18 L. T. 314; *Hodgkinson v. Kelly* (1868), L. R. 6 Eq. 496; *Cornell v. Torrens, Cornell v. Hay, Cornell v. Massey* (1873), 42 L. J. C. P. 136; *Blenkhorn v. Penrose* (1880), 43 L. T. 668; *Bellairs v. Tucker* (1884), 13 Q. B. D. 562. *As to (4) Consd. Scott v. Snyder Dynamite Projectile Co.* (1892), 67 L. T. 104. *Reid. Hodgkinson v. Kelly* (1868), L. R. 6 Eq. 496; *Panama & South Pacific Telegraph Co. v. India Rubber, Gutta Percha, & Telegraph Works Co.* (1875), 10 Ch. App. 520, n.; *Blenkhorn v. Penrose* (1880), 43 L. T. 668; *Mathias v. Yetts* (1882), 46 L. T. 497. *As to (5) & (6)*

PART III. SECT. 7, SUB-SECT. 7.—A.

402 i. Applicant for shares—Duty to inspect—Within reasonable time.]—A shareholder who has had several years within which he could make himself aware of the terms of the memorandum of assocn. & who has drawn several dividends, is not entitled to

shareholders on the ground that the co. is carrying on business in a manner in which it ought not to do.—GRAY *v.* EQUITABLE INSURANCE ASSOCN. OF NEW ZEALAND (1888), 6 N. Z. L. R. 450.—N.Z.

402 ii. ——— Prospectus specifying time & place for inspection.]—Where a

a prospectus which informs the reader that a memorandum & arts. of assocn. exist, that they may be seen at a specified place, & that shares are to be taken up subject thereto, an applt. will be held to have examined the memorandum & arts. before he applied for shares.—*Re* WAIPORI RIVER-DREDGING CO., LTD., *SHAW'S CASE*

Consd. Kent v. Freehold Land & Brickmaking Co. (1867), L. R. 4 Eq. 588. *As to* (8) **Reid. Cargill v. Bower** (1878), 10 Ch. D. 502; **Symonds v. City Bank** (1886), 34 W. R. 384. *As to* (9) *to* (13) **Consd. Aaron's Reefs v. Twiss**, [1896] A. C. 273. **Reid. Re Cachar Co., Lawrence's Case, Re Russian (Vyksounsky) Iron Works Co., Kincaid's Case** (1867), 2 Ch. App. 412; **Langham v. East Wheel Rose Consolidated Silver-Lead Mining Co.** (1868), 37 L. J. Ch. 253; **Byrne v. Millom & Askam Haematite Iron Co.** (1901), 46 Sol. Jo. 85. *Generally, Mentd. Scholey v. Central Ry. of Venezuela* (1866), 14 W. R. 786.

406. Non-members contracting with company
—**Notice of registered deed of settlement.**—By the deed of settlement of a joint stock company, the directors were authorised to borrow, under the common seal of the company, such sums as should from time to time, by a resolution passed at a general meeting of the company be authorised to be borrowed, not to exceed a certain sum. At a general meeting the directors were authorised to borrow such sums & at such interest for such periods as they might deem expedient, in accordance with the provisions of the deed of settlement & the Act of Parliament. The directors having borrowed £1,000 on bond, under the common seal of the company, it was held, that the company were liable to repay the amount, whether the resolution was or was not a sufficient authority to the directors to borrow, for though parties dealing with joint stock companies are bound to take notice of any limitation of the authority of the directors in the deed of settlement, yet, where the directors, as in this case, have power to borrow, the lenders of the money have a right to presume that the company which put forward their directors as authorised to borrow, have taken every step requisite to empower them to do so.—**ROYAL BRITISH BANK v. TURQUAND** (1856), 6 E. & B. 327; 25 L. J. Q. B. 317; 2 Jur. N. S. 663; 119 E. R. 886, Ex. Ch.

Annotations:—Apprvd. & Follid. Agar v. Athenæum Life Assco. Soc. (1858), 3 C. B. N. S. 725; **Balfour v. Ernest** (1859), 5 C. B. N. S. 60; **Commercial Bank of Canada v. G. W. Ry. of Canada** (1865), 3 Moo. P. C. N. S. 295. **Follid. Totterdell v. Fareham Blue Brick & Tile Co.** (1866), L. R. 1 C. P. 674. **Consd. Fountaine v. Carmarthen Ry.** (1868), L. R. 5 Eq. 316. **Apld. Re Land Credit Co. of Ireland, Ex p. Overend, Gurney** (1869), 4 Ch. App. 460. **Consd. Re London, Hamburg, & Continental Exchange Bank, Zulueta's Claim** (1870), 5 Ch. App. 444; **East Holyford Mining Co. v. Costelloe** (1871), 19 W. R. 1010; **Colonial Bank of Australasia v. Willan** (1874), L. R. 5 P. C. 417. **Apld. Mahony v. East Holyford Mining Co.** (1875), L. R. 7 H. L. 869. **Distd. Irvine v. Union Bank of Australia** (1877), 2 App. Cas. 366. **Consd. Re Briton Medical & General Life Assco.** (1889), 5 T. L. R. 502. **Follid. County of Gloucester Bank v. Rudry Merthyr Steam & House Coal Colliery Co.**, [1895] 1 Ch. 629. **Apld. Dey v. Pullinger Engineering Co.**, [1921] 1 K. B. 77. **Reid. Curtels v. Anchor Insee.** (1857), 2 H. & N. 537; **Re Athenæum Life Assco. Soc., Ex p. Eagle Insee.** (1858), 4 K. & J. 549; **Athenæum Life Insee. v. Pooley** (1858), 28 L. J. Ch. 119; **Re Bank of Hindustan, China, & Japan, Campbell's Case, Hippisley's Case, Allison's Case** (1873), 9 Ch. App. 1; **Re County Palatine Loan & Discount Co., Cartmell's Case** (1874), 9 Ch. App. 691; **Riche v. Ashbury Ry. Carriage & Iron Co.** (1874), L. R. 9 Exch. 224; **Melbourne Banking Corp. v. Brougham** (1878), 4 App. Cas. 156; **Yorkshire Ry. Wagon Co. v. Maclure** (1881), 30 W. R. 288; **Ward v. Royal Exchange Shipping Co., Ex p. Harrison** (1887), 58 L. T. 174; **Re Hampshire Land Co.**, [1896] 2 Ch. 743; **Duck v. Tower Galvanizing Co.**, [1901] 2 K. B. 314; **Premier Industrial Bank v. Carlton Manufacturing Co., & Crabtree**, [1909] 1 K. B. 106. **Mentd. Prince of Wales Assce. v. Harding** (1858), E. B. & E. 183; **Guest v. Poole & Bournemouth Ry.** (1870), L. R. 5 C. P. 553.

407. ———.]—There can be no remedy against a co. registered under 1844 Act, on any contract, in which a director of the co. was a party, & in which he was interested, unless the provisions of sect. 29 have been strictly observed.

A contract by the directors of one co. to purchase the trade of another co. is not binding, unless it is authorised by the deed of settlement of each co., & is made according to its provisions.

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a covenant which is void, their co. can be liable for acts done in consequence of such covenant.

The legislature devised the plan of incorporating cos. in a manner unknown to the common law, with special powers of management & liabilities, providing at the same time that all the world should have notice who were the persons authorised to bind all the shareholders by requiring the co-partnership deed to be registered, certified by the directors, & accessible to all, & besides including some clauses as to the managers in 1844 Act, s. 7, etc. All persons therefore must take notice of the deed & the provisions of the Act. If they do not choose to acquaint themselves with the powers of the directors, it is their own fault; & if they give credit to any unauthorised persons, they must be contented to look to them only, & not to the co. at large. The stipulations of the deed which restrict & regulate their authority oblige those who deal with the co.; & the directors can make no contract so as to bind the whole body of shareholders, for whose protection the rules are made, unless they are strictly complied with. The contract binds the persons making it, but no one else. Those provisions which give to the directors discretionary powers of management do not affect strangers, & the co. is bound by the exercise of the discretion which they have consented to give. Other stipulations are directory merely, & do not constitute conditions to the exercise of the power, but they form the subject of an action against the directors for the breach of their contracts expressed or implied in the deed. The great body of shareholders, for whose protection these limitations of authority are provided, cannot be affected unless they are complied with. They can act & contract only through their directors, & the acts of the individual shareholders have no effect whatever on the co. at large (**LORD WENSLEYDALE**).—**ERNEST v. NICHOLLS** (1857), 6 H. L. Cas. 401; 30 L. T. O. S. 45; 3 Jur. N. S. 919; 6 W. R. 24; 10 E. R. 1351, H. L.; *revsq. S. C. sub nom. Re SEA, FIRE & LIFE ASSURANCE CO., PORT OF LONDON SHIP OWNERS' LOAN & ASSURANCE CO.'S CASE* (1854), 5 De G. M. & G. 465, L. JJ.

Annotations:—Consd. Re Athenæum Life Assce. Soc., Ex p. Eagle Insee. (1858), 4 K. & J. 549. **Distd. Conybeare v. New Brunswick & Canada Ry. & Land Co.** (1860), 1 De G. F. & J. 578. **Consd. Re Era Assce. Soc., Williams Case, Anchor Case** (1860), 2 John. & H. 400; **Re Era Assce. Williams' Case, Anchor Case** (1862), 1 Hem. & M. 672; **Re Norwich Equitable Fire Assce. Soc.** (1887), 58 L. T. 35. **Reid. Agar v. Athenæum Life Assce. Soc.** (1858), 3 C. B. N. S. 725; **Athenæum Life Assce. Soc. v. Pooley** (1858), 3 De G. & J. 294; **Prince of Wales Assce. v. Harding** (1858), E. B. & E. 183; **Re Athenæum Assce. Soc., Ex p. Prince of Wales Life & Educational Assce.** (1859), 28 L. J. Ch. 335; **Re London & Eastern Banking Corp., Ex p. Longworth's Exors.** (No. 2), (1859) John 465; **Browning v. Great Central Mining Co. of Devon** (1860), 5 H. & N. 856; **Re Phoenix Life Assce., Ex p. Martin** (1860), 2 L. T. 196; **Re Saxon Life Assce. Soc. Anchor Assce. Co.'s Case, Era Assce. Soc. Case, Re Era Assce. Soc., Williams' Case, Anchor Assce. Co.'s Case** (1863), 32 L. J. Ch. 206; **Re State Fire Insee.** (1863), 1 De G. J. & Sm. 634; **Kearns v. Leaf, Aldebert v. Kearns** (1864), 1 Hem. & M. 681; **Re State Fire Insee.** (1865), 34 L. J. Ch. 436; **Fountaine v. Carmarthen Ry.** (1868), L. R. 5 Eq. 316; **Mahony v. East Holyford Mining Co.** (1875), L. R. 7 H. L. 869. **Mentd. Hickman v. Cox** (1857), 3 C. B. N. S. 523; **London Dock Co. v. Sinnott** (1857), E. B. & B. 347; **Metropolitan Saloon Omnibus Co. v. Hawkins** (1859), 4 H. & N. 87; **Re Royal British Bank, Nicol's Case** (1859), 3 De G. & J. 387; **Re Magdalena Steam Navigation Co.** (1860), John. 690; **Re National Patent Steam Fuel Co., Baker's Case** (1860), 1 Drew. & Sm. 55; **Stears v. South Essex Gas-Light & Coke Co.** (1860), 9 C. B. N. S. 180; **Re Phoenix Life Assce., Burges & Stock's Case** (1862), 2 John. & H. 441.

B. Extent of Notice.

408. As against applicant for shares—Documents referred to.]—**CENTRAL RY. CO. OF**

Sect. 7.—The memorandum and articles of association: Sub-sect. 7, B.; sub-sect. 8, A. & B. (a) & (b).]

VENEZUELA (DIRECTORS, ETC.) v. KISCH, No. 405, *ante*.

409. As against non-member contracting with company—Presumption that exercise of powers duly authorised.]—ROYAL BRITISH BANK v. TURQUAND, No. 406, *ante*.

410. ———.]—Where arts. of assocn. of an incorporated co. empower the directors to make regulations as to the quorum of directors necessary to authorise the affixing of the common seal, an outside person taking a deed under the co.'s seal signed by two directors & the secretary is entitled to assume that the regulations, if any, made by the directors have been complied with. A plea of *non est factum* cannot be sustained by evidence that regulations have been made requiring a quorum of three directors.—COUNTY OF GLOUCESTER BANK v. RUDRY MERTHYR STEAM & HOUSE COAL COLLIERY CO., [1895] 1 Ch. 629; 64 L. J. Ch. 451; 72 L. T. 375; 43 W. R. 486; 39 Sol. Jo. 331; 2 Mans. 223; 12 R. 183, C. A.

*Annotations:—*Consd. Premier Industrial Bank v. Carlton Manufacturing Co., & Crabtree, [1909] 1 K. B. 106. *Reid*. Re Bank of Syria, Owen & Ashworth's Claim, Whitworth's Claim, [1900] 2 Ch. 272; Duck v. Tower Galvanizing Co., [1901] 2 K. B. 314; Ruben v. Great Fingall Consolidated, [1904] 1 K. B. 650; Re Fireproof Doors, Umney v. The Co., [1916] 2 Ch. 142; Dey v. Pulinger Engineering Co., [1921] 1 K. B. 77. *Mentd.* Poole v. Downes (1897), 76 L. T. 110; Stamford, Spalding, & Boston Banking Co. v. Keeble (1913), 82 L. J. Ch. 388.

See, also, CORPORATIONS, Vol. XIII., pp. 368, 369.

SUB-SECT. 8.—VALIDITY.

A. Memorandum.

411. Validity of objects—Purchase of company's own shares.]—A co. incorporated under the Cos. Act, 1862 (c. 89), was empowered by its memorandum of assocn. to acquire & carry on a particular manufacturing business, & any other businesses which the co. might consider to be in any way conducive or auxiliary thereto or in any way connected therewith. The arts. of assocn. purported to authorise the co. to purchase its own shares. The co. bought & partly paid for certain shares of one of its members. On a claim made in the winding-up of the co. by the member for the balance of the purchase-money:—*Held*: the purchase was void because it was a trafficking in shares not within the objects of the co. as defined by the memorandum, & because such a purchase, even if it had been expressly authorised by the memorandum, was not a "lawful object" for which the co. could have been incorporated under the Cos. 1862 Act, & also was a mode of reducing capital impliedly prohibited by the 1867 & 1877 Acts.—TREVOR v. WHITWORTH (1887), 12 App. Cas. 409; 57 L. J. Ch. 28; 57 L. T. 457; 36 W. R. 145; 3 T. L. R. 745; 32 Sol. Jo. 201, H. L.

*Annotations:—*Consd. Re Walker & Hacking (1887), 57 L. T. 763; Re Almada & Tiritto Co. (1888), 38 Ch. D. 415; Lee v. Neuchatel Asphalte Co. (1889), 41 Ch. D. 1. *Apld.* Re Mersina & Adana Construction Co. (1889), 5 T. L. R. 680. *Consd.* Eichbaum v. City of Chicago Grain Elevators, [1891] 3 Ch. 459; Ooregum Gold Mining Co. of India v. Roper, Wallroth v. Roper, [1892] A. C. 125; Re Eddystone Marine Insco., [1893] 3 Ch. 9. *Distd.*

PART III. SECT. 7, SUB-SECT. 8.—B. (a).

*g. Articles adopting Table A unless excluded—Article inconsistent with Table A—Table A excluded by implication.]—*Arts. of assocn. provided that Table A of the First Schedule of 1908 Act should apply "only so far

as they are not excluded, or altered, or modified" thereby. They expressly excluded some of the clauses of Table A, but not clause 99, which empowers directors, before recommending a dividend to set aside a sum as reserve. The co.'s 12th article provided that "after allowing for all charges, in-

Re Borough Commercial & Bldg. Soc., [1893] 2 Ch. 242; *Re* Denver Hotel Co., [1893] 1 Ch. 495. *Expld.* British & American Trustee & Finance Corp. v. Couper, [1894] A. C. 399. *Consd.* Lock v. Queensland Investment & Land Mortgage Co., [1896] 1 Ch. 397. *Apld.* Bellerby v. Rowland & Marwood's S.S. Co., [1902] 2 Ch. 14. *Consd.* Rowell v. Rowell, [1912] 2 Ch. 609. *Reid.* Faure Electric Accumulator Co. v. Phillipart (1888), 58 L. T. 525; *Re* London Celluloid Co., Bayley & Hanbury's Cases (1888), 59 L. T. 109; *Re* Railway Timetables Publishing Co., *Ex p.* Sandys (1889), 58 L. J. Ch. 504; *Re* Sharpe, *Re* Bennett, Masonic & General Life Assce. v. Sharpe, [1892] 1 Ch. 154; *Re* Sovereign Life Assce., [1892] 3 Ch. 279; *Verner v. General & Commercial Investment Trust*, [1894] 2 Ch. 239; *Metropolitan Coal Consumers' Assocn. v. Scrimgeour* (1895), 44 W. R. 35; *Welton v. Saffery*, [1897] A. C. 299; *Mother Lode Consolidated Gold Mines v. Hill* (1903), 19 T. L. R. 341; *Bury v. Famatina Development Corp.*, [1909] 1 Ch. 754; *Hopkinson v. Mortimer, Harley*, [1917] 1 Ch. 646; *I. R. Comrs. v. Blott, I. R. Comrs. v. Greenwood*, [1921] 2 A. C. 171. *Mentd.* *Re* West London Commercial Bank, Whiteley's Case (1889), 60 L. T. 807; *Re* Lamson Store Service Co., *Re* National Reversionary Investment Co. (1895), 2 Mans. 537; *Re* Thomas, Andrew v. Thomas, [1916] 2 Ch. 331.

See, generally, Nos. 4046–4055, post.

412. Exclusion of operation of 1862 Act, s. 161.]

—It is competent for a co. by its memorandum of assocn. to exclude the operation of the above sect. in the event of a sale by the co. of its undertakings to another co., the whole or part of the consideration for such sale being shares in the purchasing co., notwithstanding that at the time of the execution of the contract for sale it is in contemplation to wind up the selling co. voluntarily.—COTTON v. IMPERIAL & FOREIGN AGENCY & INVESTMENT CORPN., [1892] 3 Ch. 454; 61 L. J. Ch. 684; 67 L. T. 342; 8 T. L. R. 777.

*Annotations:—*Consd. Payne v. Cork Co., [1900] 1 Ch. 308. *Consd. & Follid.* Doughty v. Lomagunda Reefs, [1902] 2 Ch. 837. *Dbtd. & N.F.* Bisgood v. Henderson's Transvaal Estates, [1908] 1 Ch. 743.

413. ———.]—BISGOOD v. HENDERSON'S TRANSVAAL ESTATES, LTD., No. 1226, *post*.

See, now, 1908 Act, s. 192 (i).

What companies may be registered.]—*See* Sect. 4, sub-sect. 2, *ante*.

B. Articles.

(a) In General.

414. Articles conforming in principle with Table A.]—The directors of a co. limited by shares may receive payment from a shareholder of any amounts remaining unpaid on his shares, & may pay out of capital interest on sums so paid up in advance of calls, either under Table A of 1862 Act, if applicable, or under provisions to the same effect in the co.'s arts. of assocn., provided they do so in good faith, & in the honest exercise of the discretion confided to directors.

Whatever might have been argued with reference to what has been called the general law without Table A, or without that portion of it to which reference has been made, I confess I do not think it very material to consider; because the insertion of Table A with the 7th sect., giving a sanction by the Legislature to an arrangement which is exactly the same as the present arrangement in principle, & indeed almost in words, seems to me to remove all doubt whatever from this matter. Whatever may be the meaning of it, or whatever cause the Legislature may have had for placing it there, there it is, & to argue that it is *ultra vires* to do that which the Legislature has expressly sanctioned in the example it has

cluding the payment of directors' salaries, the profits of the company shall be applied" in payments to shareholders:—*Held*: Article 12 was inconsistent with clause 99 of Table A & therefore excluded it by implication.—PATERSON v. PATERSON & SONS, LTD., [1917] S. C. (H. L.) 13.—*SCOT*.

given of the arts. of assocn. in the statute itself seems to me to be somewhat absurd (LORD HALSBURY, C.).—*LOCK v. QUEENSLAND INVESTMENT & LAND MORTGAGE CO.*, [1896] A. C. 461; 65 L. J. Ch. 798; 75 L. T. 3; 45 W. R. 65; 40 Sol. Jo. 598, H. L.

(b) *Particular Articles.*

415. Provision for calls on shareholders—In excess of capital stated in memorandum—Though shares fully-paid.]—The P. Co. was registered as a co. with limited liability under 1862 Act. The memorandum of assocn. stated the capital to be £100,000, divided into 100 shares of £1,000 each. All these were allotted, & had been fully paid-up. The co.'s arts. of assocn. provided that in case increased funds should be necessary for the purpose of the undertaking, the same, to an extent not exceeding £200 per share, should be contributed by the holders for the time being of the 100 shares rateably in proportion to the number of their shares, & that such increased funds should be treated as a debt from the co. to be repaid with interest previous to the division of any profits at such rate of interest & in such manner as the committee might think fit. Increased funds became necessary for the purpose of the undertaking & thereupon a resolution was duly made by the proper representatives of the co., that in accordance with the above arts. a call of £200 per share be made; that the amount be treated as a debt from the co. to be repaid with interest at the rate of 7½ per cent. previous to the division of any profits. This resolution was duly notified to deft., who at the time was the registered holder of four shares in the co. Deft. refused to contribute any money which he was thus called upon to contribute to the co., & thereupon this action was brought to enforce the payment of £200 per share be deft. as a debt due from him to the co.—as a member thereof—under 1862 Act, s. 16:—*Held*: (1) this mode of raising contributions from the shareholders by way of loan was not an alteration made by the co. in the conditions, as to the amount & limit of its capital, contained in its memorandum of assocn., so as to be illegal within 1862 Act, s. 12; (2) the passing & service of the above resolution made the sum of £200 per share payable by the shareholders, & recoverable from them by the co. by action under 1862 Act, ss. 16 & 17, as a debt due from the members to the co. in the nature of a specialty debt.—*PENINSULAR CO., LTD. v. FLEMING* (1872), 27 L. T. 93.

416. Restraint of right of action.]—Defts. were a limited co., for the mutual insurance of ships belonging to members. In Dec. 1868, pltf. became equitable mortgagee of the ship H., D. being registered owner. No copy of the rules were ever given to pltf., & he had no knowledge of the provisions until after the loss of the vessel:—*Held*: in the Ct. of Queen's Bench (1) the policy sufficiently specified the particular risk or adventure within 30 & 31 Vict. c. 23, s. 7; (2) defts. were precluded from saying pltf., who was the owner of the ship, was not a member of the society, after having accepted an insurance & taken premiums & other payments from him; (3) the fact that pltf. turned his equitable interest into a legal interest after the policy was renewed by him did not bring the case within art. 63; but (4) defts. were entitled to judgment: for the contract was contained in the policy, & any of the arts. applicable; & art. 39 which regulated the manner of the payment under the policy did not exclude the jurisdiction of the courts of law, but made it a

condition precedent to bringing an action that the loss of the particular member should have been first decided upon by the directors, subject to the appeal given by art. 84. The Exchequer Chamber reversed the judgment of the Queen's Bench.

By AMPHLETT, B., on the ground that, if the investigation by the directors had been properly conducted the action could not have been maintained; but that the conduct of the directors, by adjudicating against pltf.'s claim without hearing him, or giving him an opportunity of being heard, was not binding on pltf.; & that, under the circumstances, defts. could not take advantage of the wrong done by their agents by setting up as a defence that the determination of the directors in favour of pltf. was a condition precedent to bringing the action, & that an actual loss being admitted, pltf. was entitled to recover the amount. By KELLY, C.B., & BRETT, J., on the ground that such of the arts. as were applicable must be read with the policy, & that arts. 39, 83, & 84 were intended to prevent the insured from maintaining any action or suit at all in the ordinary cts. in respect of any dispute arising on the policy; & that therefore the arts. were invalid, & did not prevent pltf. from maintaining his action. ARCHIBALD, J. & POLLOCK, B., were of opinion that the judgment ought to be affirmed on the ground taken by the Queen's Bench.—*EDWARDS v. ABERAYRON MUTUAL SHIP INSURANCE SOCIETY* (1876), 1 Q. B. D. 563; 34 L. T. 457; 3 Asp. M. L. C. 154, Ex. Ch.

Annotation:—*Generally*, *Consd. Trainor v. Phoenix Fire Asso.* (1891), 65 L. T. 825.

417. Restraint of right of contributory—To petition for winding-up.]—The right given by 1862 Act, s. 82, to a contributory to petition for the winding-up of a co. cannot be excluded or limited by the arts. of assocn. of the co.—*Re PEVERIL GOLD MINES. LTD.*, [1898] 1 Ch. 122; 67 L. J. Ch. 77; 77 L. T. 505; 46 W. R. 198; 14 T. L. R. 86; 42 Sol. Jo. 96; 4 Mans. 398, C. A.

Annotations:—*Reid*, *Payne v. Cork Co.*, [1900] 1 Ch. 308; *Punt v. Symons*, [1903] 2 Ch. 506; *Ayre v. Skelsey's Adamant Cement Co.* (1904), 20 T. L. R. 587; *Bisgood v. Henderson's Transvaal Estates*, [1908] 1 Ch. 743.

418. Exclusion of power to alter articles.]—A co. cannot contract itself out of the provisions of 1862 Act, s. 50, by a clause in its arts. excepting any regulation contained in the arts. from the operation of the section, & a resolution of a general meeting of the co. to alter or modify such regulation will be valid.—*WALKER v. LONDON TRAMWAYS CO.* (1879), 12 Ch. D. 705; 49 L. J. Ch. 23; 28 W. R. 163.

Annotations:—*Reid*, *Re Barrow Hematite Steel Co.* (1888), 59 L. T. 500; *Goode v. Ladies' Dress Assocn.* (1893), 37 Sol. Jo. 340; *Re Hyderabad (Deccan) Co.* (1896), 75 L. T. 23; *Andrews v. Gas Meter Co.*, [1897] 1 Ch. 361; *Allen v. Gold Reefs of West Africa*, [1900] 1 Ch. 656; *Punt v. Symons*, [1903] 2 Ch. 506; *Ayre v. Skelsey's Adamant Cement Co.* (1904), 48 Sol. Jo. 572.

See, generally, Sect. 30, sub-sect. 2, C., *post*.

419. Power to allot unallotted shares among shareholders—Without further payment.]—(1) After a resolution has been passed for winding-up a co. voluntarily, a shareholder cannot, as a general rule, obtain a compulsory order for winding-up, or an order for continuing the voluntary winding-up under supervision. The only exceptions to the rule are where the resolution has been passed fraudulently, or where creditors appear to support the petition.

(2) By the arts. of assocn. of a limited co. the directors were authorised, when it should appear to them that the capital for the time being subscribed was sufficient for the purposes of the co.,

Sect. 7.—The memorandum and articles of association: Sub-sect. 8, B. (b) & (c).]

to allot the remaining unallotted shares among the shareholders in proportion to the number of shares then held by them, without receiving any money for them. When shares to the amount of one-fourth of the nominal capital had been allotted & paid-up, the directors allotted the remaining three-fourths, as fully paid-up shares, among the existing shareholders without further consideration, & petitioner became a purchaser of some of the shares in the market. The co. passed a resolution for a voluntary winding-up, & afterwards petitioner presented a petition for a compulsory winding-up:—*Held*: the provision in the arts. was highly improper; but if it amounted to a fraud it was a fraud upon petitioner in his individual capacity as purchaser of the shares, & was not committed by or upon the co., & therefore, it was not within the scope of the Winding-up Acts to give relief in respect thereof. The petition for winding-up was accordingly dismissed.

(3) *Held*: (per BRAMWELL, L.J.), if the alleged fraud could be proved, the guilty parties could be indicted for conspiracy.—*Re GOLD CO.* (1879), 11 Ch. D. 701; 48 L. J. Ch. 281; 40 L. T. 5; 43 J. P. 652; 27 W. R. 341, C. A.

Annotations:—*As to* (1) *Refd.* *Re Phoenix Electric Light & Power Co.* (1883), 48 L. T. 260; *Re Varieties*, [1893] 2 Ch. 235; *Re Bishop*, [1900] 2 Ch. 254; *Re Hadleigh Castle Gold Mines*, [1900] 2 Ch. 419; *Re Haycraft Gold Reduction & Mining Co.*, [1900] 2 Ch. 230; *Re National Distribution of Electricity Co.*, [1902] 2 Ch. 34. *As to* (2) *Consd.* *London Trust Co. v. Mackenzie* (1893), 62 L. J. Ch. 870. *Refd.* *Re Ambrose Lake Tin & Copper Mining Co.*, *Ex p. Taylor*, *Ex p. Moss* (1880), 14 Ch. D. 390; *Re British Seamless Paper Box Co.* (1881), 50 L. J. Ch. 497. *Generally, Mentd.* *Arnot v. United African Lands*, [1901] 1 Ch. 518.

Issue of shares as fully-paid.]—*See, generally, Sect. 20, post.*

420. Purchase of company's own shares.]—The memorandum of an ordinary coal co. contained the usual powers, & the general clause at the end of its powers "to do all things conducive to the attainment of the above objects." The memorandum contained no power authorising the co. to purchase its own shares. The arts. of assocn. expressly authorised the purchase by the co. of its own shares. The vendor to the co. had entered into an arrangement with it, by which the co. was to purchase on certain terms certain shares issued to him. The transaction was carried out perfectly *bonâ fide*, & the co. was placed on the list of shareholders as owner of the shares. On a summons taken out by the liquidator to have the vendor placed on the list of contributories:—*Held*: the transaction was valid, & the vendor had effectually ceased to be a member of the co.

A co. limited by shares can purchase its own shares when the arts. of assocn. expressly authorise the purchase, although the memorandum of assocn. contains no such power, provided the arts. are not intended to authorise any trafficking in shares for the purposes of profit.—*Re DRONFIELD SILKSTONE COAL CO.* (1880), 17 Ch. D. 76; 44 L. T. 361; *sub nom. Re DRONFIELD SILKSTONE COAL CO., LTD.*, *Ex p. WARD*, 50 L. J. Ch. 387; 29 W. R. 768, C. A.

Annotations:—*Consd.* *Guinness v. Land Corpn. of Ireland* (1882), 22 Ch. D. 349; *Trevor v. Whitworth* (1887), 12 App. Cas. 409. *Refd.* *Re Mersina, Tarsus & Adana Ry. Construction Co.* (1889), 1 Meg. 341; *Elchbaum v. City of Chicago Grain Elevators*, [1891] 3 Ch. 459; *Re Sovereign Life Assce.*, [1892] 3 Ch. 279; *Bellerby v. Rowland & Marwood's S.S. Co.*, [1902] 2 Ch. 14. *Mentd.* *Re Ince Hall Rolling Mills Co.* (1882), 23 Ch. D. 645, n.; *Re Florence Land & Public Works Co.*, *Nicol's Case*, *Tufnell & Ponsonby's Case* (1885), 29 Ch. D. 421.

421. — Not lawful object—Though authorised by memorandum.]—*TREVOR v. WHITWORTH*, No. 411, *ante*.

See, generally, Sect. 31, sub-sect. 2, B., post.

422. Compulsory surrender of shares by employee—On termination of service.]—The arts. of assocn. of a co. provided that all employees of the co. other than the managing directors should, on the termination of their service, surrender their shares to the co. The co. was now being wound up, & a cashier who was discharged in 1882 applied for the removal of his name from the list of contributories, & for repayment to him of the value as in 1882 of his shares, & for indemnity against subsequent calls:—*Held*: no such relief could be granted.—*Re WALKER & HACKING, LTD.* (1887), 57 L. T. 763.

See, generally, Sect. 26, post.

423. Provision for compulsory transfer of shares.]—A provision in the arts. of assocn. of a co. for the compulsory transfer of shares is neither repugnant to the nature of personal property nor obnoxious to the rule against perpetuity.

The fact that the liability to such compulsory transfer is to arise only in the event of the shareholder's bkpcy., & the fact that the transfer is to be effected at a pre-arranged valuation which may possibly be less than the actual market value of the share at the time of transfer, do not in themselves constitute a fraud upon the bkpcy. law; provided that both these provisions are made without undue preference, & *bonâ fide* with a view to the successful working of the co.

A share in a co. is not to be regarded as a sum of money settled subject to certain conditions contained in the arts. of assocn.; but is to be regarded as an interest in the co., measured, it is true, for the purposes both of liability & interest, by a certain sum of money, but impressed also from its inception with the various rights & liabilities contained in the contract entered into by means of the arts. of assocn. by all the shareholders *inter se*, in accordance with 1862 Act, s. 16.

The rule against perpetuity has no application in the case of personal contracts.—*BORLAND'S TRUSTEE v. STEEL BROTHERS & CO., LTD.*, [1901] 1 Ch. 279; 70 L. J. Ch. 51; 47 W. R. 120; 17 T. L. R. 45.

Annotations:—*Refd.* *Brown v. British Abrasive Wheel Co.*, [1919] 1 Ch. 290. *Mentd.* *S. E. Ry. v. Associated Portland Cement Manufacturers* (1900), Ltd., [1910] 1 Ch. 12; *Hickman v. Kent or Romney Marsh Sheep-Breeders' Asscn.* (1915), 84 L. J. Ch. 688.

See, generally, Sect. 23, sub-sect. 10, A., post.

424. Restraint on employment of former employees of members—Restraint of trade.]—A society established for the protection of a particular trade contained a rule that no member should employ any traveller, carman, or outdoor employee who had left the service of another member without the consent in writing of his late employer till after the expiration of two years:—*Held*: by the Ct. of Appeal, the rule was unreasonable, in restraint of trade, & void.

But, *Seem*: a rule protecting the members against information gained by servants being improperly communicated to other members, if reasonably framed, would have been good.—*MINERAL WATER BOTTLE EXCHANGE & TRADE PROTECTION SOCIETY v. BOOTH* (1887), 36 Ch. D. 465; 57 L. T. 573; 36 W. R. 274, C. A.

Annotations:—*Refd.* *Chamberlain's Wharf v. Smith* (1900), 83 L. T. 238; *Davies v. Thomas*, [1920] 2 Ch. 180.

See, generally, TRADE & TRADE UNIONS.

425. Power to receive payment of calls in

advance—& payment of interest out of capital.]—**LOCK v. QUEENSLAND INVESTMENT & LAND MORTGAGE CO., No. 414, ante.**

426. Exclusion of rights of dissentient member—On sale of undertaking.]—The arts. of assocn. of a co. provided that, "If at any time a sale or arrangement shall be made or proposed in pursuance of 1862 Act, s. 161, the purchase-money to be paid for the interest of any dissentient member shall be such sum of money as the liquidator can obtain by selling the shares, stock, or other property to which such dissentient member would have been entitled upon the completion of the sale or arrangement had he not expressed his dissent."

The co. resolved upon a voluntary winding-up, & authorised the liquidator to enter into an arrangement for the sale of the business & assets of the co. to a new co.:—*Held*: the above clause of the arts. did not amount to an "agreement" within 1862 Act, s. 162, so as to deprive a member of the co. who dissented from the arrangement of his right under that section to have the value of his interest in the co. determined by arbitration.

Semble: the "agreement" intended by s. 162 is an agreement between the dissentient member & the liquidator in the winding-up of the co.—**BARING-GOULD v. SHARPINGTON COMBINED PICK & SHOVEL SYNDICATE, [1899] 2 Ch. 80; 68 L. J. Ch. 429; 80 L. T. 739; sub nom. Re BARING-GOULD (F.) & SHARPINGTON COMBINED PICK & SHOVEL SYNDICATE, LTD., 47 W. R. 564; 6 Mans. 430; 43 Sol. Jo. 494; sub nom. Re GOULD (F. B.) & SHARPINGTON COMBINED PICK & SHOVEL SYNDICATE, LTD., 15 T. L. R. 366, C. A.**

Annotations:—**Folld. Payne v. Cork Co., [1900] 1 Ch. 308; Manners v. St. David's Gold & Copper Mines, [1904] 2 Ch. 593. Rejd. Bisgood v. Henderson's Transvaal Estates, [1908] 1 Ch. 743; Llewellyn v. Kasintoe Rubber Estates, [1914] 2 Ch. 670. Mentd. Dibble v. Wilts. & Somerset Farmers, [1923] 1 Ch. 342.**

427. ———.]—A co. cannot, by its arts. of assocn., deprive members of the protection afforded to them by 1862 Act, s. 161, in the event of their dissenting from a sale of the co.'s assets in a winding-up in consideration of shares in a new co.—**PAYNE v. CORK CO., LTD., [1900] 1 Ch. 308; 82 L. T. 44; 48 W. R. 325; 16 T. L. R. 135; sub nom. PAINE v. CORK CO., 69 L. J. Ch. 156; 7 Mans. 225.**

Annotations:—**Distd. Doughty v. Lomagunda Reefs, [1902] 2 Ch. 837. Folld. Manners v. St. David's Gold & Copper Mines, [1904] 2 Ch. 593. Rejd. Bisgood v. Henderson's Transvaal Estates, [1908] 1 Ch. 743; Llewellyn v. Kasintoe Rubber Estates, [1914] 2 Ch. 670.**

428. ———.]—**BISGOOD v. HENDERSON'S TRANSVAAL ESTATE, LTD., No. 1226, post.**

See, also, No. 416, ante, & see, now, 1908 Act, s. 192, & generally, Sect. 37, sub-sect. 13, E. (a), post.

429. Article requiring majority larger than statutory majority—For alteration of articles.]—**AYRE v. SKELSEY'S ADAMANT CEMENT CO., LTD. (1905), 21 T. L. R. 464, C. A.**

430. Withholding information from shareholders—Disclosed to auditors.]—A trading co. passed a special resolution altering their arts. of assocn. by inserting a provision that the directors might, in addition to the ordinary reserve fund, set aside (without disclosing the fact) out of the profits sums to form an internal or secret reserve fund; that the fund need not be shown on the

balance-sheet, & no information as to it need be given to the shareholders; that the directors might invest it as they thought fit, & might apply it for any purposes which they considered would advance the interests of the co.; & that, while the particulars as to the fund were to be disclosed to the auditors, it was to be the auditors' duty not to disclose any information with regard to it to the shareholders or otherwise:—*Held*: the last clause that the auditors should be bound not to disclose any information with regard to the fund to the shareholders or otherwise was inconsistent with 1900 Act, s. 23, as to the duty of auditors in making their report to the shareholders on the accounts, if they thought that the true state of the co.'s affairs was affected by facts relating to the internal reserve fund.—**NEWTON v. BIRMINGHAM SMALL ARMS CO., LTD., [1906] 2 Ch. 378; 75 L. J. Ch. 627; 95 L. T. 135; 54 W. R. 621; 22 T. L. R. 664; 50 Sol. Jo. 593; 13 Mans. 267.**

431. Liability extended beyond liability on shares.]—**BISGOOD v. HENDERSON'S TRANSVAAL ESTATES, LTD., No. 1226, post.**

432. Directors relieved from loss—Unless arising from dishonesty.]—*Re* **BRAZILIAN RUBBER PLANTATIONS & ESTATES, LTD., No. 666, post.**

433. Power to expel member by buying out—Private company.]—A private trading co., in which the majority of the shares were held by the directors, passed a special resolution to alter its arts. by introducing a power for the directors to require any shareholder who competed with the co.'s business to transfer his shares, at their full value, to nominees of the directors. Pltfs., who carried on a competing business, held the minority of the shares, & had voted against the resolution. They brought an action for a declaration that it was invalid as against them:—*Held*: (1) the co. had power under 1908 Act, s. 13, to introduce into its altered arts. anything that might have been included in its original arts., provided that the alteration was made *bonâ fide* for the benefit of the co. as a whole; (2) a power to expel a shareholder by buying him out was valid in the case of original arts., & could therefore be included in altered arts., subject to the same limitation.—**SIDEBOTTOM v. KERSHAW, LEESE & CO., [1920] 1 Ch. 154; 89 L. J. Ch. 113; 122 L. T. 325; 36 T. L. R. 45; 64 Sol. Jo. 114, C. A.**

Annotation:—*As to* (1) **Consd. Dafen Tinplate Co. v. Llanelly Steel Co., [1920] 2 Ch. 124.**

Share certificates transferable by delivery.]—*See* **No. 277, ante.**

See, further, Sect. 30, sub-sect. 2, C.

(c) *Articles Inconsistent with Memorandum.*

434. Shares stated in articles to be fully paid—Not so stated in memorandum—Shares taken by subscribers to memorandum.]—*Re* **ANGLO-MORAVIAN HUNGARIAN JUNCTION RY. CO., DENT'S CASE, FORBES' CASE, No. 386, ante.**

435. ——— Shares issued to vendor to company.]—A syndicate was formed for the purchase of a coal-mine from A. with a view to forming a co. to take the mine. The mine was accordingly agreed to be conveyed by A. to B., who was to establish a company for taking over the mine, in consideration of £66,000, of which £42,000 were to be paid-up shares of the intended co. The memorandum of assocn. stated that the

PART III. SECT. 7, SUB-SECT. 8.—
B. (c).

*h. Rights of shareholders—Cannot be modified by inconsistent articles.]—***Art. 5 of the memorandum of**

assocn. of a co. registered in 1891 provided that the capital of the co. was to be £12,500 "Divided into 625 preference shares of £10 each, bearing a cumulative preferential dividend of 8 per cent. per annum &

625 ordinary shares of £10 each with power to increase the same, & the share capital of the co. whether original or increased might be divided into different classes, to be held on the terms prescribed by the arts. of assocn.

Sect. 7.—The memorandum and articles of association: Sub-sect. 8, B. (c). Sect. 8: Sub-sect. 1.]

capital was to be £200,000 in 20,000 shares of £10 each. The arts. of assocn. stated that the mine belonged to the persons named in the schedule of an agreement to be executed immediately after the registration of the arts., & that 15,000 paid-up shares were to be allotted to them in the proportions mentioned in the schedule. Soon afterwards B. declared himself a trustee for the co., & subsequently to this the agreement referred to in the arts. was executed, & by it B. declared that he had entered into the agreement for the purchase of the mine on behalf of the persons named in the schedule, being A., the members of the syndicate, & their nominees, & that they declared they held the mine in trust for the co.; & that 15,000 paid-up shares were to be allotted to them in the proportions therein mentioned. This agreement was registered under the 1867 Act, s. 25. A., besides the shares representing the purchase-money of the mine, purchased 3,520 from one of the members of the syndicate & other persons. The directors issued a large number of debentures on the security of the property of the co., but no other shares were issued except those 15,000 paid-up shares. The co. being wound up:—*Held*: there was no inconsistency between the memorandum & arts. of assocn. in the fact that the memorandum stated the capital as consisting of 20,000 shares, & the articles stated that 15,000 of these shares were to be taken as paid up.—*Re WEDGWOOD COAL & IRON CO., ANDERSON'S CASE* (1877), 7 Ch. D. 75; 47 L. J. Ch. 273; 37 L. T. 560; 26 W. R. 442, C. A.

Annotations:—*Consd. Guinness v. Land Corpn. of Ireland* (1882), 22 Ch. D. 349. *Reid. Re South Durham Brewery Co.* (1885), 31 Ch. D. 261. *Mentd. Re Ince Hall Rolling Mills Co.* (1882), 23 Ch. D. 545, n.; *Christchurch Gas Co. v. Kelly* (1887), 3 T. L. R. 634; *Re Eddystone Marine Insce.*, [1893] 3 Ch. 9; *Re Kharaskhoma Exploring & Prospecting Syndicate*, [1897] 2 Ch. 451; *Re Wragg*, [1897] 1 Ch. 796.

See, also, No. 377, *ante*.

436. Liability of shareholders limited by memorandum—Wider liability created by articles.]—(1) By the memorandum of assocn. of a co. formed under 1856 Act, the liability was limited to £10 per share. By the arts. of assocn. it was provided as regarded certain debts for which certain shareholders had given promissory notes, that if the co. should be called upon to pay them, & should not have funds in hand applicable to the payment, each shareholder should contribute & pay to the co. as a debt due to the co., a proportionate amount according to the number of shares held by him:—*Held*: though the memorandum of assocn. limited the extent of liability as regarded creditors outside the co., there was nothing in the above Act preventing the shareholders *inter se* from contracting to make themselves liable to a greater amount; the provision in the arts. of assocn. constituted such a contract; & consequently that holders of fully paid-up shares might be put on the list of contributories for the purpose of having a call made to meet the liability so incurred.

of the co. or by special resolution, & so that the respective classes of shares might have to be subject to such preference, guarantees & restrictions, if any, as might be prescribed by the arts. & special resolution. The arts. contained no provisions as to the division of shares into different classes. Under the memorandum 600 ordinary & 208 preference shares were allotted & fully paid up. By a special resolution of the co. passed & confirmed at meetings held on 1st & 16th March, 1892, it was provided "that the pre-

sent issue of 625 preference shares, authorised by art. 5 of the memorandum of assocn. of the co. be entitled to rank in respect of dividend as well as capital in priority to the ordinary shares of the co."—*Held*: (1) the special resolution passed in 1892 was *ultra vires* of the co. in respect that it was inconsistent with the provisions of art. 5 of the memorandum of assocn. which while providing that the preference shareholders were to have a preference in regard to dividends, implied that all shareholders were to

(2) Shares having been registered in the joint names of two persons, one of whom was since dead, the articles of association being silent as to the liability thereby incurred:—*Held*: that by 1856 Act, a joint liability only was contracted, & it survived on the death of the joint owner. The survivor was therefore alone liable to be placed on the list of contributories.—*Re MARIA ANNA & STEINBANK COAL & COKE CO., MAXWELL'S CASE, HILL'S CASE* (1875), L. R. 20 Eq. 585; 44 L. J. Ch. 423; 32 L. T. 747; 23 W. R. 646.

Annotations:—*As to* (1) *Folld. Re Maria Anna & Steinbank Coal & Coke Co., McKewan's Case* (1877), 6 Ch. D. 447. *Distd. Re Bangor & North Wales Mutual Marine Protection Assocn., Baird's Case*, [1899] 2 Ch. 593. *Reid. Re Walker & Hacking* (1887), 57 L. T. 763. *Generally, Mentd. Re St. Nazaire Co.* (1877), 36 L. T. 358.

437. ———.]—A co. was formed under 1856 Act, with a capital of £160,000 divided into £10 shares, & the memorandum stated that the liability of the shareholders was limited. The arts. provided that certain debts of specified amount which had been incurred by six of the shareholders in forming the co. should be paid by the co., & that if the co. should not have sufficient funds to pay them, each shareholder for the time being should contribute & pay to the co. a proportionate amount of those debts according to the number of shares of each shareholder. The shares were not all allotted. The co. having been ordered to be wound up:—*Held*: (1) the agreement to contribute to these debts was legal & could be enforced by a call, though the shares had been fully paid up; (2) each shareholder must contribute a sum bearing to the whole of the debts the same proportion as the number of his shares bore to the whole number actually allotted; (3) the six shareholders were not entitled to interest upon large sums which they had paid for interest on the debts; (4) no shareholder was liable to pay any further proportion in consequence of the inability of any other shareholder to pay his proportion.—

Re MARIA ANNA & STEINBANK COAL & COKE CO., MCKEWAN'S CASE (1877), 6 Ch. D. 447; 46 L. J. Ch. 819; 37 L. T. 201; 25 W. R. 857, C. A.

Annotation:—*As to* (2) *Distd. Re Bangor & North Wales Mutual Marine Protection Assocn., Baird's Case*, [1899] 2 Ch. 593.

438. Application of capital by articles—To purposes not covered by memorandum.]—GUINNESS v. LAND CORPN. OF IRELAND, No. 330, *ante*.

Power to issue preference shares.]—See No. 1451, *post*.

Provision for calls on shareholders—In excess of fully paid capital.]—See No. 415, *ante*.

Purchase of company's own shares.]—See Nos. 411, 420, *ante*.

Construction of memorandum & articles generally.]—See Sub-sect. 3, *ante*.

SECT. 8.—THE PROSPECTUS.

SUB-SECT. 1.—IN GENERAL.

439. Purpose of.]—(1) The proper purpose of a prospectus of an intended co. is to invite persons

have equal rights on the distribution of capital & (2) it was a violation of the contract made by the co. with the ordinary shareholders who had taken shares prior to its date.—*MILFORD HAVEN FISHING CO. v. JONES* (1895), 22 R. (Ct. of Sess.) 577; 32 Sc. L. R. 449; 2 S. L. T. 562.—*SCOT.*

PART III. SECT. 8, SUB-SECT. 1.

k. Nature of—Basis of contract.]—The prospectus is the basis for the contract for shares, & the co. by issuing

to become allottees of the shares, or original shareholders in the co. When it has performed this office it is exhausted.

A prospectus of an intended co. ought not to misrepresent actual & material facts, or to conceal facts material to be known, the misrepresentation or concealment of which may improperly influence & mislead the mind of the reader, for if he is thereby deceived into becoming an allottee of shares, & in consequence, suffers loss, he is entitled to proceed against those who had thus misled him. But the responsibility of directors who issue a prospectus for an intended co. misrepresenting actual & material facts, or concealing facts material to be known, does not, as of course, follow the shares on their transfer from an allottee to his vendee. In order that this third person, the vendee, should be enabled to maintain any proceeding at law, or in equity, against the directors in respect of losses occasioned by his belief in the prospectus & his consequent procurement of shares, he must show some direct connection between them & himself in the communication of the prospectus, & its influence upon his conduct in becoming an allottee.

(2) The rule as to delay in seeking for compensation for losses thus occasioned is, in common law proceedings, that which is prescribed by Stat. Limitations, & the rule in equity follows by analogy that of the law. Where, therefore, a person became possessed of shares in Oct., 1865, & the co. was ordered in June, 1866, to be wound up, & he contested his liability to be made a contributory, but was, in July, 1867, declared liable as such, & in Mar., 1868, filed his bill against the directors to be indemnified by them:—*Held*: delay could not be set up as an answer to the suit.

The proceeding in such a case is like an action at law for deceit—the same principle being applicable in such a matter both at law & in equity—& is therefore of a personal character, & the estate of a deceased director not being alleged & proved to have received benefit from the deceit, his exors. cannot be made liable to compensate the person who asserts that he has been injured by it.

(3) One of the projectors of a co. set up as a defence that he had not taken part in preparing or issuing the prospectus; he knew, however, all that the other directors knew, consented to become a director of the co., signed the memorandum & arts. of assocn., & shares were appropriated to him:—*Held*: under these circumstances he could not avail himself of this defence.

Mere non-disclosure of facts, unless such non-disclosure had the effect of making the disclosed facts absolutely false, would not be sufficient to sustain a proceeding which was really in the nature of an action for misrepresentation (LORD CAIRNS).

(4) A prospectus for an intended co. was prepared by the projectors, the directors of the co., & issued by them to the public; it contained

misrepresentations of facts, facts known to those who issued it, & it also concealed the existence of a deed, which was material to be known, & which, if known, would in all probability have prevented the formation of the co. Being addressed to the whole public, any one might take up the prospectus & appropriate to himself its representations, by applying for an allotment of shares:—*Held*: when the allotment was completed, the office of the prospectus was exhausted, & a person who had not become an allottee, but was only a subsequent purchaser of shares in the market, was not so connected with the prospectus as to render those who had issued it liable to indemnify him against the losses which he had suffered in consequence of his purchase.—*PEEK v. GURNEY* (1873), L. R. 6 H. L. 377; 43 L. J. Ch. 19; 22 W. R. 29, H. L.

Annotations:—As to (1) *Distd. Smith v. Chadwick* (1882), 20 Ch. D. 27. *Reid. Eaglesfield v. Londonderry* (1876), 4 Ch. D. 693; *Davies v. London & Provincial Marine Insee.* (1878), 38 L. T. 478; *Weir v. Bell* (1878), 3 Ex. D. 238; *Arkwright v. Newbold* (1881), 17 Ch. D. 301; *Derry v. Peek* (1889), 14 App. Cas. 337; *Chapman v. Great Central Freehold Mines* (1905), 22 T. L. R. 90. *Mentd. R. v. Most* (1881), 50 L. J. M. C. 113. As to (2) *Distd. Twycross v. Grant* (1878), 4 C. P. D. 40. *Folld. Geipel v. Peach*, [1917] 2 Ch. 108. *Mentd. Phillips v. Homfray* (1883), 24 Ch. D. 439; *Hatchard v. Mège* (1887), 18 Q. B. D. 771; *Cackett v. Keswick*, [1902] 2 Ch. 456; *Quirk v. Thomas*, [1915] 1 K. B. 798. As to (3) *Expld. Cargill v. Bower* (1878), 10 Ch. D. 502. *Reid. Glasier v. Rolls* (1889), 42 Ch. D. 436. *Mentd. Tackey v. McBain*, [1912] A. C. 186. As to (4) *Distd. Andrews v. Mockford*, [1896] 1 Q. B. 372. *Reid. Edgington v. Fitzmaurice* (1885), 29 Ch. D. 459. *Generally, Reid. Re Southport & West Lancashire Banking Co., Fisher & Sherrington's Case* (1885), 53 L. T. 832; *Salaman v. Warner* (1891), 65 L. T. 132; *Aaron's Reefs v. Twiss*, [1896] A. C. 273. *Mentd. Pender v. Fox* (1872), 20 W. R. 966; *Phosphate Sewage Co. v. Hartmont* (1876), 34 L. T. 154; *Schroeder v. Mendl* (1877), 37 L. T. 452; *Young v. Wallingford* (1883), 52 L. J. Ch. 590; *Newbigging v. Adam* (1886), 34 Ch. D. 582; *Lange v. Barton* (1891), 7 T. L. R. 451; *Cavaller v. Pope*, [1905] 2 K. B. 757; *Nocton v. Ashburton*, [1914] A. C. 932.

Compare No. 563, post.

440. Strict & scrupulous accuracy necessary—Both in statement & inclusion of facts.]—*NEW BRUNSWICK & CANADA RY., ETC., Co. v. MUGGERIDGE*, No. 569, *post*.

441. No misstatement or concealment of material facts allowed.]—*CENTRAL RY. Co. OF VENEZUELA (DIRECTORS, ETC.) v. KISCH*, No. 405, *ante*.

442. —.]—*PEEK v. GURNEY*, No. 439, *ante*.

443. Construction—Question for judge.]—*MOORE v. EXPLOSIVES Co., LTD.*, No. 531, *post*.

444. Effect of statement in—Deposit returned if no allotment made.]—A statement in the prospectus of a joint-stock co. "Deposits returned if no allotment made," does not create a trust in favour of subscribers for shares who have paid deposits to the account of the co., as against creditors of the co. who seek to attach the moneys standing to the co.'s banking account, although the co. proves abortive & no allotment is ever made.—*MOSELEY v. CRESSEY'S Co.* (1865), L. R. 1 Eq. 405; 35 L. J. Ch. 360; 14 L. T. 99; 12 Jur. N. S. 46; 14 W. R. 246.

445. — Shares to be taken by directors —

stock, thereon ratifies & adopts the prospectus, even where it is issued before incorporation.—*BUFF PRESSED BRICK Co. v. FORD* (1915), 8 O. W. N. 63; 33 O. L. R. 264; 23 W. L. R. 718.—CAN.

1. What constitutes prospectus—*Advertisement.*]—An advertisement designed to accomplish the purpose mentioned in Companies Act, s. 95 (1), is a "prospectus" within s. 99 of above Act.—*Re R. v. GARVIN* (1909), 18 O. L. R. 49; 13 O. W. R. 575; 14 Can. Crim. Cas. 283.—CAN.

m. — "Statement" containing untrue particulars.]—A document called a "statement," issued by the co., which contained several untrue representations bearing on the value of the shares, such as that all the earnings would be available for the common stock, & that the superintendent of the co.'s factory had an interest in the co.:—*Held*: the "statement," as it was "issued for the purpose of being used to promote or aid in the subscription or purchase of" the shares of the co., was a "prospectus" within Companies Act, s. 99.—*Mc-*

CURDY v. OAK TIRE & RUBBER Co., LTD. (1918), 44 O. L. R. 571.—CAN.

n. — Application form—*Accompanied by particulars of property*—*"Circular or other invitation."*]—The application form for shares alone or together with the separate document containing particulars of the property & claim issued by the promoters constitutes a "prospectus" it being "a circular or other invitation" offering shares to the public for subscription or purchase.—*Re SHORTLAND FLAT*

Sect. 8.—The prospectus: Sub-sects. 1 & 2, A. (a) & (b).]

Whether directors bound.]—The prospectus of a co., approved & issued by the directors after the registration of the co., & inviting subscriptions for the preference shares & debenture capital, stated that the directors would take all the ordinary shares which were not taken by the vendors to the co. The vendors, who were two of the directors, & others took all the ordinary shares except 367. No ordinary shares were ever allotted to any of the other directors, & none of those directors was ever placed on the register of shareholders in respect of any ordinary shares. In the winding-up of the co., there being no evidence, except the prospectus, of any agreement between the co. & one of the non-vendor directors that he should take any ordinary shares:—*Held*: the prospectus was not satisfactory proof of an agreement binding the co. to allot & the director to accept such shares, & he was not liable in respect of any ordinary shares, either on the ground of agreement or on the ground of estoppel.—*Re MOORE BROTHERS & CO., LTD.*, [1899] 1 Ch. 627; 47 W. R. 401; 15 T. L. R. 192; 43 Sol. Jo. 259; *sub nom. Re MOORE BROTHERS & CO., LTD., BARTHOLOMEW'S CASE*, 68 L. J. Ch. 302; 80 L. T. 104; 6 Mans. 290, C. A.

446. Prospectus not authorised for publication—Application of 1867 Act, s. 38.]—Pltf., who was an underwriter of shares, sought to recover damages for non-disclosure of the same agreement as that in *Cackett v. Keswick*, No. 458, *post*, of Mar. 10, 1899, in the prospectus, but the circumstances were different. On Mar. 13, 1899, pltf. met a friend who mentioned the co. to him & showed him a draft prospectus. He was attracted by the names of M. & K. on the front sheet, but in his evidence he stated that he did not remember reading anything about contracts. He signed an underwriting agreement for 250 shares, & gave a cheque for £62 10s. which was returned to him on Mar. 28, as the directors had decided "not to issue" the prospectus before Easter. Another cheque & a signed application form for those shares were sent before the end of April:—*Held*: pltf. signed his underwriting agreement & application for shares before any prospectus had been issued to the public. The incorporation took place on May 24, & the prospectus was issued on May 27, & the above sect. was not intended to apply to copies of a prospectus not authorised for publication shown to friends or speculators by way of anticipation of the public. If such persons were deceived they had certain rights, but could not get the benefit of the Act.—*BATY v. KESWICK* (1901), 85 L. T. 18; 50 W. R. 14; 45 Sol. Jo. 672; *sub nom. CACKETT v. KESWICK, BATY v. KESWICK*, 17 T. L. R. 664.

Annotation:—*Apprvd. Nash v. Calthorpe*, [1905] 2 Ch. 237.

GOLD-MINING CO., LTD. (1910), 29 N. Z. L. R. 931.—N.Z.

c. — Issue to public generally—*Issued by provisional directors—Not adopted by company.*—A document was sent to the petr. prior to the formation of the co. by one of six persons named therein as directors of the proposed co. to whom he was personally known & who afterwards became a director, along with a letter advising him to apply for an allotment of shares. 40 copies of the document were similarly distributed by the provisional directors to their business friends, who were asked to place it before their friends & clients. The co. after its formation had not adopted or issued

copies of the document. It contained no invitation to take shares. It stated that co. was to be a private co.:—*Held*: (1) the document was not a prospectus within the meaning of Act of 1900 as it was not issued to the public generally & did not contain an invitation to take shares & (2) the co. not having adopted the document was not responsible for the statements it contained. Opinion that the procedure by summary petn. authorised by sect. 35 of Cos. Act, 1862, was an inappropriate method to try the question.—*SLEIGH v. GLASGOW & TRANSVAAL OPTIONS, LTD.* (1904), 6 F. (Ct. of Sess.) 420.—SCOT.

p. Issuing of prospectus—Act of

Prospectus headed "For private circulation only"—Application of 1908 Act, s. 81.]—See No. 476, *post*.

Application of 1908 Act, s. 85.]—See No. 1646, *post*.

Prospectus inconsistent with memorandum.]—See No. 1, *ante*.

Conduct amounting to waiver.]—See No. 787, *post*.

Prospectus inconsistent with articles—Ground for removal from register.]—See No. 777, *post*.

Conduct amounting to waiver.]—See No. 401, *ante*.

Constitution of company not consistent with prospectus.]—See, generally, Sub-sect. 4, *post*.

SUB-SECT. 2.—DISCLOSURE AND OMISSION.

A. What must be Disclosed.

(a) Apart from Statute.

447. Remuneration of promoter.]—Upon the establishment of the W. F. Ry., a person who had been instrumental in forming the co., & in procuring the grant from the Belgian govt., obtained from the directors an agreement to pay him a large percentage upon the capital of the co., to allot him 4,000 shares, & to guarantee him a salary of £500 a year as general manager of the co. The directors also allotted to themselves 20,000 shares, & also another 10,000 shares for themselves & the other shareholders in the S. & M. Ry., of which they were also directors. These facts were suppressed in the prospectus they subsequently issued; which, however, did state that they had reserved to themselves a commission of £3 per cent. upon the capital by way of reimbursement for the expenses, liabilities & payments already incurred. Upon a bill by an original shareholder to be relieved from his shares & to obtain payment of his deposit money & calls, with interest, on the ground that he had been induced to take them by the representations made by the prospectus:—*Held*: the omission to state these facts in the prospectus was not such a misrepresentation or concealment as would induce the ct. to set aside the contract, & the bill was dismissed, with costs.—*PULSFORD v. RICHARDS* (1853), 17 Beav. 87; 22 L. J. Ch. 559; 22 L. T. O. S. 51; 17 Jur. 865; 1 W. R. 295; 51 E. R. 965.

Annotations:—*Apld. Jennings v. Broughton* (1853), 17 Beav. 234. *Mentd. Bushby v. Ellis* (1853), 17 Beav. 279; *Gordon v. Street*, [1899] 2 Q. B. 641.

448. — Out of vendor's purchase money — No duty at common law.]—HOWARD v. ESCOMBE (1887), 3 T. L. R. 316.

449. Benefit taken by directors.]—PULSFORD v. RICHARDS, No. 447, *ante*.

450. Liability of deposit to forfeiture.]—CENTRAL RY. CO. OF VENEZUELA (DIRECTORS, ETC.) v. KISCH, No. 405, *ante*.

"management & conduct"—Statements in prospectus on representations of company—Companies Act, 1866, s. 154.]—Re INDIAN COMPANIES ACT, 1866, & EAST INDIA BUILDING & GENERAL CONTRACT CO., LTD., ROMANATH GOSSAIN'S CASE (1867), 2 Ind. Jur. N. S. 296.—IND.

PART III. SECT. 8, SUB-SECT. 2.—A. (a).

q. Remuneration of promoter—Bogus contract to conceal absence of consideration.]—25,000 shares were issued as a bonus to a promoter. This was not disclosed in the prospectus, & in order to conceal it it was arranged

451. Grant of right to shares to concessionaires —By grantor of concession.]—CENTRAL RY. CO. OF VENEZUELA (DIRECTORS, ETC.) v. KISCH, No. 405, ante.

452. Amount payable to concessionaires by company.]—CENTRAL RY. CO. OF VENEZUELA (DIRECTORS, ETC.) v. KISCH, No. 405, ante.

453. Qualification in conditions of acquisition of property.]—CENTRAL RY. CO. OF VENEZUELA (DIRECTORS, ETC.) v. KISCH, No. 405, ante.

454. Qualification in guarantee of interest —By grantor of concession.]—CENTRAL RY. CO. OF VENEZUELA (DIRECTORS, ETC.) v. KISCH, No. 405, ante.

455. — By contractor.] —CENTRAL RY. CO. OF VENEZUELA (DIRECTORS, ETC.) v. KISCH, No. 405, ante.

456. Amounts payable by concessionaire to directors—Concessionaire acting as contractor under company.]—A co. was formed for the purpose of making & working a railway in Switzerland under a concession vested in H., a contractor, & transferred by him to the co. under an agreement by which he obtained the contract for making the line, the terms of the contract being stated in the arts. of assocn. Before the formation of the co. H. agreed to give S., who afterwards became the chairman of the board of directors, £2,000 worth of paid-up shares, & after the co. was formed he paid the deposit & allotment moneys on the shares taken by S., & several other directors, & gave to C. & W., who afterwards became directors, bills for £10,000, in consideration of their procuring a credit co. to bring out the co. The directors issued a prospectus, which contained no misrepresentations, but did not mention the transactions between H. & the directors:—*Held*: there was no such suppression of material facts in the prospectus, as to entitle a person who had been induced by it to take shares in the co., to be relieved of his shares. *Semble*: a shareholder who institutes a suit to be relieved of his shares on the ground of misrepresentation more than three months after he has discovered the misrepresentation, loses his right to relief by his delay.—*HEYMANN v. EUROPEAN CENTRAL RY. CO.* (1868), L. R. 7 Eq. 154.

Annotations:—*Refd.* *McKeown v. Boudard Peveril Gear Co.* (1896), 65 L. J. Ch. 446; *First National Reinsurance v. Greenfield*, [1921] 2 K. B. 260. *Mentd.* *Cornell v. Torrens*, *Cornell v. Hay*, *Cornell v. Massey* (1873), 21 W. R. 580.

457. Contract—Between vendor & promoter.]—*Re COAL ECONOMISING GAS CO., GOVER'S CASE*, No. 492, *post*.

458. — Commission for underwriting & use of future chairman's name on prospectus.]—A waiver clause in a prospectus as to the disclosure of contracts under 1867 Act, s. 38, may be enforced against an intending shareholder, if it is honest & not misleading, but not if it fails to give sufficient notice as to the nature of what is to be waived.

The prospectus of a mining co., disclosed an agreement as to the purchase of the produce of the mine, & stated that the directors had guaranteed the subscription of a part of the capital, & would receive a commission for so doing. It then stated that there might also be various trade contracts & business arrangements in addition to the before-mentioned agreement as to the purchase of the produce, & that as these contracts & business arrangements & the above-mentioned underwriting agreements might constitute contracts

within 1867 Act, s. 38, appcts. for shares should be deemed to waive the insertion of the particulars of any such contracts, arrangements, or agreements. The prospectus did not disclose a contract between the promoters & K., the future chairman of the co., whereby a firm of which K. was a member was to receive 12,000 fully paid £1 vendor's shares, as to 2,000 for commission for underwriting, & as to 10,000 for the use of the names of K. & the firm on the prospectus, & for adopting the co.:—*Held*: this was a contract which ought under s. 38 to have been disclosed; & it was not covered by the waiver clause.

Wholly apart from s. 38, in common fairness to the intending investor, to whom a prospectus of this kind is issued, such a contract as we have here to deal with ought to be specified & referred to in the prospectus (*ROMER, L.J.*).—*CAKETT v. KESWICK*, [1902] 2 Ch. 456; 71 L. J. Ch. 641; 87 L. T. 11; 51 W. R. 69; 18 T. L. R. 650; 46 Sol. Jo. 600; 9 Mans. 388, C. A.

Annotations:—*Fold.* *Watts v. Bucknall*, [1903] 1 Ch. 766. *Consd.* *Nash v. Calthorpe*, [1905] 2 Ch. 237. *Refd.* *De La Cour v. Clinton*, *Trechmann v. Calthorpe* (1904), 90 L. T. 615. *Mentd.* *Exploring Land & Minerals Co. v. Kolkemann* (1905), 94 L. T. 234.

459. Promoters real vendors.]—The promoters of a co. purchased property for the purpose of selling to the co. when formed. The property was conveyed to a trustee for the promoters nominated by them, & was afterwards by the direction of the promoters conveyed by him to a trustee for the co., who was also nominated by the promoters, they receiving from the co. an increased price on the sale. The promoters also nominated the first directors of the co. & provided the qualification of some of them. The prospectus of the co., which was issued for the purpose of inducing the public to subscribe for its shares, was prepared with the knowledge & privity of the promoters, so that, as the ct. held, they were responsible for it. It did not disclose the fact that the promoters were the real vendors of the property to the co., but, on the contrary, represented the promoters' trustee as the vendor. The co. afterwards went into liquidation. Upon a summons by the liquidator to compel the promoters to account for the profit which they had obtained on the resale of the property:—*Held*: the promoters as such stood in a fiduciary position towards the persons who were invited to take shares in the co., & it was their duty to disclose to those persons the fact that they were the real vendors to the co.—*Re LEEDS & HANLEY THEATRES OF VARIETIES, LTD.*, [1902] 2 Ch. 809; 72 L. J. Ch. 1; 87 L. T. 488; 51 W. R. 5; 46 Sol. Jo. 648; 10 Mans. 72, C. A.

Annotations:—*Refd.* *Re Darby, Ex p. Brougham*, [1911] 1 K. B. 95; *Omnium Electric Palaces v. Barnes*, [1914] 1 Ch. 332.

Disclosure by promoters—Apart from prospectus.]—See Sect. 1, sub-sect. 4, ante.

(b) *Under Companies Act, 1867 (c. 131), s. 38.*

460. General rule—Material contract.]—A contract required by 1867 Act, s. 38, to be specified in a prospectus means a contract that is "material"—one which whether deterrent or not, an intending investor ought to have an opportunity of considering in order to decide whether to apply for shares or not.

On Sept. 21, 1898, the directors of a newly incorporated co. entered into a contract by letter

that a contract, whereby the co. had agreed to acquire the business of K. for 25,000 shares, should show the consideration as 50,000 instead of

25,000 shares & that the promoter should have 25,000 of these shares:—*Held*: the issue of these 25,000 shares to M. was illegal & could not be

ratified by the shareholders.—*ROSE v. BRITISH COLUMBIA REFINING CO.* (1911), 18 W. L. R. 299.—CAN.

Sect. 8.—The prospectus: Sub-sect. 2, A. (b) & (c).]

with B. its promoter, confirmed by a resolution of Oct. 1, that, in consideration of his advancing a sum of £14,250, to enable the co. to pay the deposit on its intended purchase of an undertaking introduced by him, & of his taking upon himself the risk of forfeiture of the deposit in the event of non-completion of the purchase, the co. would repay the deposit by a certain day together with £7,500 bonus for such loan. The deposit was then raised by B. & paid to the vendors. Subsequently by a contract, by resolution of the directors, of Oct. 10, 1898, between B. & the directors, upon their giving him assurance that his right to recover proper remuneration for commission on introducing the business of the purchase & raising the necessary deposit should be honourably met at a future meeting of the directors the contract of Sept. 21 was cancelled, & the subject was adjourned to a future meeting of the board. On Oct. 20, 1898, the directors issued a prospectus stating that certain contracts therein specified were the only contracts entered into by the co., no reference being made to either of the 2 contracts of Sept. 21 & Oct. 10, 1898. On the faith of that prospectus pltf. applied for 400 £10 shares in the co., which were duly allotted to him on Oct. 26, 1898, & he paid £1,000 upon them. In Jan. 1900, the co. went into liquidation, & in Dec. 1901, pltf. brought an action against the directors claiming, under 1867 Act, s. 38, to have the prospectus declared fraudulent by reason of the omission of the 2 contracts, with damages:—*Held*: both contracts were such as were material to be specified in the prospectus, & as the defts. had, even though they might have done so innocently & on legal advice, “knowingly issued” the prospectus containing an “untrue statement,” pltf. had established his case both under 1867 Act, s. 38, & under Directors Liability Act, 1890 (c. 64), s. 3 (1); pltf. was entitled to damages, the measure being the difference between the price he paid for the shares & their fair value at the date of allotment.—*BROOME v. SPEAK*, [1903] 1 Ch. 586; 72 L. J. Ch. 251; 88 L. T. 580; 51 W. R. 258; 19 T. L. R. 187; 47 Sol. Jo. 238; 10 Mans. 38, C. A.; *affd. sub nom. SHEPHEARD v. BROOME*, [1904] A. C. 342, H. L.

Annotations:—*Consd. Nash v. Calthorpe*, [1905] 2 Ch. 237; *Shepherd v. Bray*, [1906] 2 Ch. 235. *Refd. Watts v. Bucknall*, [1903] 1 Ch. 766; *De La Cour v. Clinton*, *Trechmann v. Calthorpe*, *Tait v. Mac Leay* (1904), 91 L. T. 474; *Hoole v. Speak* (1904), 91 L. T. 183.

See, now, 1908 Act, s. 81 (1) (k).

461. “Contract”—Understanding between vendors & directors—For transfer of part of vendor's shares—To directors as promotion-money.]—*ARKWRIGHT v. NEWBOLD*, No. 145, *ante*.

462. — May be verbal.]—Pltfs., by one of their directors, who was also their stockbroker, were induced to take shares in deft. co., by means of a prospectus issued by the directors of the deft. co., also defts. to the action, whereby it was stated that the purchase-money paid to the vendors for the co.'s business was £36,000, whereas, in fact, of that sum £6,000 was paid to a promoter, who was in no sense a vendor. Such promotion money was paid under a parol agreement between the true vendor & the promoter, to which no reference was made by the prospectus:—*Held*: the agreement was such a contract as ought to have been disclosed by the prospectus, as provided by 1867 Act, s. 38, & further, the statement as to the purchase-money was a material misrepresentation, & pltf.'s agent having relied upon it,

pltfs. were entitled to rescission as against the co. & to damages as against the directors who issued the fraudulent prospectus.

Defts. are severally liable to repay to pltf. trust co. the actual amount paid by them, with interest calculated from the day of payment to deft. co. Having regard to the circumstances of this case, I see no reason why interest should not be payable at what I may term a mercantile rate usually allowed by juries, & I shall fix it at five per cent. (*KEKEWICH, J.*)—*CAPEL & Co. v. SIM'S SHIPS COMPOSITIONS Co., LTD.* (1888), 57 L. J. Ch. 713; 58 L. T. 807; 36 W. R. 689; 4 T. L. R. 458.

Annotation:—*Refd. Arnison v. Smith* (1889), 41 Ch. D. 348.

463. Contract by promoter—To allot part of promoter's shares to directors.]—Declaration alleged that the promoters of a joint-stock co., of which defts. were directors, entered into certain contracts with defts. to register shares of nominal value in their names, to pay a salary for allowing their names to be used as trustees, to appoint a particular person managing director who might nominate another person to vote in his absence; also that the promoters had entered into a contract with the owner of the property which the co. was to purchase that he should receive only part of the purchase money, the remainder to be divided amongst the promoters. The declaration proceeded to state that defts. afterwards, with knowledge, fraudulently & with intention to induce persons to take shares, published a prospectus without specifying any of these contracts; & pltf., on the faith of the prospectus, without notice of the contracts, took shares in the said co., & lost money thereby. Upon demurrer:—*Held*: these contracts, especially the last, were such as are required to be specified in a prospectus by 1867 Act, s. 38; & the declaration disclosed a good cause of action.—*CHARLTON v. HAY* (1874), 31 L. T. 437; 23 W. R. 129.

Annotations:—*Consd. Twycross v. Grant* (1877), 2 C. P. D. 469. *Apld. Sullivan v. Mitcalfe* (1880), 5 C. P. D. 455. *Distd. Howard v. Escombe* (1887), 3 T. L. R. 316. *Mentd. Craig v. Phillips* (1877), 7 Ch. D. 249.

See, also, No. 145, *ante*.

464. — To pay salary to proposed trustee—For use of name.]—*CHARLTON v. HAY*, No. 463, *ante*.

465. — For appointment of one promoter—Managing director—With power to appoint deputy with power of voting.]—*CHARLTON v. HAY*, No. 463, *ante*.

466. — Vendor to receive part only of purchase-money—Balance payable to promoters.]—*CHARLTON v. HAY*, No. 463, *ante*.

467. — — — — —.]—B. & C., being possessed of a patent, agreed to sell it to a co. for £56,000, but by a series of contracts it was arranged that only £2,000 out of that sum should be retained by them for their own use, & that £54,000 should be divided between the promoters of the co. The prospectus, issued on behalf of the co., did not mention the contracts relating to the disposal of the purchase-money of the patent. Defts. were promoters & directors of the co. Pltf. subscribed for shares, but he afterwards sued defts. to recover the price of the shares subscribed for by him:—*Held*: the contracts as to the disposal of the purchase-money of the patent ought to have been specified in the prospectus pursuant to 1867 Act, s. 38, & defts. were liable to pltf. for the price of his shares.—*SULLIVAN v. MITCALFE* (1880), 5 C. P. D. 455; 49 L. J. Q. B. 815; 44 L. T. 8; 29 W. R. 181.

Annotations:—*Distd. Howard v. Escombe* (1887), 3 T. L. R.

316. *Consd. Cackett v. Keswick*, [1902] 2 Ch. 456; *Nash v. Calthorpe*, [1905] 2 Ch. 237. *Reid. Broome v. Speak*, [1903] 1 Ch. 586; *Stevens v. Hoare* (1904), 20 T. L. R. 407; *Macleay v. Tait*, [1906] A. C. 24.

468. ————.]—*CAPEL & CO. v. SIM'S SHIPS COMPOSITIONS CO., LTD.*, No. 462, *ante*.

469. ——— With his vendor—Whether entered into as promoter—Consideration partly shares of intended company.]—*Re COAL ECONOMISING GAS CO., GOVER'S CASE*, No. 492, *post*.

See, now, 1908 Act, s. 81 (2).

470. ——— Consideration cash payable in instalments.]—Pltf. & deft., being both interested, with others, in mines which required the use of coal, deft., on Mar. 26, 1873, wrote to pltf., amongst others, a letter, mentioning a property consisting partly of smelting works & partly of a colliery then for sale, recommending it as a first-class investment, & offering it to pltf. & others in the terms of a prospectus about to be issued. The latter mentioned the capital of & number of shares in a co. proposed to be formed for the working of the businesses. On May 10, 1873, deft. contracted to purchase the property for £16,125 in cash, to be paid by instalments. By another agreement, dated May 29, 1873, deft. agreed to sell the property to two persons, expressly as trustees for the intended co., for £23,725 in cash, also to be paid by instalments. On June 2, 1873, a prospectus was issued, in which the name of deft. appeared as managing director, & in which the contract of May 29, 1873, was the only one referred to; & on June 9, 1873, pltf. agreed to take 200 shares of £5 each in the co., which was registered on July 16, 1873. At the hearing of a suit, in which pltf. prayed for a declaration that he was induced to take the shares by the fraud & deceit of deft., it was contended that the contract of May 10, 1873, ought to have been specified in the prospectus:—*Held*: the omission in the prospectus of mention of the contract of May 10, 1873, was not fraudulent within the meaning of 1867 Act, s. 38; & inasmuch as upon the evidence the statements in the letter & prospectus did not amount to misrepresentation either within the knowledge of the deft. or in fact, the bill was dismissed.—*CRAIG v. PHILLIPS* (1876), 3 Ch. D. 722; 46 L. J. Ch. 49; 35 L. T. 198.

Annotation:—*Dbtd. Twycross v. Grant* (1877), 2 C. P. D. 469.

471. ————.]—*TWYCROSS v. GRANT*, No. 29, *ante*.

472. ——— To pay commission.—Construction of tramways subject of concessions sold to company.]—*TWYCROSS v. GRANT*, No. 29, *ante*.

473. ——— To allot fully paid vendor's shares to firm of future chairman—Commission on underwriting—And use of name on prospectus.]—*CACKETT v. KESWICK*, No. 458, *ante*.

474. ——— With directors—For bonus for providing deposit on purchase of undertaking—Subsequently cancelled.]—*BROOME v. SPEAK*, No. 460, *ante*.

475. ———— & introducing business.]—*BROOME v. SPEAK*, No. 460, *ante*.

Disclosure by promoters—Apart from prospectus.]—*See Sect. 1, sub-sect. 4, ante*.

(c) *Under Companies (Consolidation) Act, 1908* (c. 69).

See 1908 Act, s. 81.

Contents of memorandum.]—*See, generally*, Sect. 7, *ante*.

Qualification of directors.]—*See, generally*, Sect. 28 *mut.*

476. Second or subsequent offer of shares—First prospectus headed "for private circulation only"—Offer to the public.]—In Feb., 1910, a prospectus was issued on behalf of a co. headed "For private circulation only," but also containing a statement that it had been filed with the Registrar of Joint Stock Cos. It was stated that this prospectus was distributed by the promoter only to shareholders in certain gas cos. in which he was interested, & not more than 3,000 copies were sent out. In April, 1910, a second prospectus was issued which contained no statement of the first offer of shares. B. applied for & was allotted shares on the terms of the second prospectus. He died soon afterwards. His exors. moved to rectify the register by removing his name on the ground that there was a breach of 1908 Act, s. 81, in not stating the offer of shares contained in the first prospectus & the amount subscribed:—*Held*: on the evidence, the circulation of the first prospectus was an offer of shares to the public within the meaning of 1908 Act. Consequently the second prospectus was a "subsequent offer" within 1908 Act, s. 81, & the first offer ought to have been stated.

The remedy of the allottee was in damages against the persons responsible for the prospectus & not by rescission.—*Re SOUTH OF ENGLAND NATURAL GAS & PETROLEUM CO., LTD.*, [1911] 1 Ch. 573; 80 L. J. Ch. 358; 104 L. T. 378; 55 Sol. Jo. 442; 18 Mans. 241.

Compare No. 406, *ante*, Nos. 1134, 1645, *post*.

477. "Amount payable to vendor"—Amount paid by vendor not included—Though property recently acquired.]—Where a co. on its formation purchases or proposes to acquire from an absolute owner property which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, 1900 Act, s. 10 (1) (f), requires that the name & address of the vendor & the amount of the consideration shall be stated in the prospectus. There is no obligation under the sub-sect. to disclose the amount of the purchase-money, however small, paid by the vendor on his acquisition of the property, however recent.

If the co. buys merely the benefit of a contract for the purchase of property, the consideration for which remains wholly or partly undischarged, & so, *pro tanto*, a burden on the property, the co. acquiring the benefit of the contract is a "sub-purchaser" within the meaning of the sub-sect., & the particulars thereby required must be stated in the prospectus.

A co. is not a "sub-purchaser" for the purposes of the sub-sect. unless it has to pay purchase-money to some one other than its own vendor, & it is not necessary to state in the prospectus the amount of any consideration paid or to be paid by anyone other than the co.—*BROOKES v. HANSEN*, [1906] 2 Ch. 129; 75 L. J. Ch. 450; 94 L. T. 728; 54 W. R. 502; 22 T. L. R. 475; 50 Sol. Jo. 406; 13 Mans. 172.

Annotation:—*Reid. Re Christineville Rubber Estates* (1911), 81 L. J. Ch. 63.

478. "Sub-purchaser"—Company purchasing benefit of contract—Payment to person other than immediate vendor essential.]—*BROOKES v. HANSEN* No. 477, *ante*.

Underwriting commission.]—*See, generally*, Sect. 11, *post*.

"Material contract."—*See* Sub-sect. 2, A. (b), *ante*.

Disclosure by promoters—Apart from prospectus.]—*See* Sect. 1, sub-sect. 4, *ante*.

Sect. 8.—The prospectus: Sub-sect. 2, B. & C. (a) & (b) i.]

B. Sufficiency of Disclosure.

479. Prospectus referring to Act of Parliament —Act of Parliament reciting deed of settlement.]—A prospectus of a bank mentioning an Act of Parliament, in which Act a deed of settlement is recited, is not of itself sufficient to fix every person reading the prospectus with constructive notice of the contents of the deed.—*Re NATIONAL INSURANCE & INVESTMENT ASSOCN., DAVIES' CASE, ABERCORN'S (LORD) CASE (1862), 4 De G. F. & J. 78; 31 L. J. Ch. 828; 7 L. T. 225; 8 Jur. N. S. 951; 10 W. R. 548; 45 E. R. 1112, L. JJ.; subsequent proceedings, sub nom. Re NATIONAL ASSURANCE & INVESTMENT ASSOCN., Exp. MUNDAY, 31 Beav. 206.*

Annotations:—Mentd. Re District Savings Bank, Ex p. Official Liquidator (1862), 6 L. T. 304; Re National Assoc. & Investment Assocn. Bank of Deposit, Ex p. Cotterell (1862), 32 L. J. Ch. 66; Re Great Northern & Midland Coal Co., Currie's Case (1863), 3 De G. J. & S. 367; Re Waterloo Life etc. Co., Ex p. Saunders (1863), 3 New Rep. 58; Re Llanharry Hematite Iron Ore Co., Roney's Case, Stock's Case (1864), 4 De G. J. & Sm. 426; Re Life Assocn. of England, Blake's Case (1865), 34 Beav. 639; Re General International Agency Co., Chapman's Case (1866), L. R. 2 Eq. 567; Henderson v. Lacon (1867), L. R. 5 Eq. 249; Re International Contract Co., Levita's Case (1867), 3 Ch. App. 36; Ilfracombe Ry. v. Nash (1870), 18 W. R. 431; Re Great Oceanic Telegraph Co., Harward's Case (1871), L. R. 13 Eq. 30; Re Metropolitan Public Carriage & Repository Co., Brown's Case (1873), 9 Ch. App. 102; Re Freehold & General Investment Co., Green's Case (1874), L. R. 18 Eq. 428; Re British Provident Life & Guarantee Assocn., De Ruvigne's Case (1877), 5 Ch. D. 306; Re Colombia Chemical Factory Manure & Phosphate Works, Hewitt's Case, Brett's Case (1883), 25 Ch. D. 283; Arnison v. Smith (1889), 41 Ch. D. 348; Re Printing Telegraph & Construction Co. of the Agence Havas, Ex p. Canimell, [1894] 2 Ch. 392.

480. Abridged prospectus—Date of, & parties to contract omitted—Even though stated where full prospectus may be obtained.]—An abridged prospectus not containing the date of, nor the names of the parties to, a contract for the sale of a patent to be worked by the co., to trustees on behalf of the co.:—*Held*: to be fraudulent within 1867 Act, s. 38, although it stated where full prospectuses could be obtained.—*WHITE v. HAYMEN (1883), 1 Cab. & El. 101.*

481. — — —.]—ARMY, NAVY & CIVIL SERVICE CO-OPERATIVE SOCIETY OF INDIA, LTD. v. CRAIG (1892), 8 T. L. R. 227.

See, also, No. 1646, post.

482. Notice of contracts—Referred to in articles —Articles registered before issue of prospectus.]—The prospectus of a joint-stock bank represented that one half of the shares had been actually subscribed. It appeared that a large portion of these had been agreed to be taken by an Italian co., on the condition that it should at once be credited with a very large sum not much less than the amount of the deposit & allotment moneys payable on their shares, that they should draw on the bank for the amount of the deposit & allotment moneys; & that the proceeds of the bills so drawn, & accepted by the bank, should go in payment of the deposit & allotment moneys. This agreement was not set out in the arts. of assocn., but was referred to in them; & they stipulated that every member should have notice of the agreement. They were registered before

the issuing of the prospectus. D. applied for shares, & alleged that he had done so on the faith of the statements in the prospectus. The shares were allotted to him, but he refused to pay the deposit & allotment moneys. He took no steps to have his name removed from the register till a year afterwards, when the co. was being wound up:—*Held*: he was bound by the knowledge of the contents of the agreement. Even if this had not been so, his laches would have disentitled him to have his name removed from the register.—*Re PENINSULAR, WEST INDIAN & SOUTHERN BANK, DIXON'S CASE (1867), 15 L. T. 651; 15 W. R. 480.*

483. Dates & names of parties to contracts—Not notice of material facts.]—Where a person is induced by a fraudulent prospectus to apply for an allotment of shares, & his shares are afterwards forfeited by his failure to pay calls, he ceases to be a shareholder & becomes a mere debtor to the co., & if he has done nothing to affirm the contract he may repudiate it & defend an action for calls on the ground of the fraud.

A prospectus which merely specifies the dates of & names of the parties to contracts in compliance with 1867 Act, s. 38, does not give notice of circumstances contained in the contracts which are material to be known & the omission of which causes the prospectus to give a false impression.

In an action to enforce a contract in which deft. sets up the plea that he was induced by fraud to enter into the contract, it is not necessary for deft. expressly to repudiate the contract; in order to rebut the plea, it is for plff. to show that deft. had adhered to the contract notwithstanding the discovery of the fraud.—*AARON'S REEFS v. TWISS, [1896] A. C. 273; 65 L. J. P. C. 54; 74 L. T. 794, H. L.*

Annotations:—Consd. First National Reinsurance v. Greenfield, [1921] 2 K. B. 260. Refd. Re Dunlop Truffault Cycle & Tube Manufacturing Co., Ex p. Shearman (1896), 66 L. J. Ch. 25; Re Olympia, [1898] 2 Ch. 153; Ladies Dress Assocn. v. Pulbrook (1899), 68 L. J. Q. B. 871; McConnell v. Wright, [1903] 1 Ch. 546; Merino v. Mutual Reserve Life Insce. (1904), 21 T. L. R. 167; United Shoe Machinery Co. of Canada v. Brunet, [1909] A. C. 330; Re Pacaya Rubber & Produce Co., Burn's Application, [1914] 1 Ch. 542; Moody v. Cox & Hatt, [1917] 2 Ch. 71.

484. — — — Notice in business sense.]—GREENWOOD v. LEATHER SHOD WHEEL CO., No. 526, *post*.

485. — — — Notice fixing shareholder with knowledge of contracts—But not of contents.]—WATTS v. BUCKNALL, No. 528, *post*.

486. Disclosure that directors of company directors of promoting syndicate—Disclosure that profit made.]—Re LADY FORREST (MURCHISON) GOLD MINE, LTD., No. 47, *ante*.

Statement of minimum subscription.]—See No. 1648, *post*.

C. Effect of Non-Disclosure.

(a) Apart from Statute.

487. Liability of director—Taking no part in preparation of issue of prospectus.]—PEEK v. GURNEY, No. 439, *ante*.

488. — — — Whether personal—Death of director.]—PEEK v. GURNEY, No. 439, *ante*.

489. — — — Limitation of action.]—PEEK v. GURNEY, No. 439, *ante*.

Compare Sub-sect. 3, E. (a), post.

PART III. SECT. 8, SUB-SECT. 2.—B. r. Measure of obligation to disclose.]—COMPONENTS' TUBE CO. v. NAYLOR, [1900] 2 I. R. 1.—IR.

PART III. SECT. 8, SUB-SECT. 2.—C. (a).

s. Omission to disclose incumbrances

—If affecting shareholders—Created before prospectus issued.]—Shareholders brought an action against the promoters of a co. who had sold a lumber business to the co. which they had promoted for the purpose of acquiring the said lumber business. They claimed rescission of the contract to take shares & damages for misrepresentation against

the directors & promoters. One of the alleged grounds on which relief was sought was that the promoters had created a mtge. on the lumber business after the issue of the prospectus without disclosing in the prospectus that they intended so to do:—*Held*: the mtge. having been given after the prospectus was issued, it

490. Not a ground for rescission — Unless amounting to misrepresentation.]—PEEK v. GURNEY, No. 439, *ante*.

491. ———.]—Where there has been no positive misrepresentation in a prospectus issued by the directors of a co., a person to whom shares have been allotted, for which he had applied on the faith of statements contained in the prospectus, is not entitled to have his contract to take the shares rescinded merely because the prospectus did not set out all the facts which were known to the directors. In such a case he is only entitled to have his contract rescinded where the facts not disclosed are such that the omission to disclose them renders the prospectus, as it stands, misleading.—MC KEOWN v. BOUDARD-PEVERIL GEAR Co. (1896), 65 L. J. Ch. 735; 74 L. T. 712; 45 W. R. 152; 40 Sol. Jo. 565, C. A.

Compare Nos. 524, 525, *post*.

(b) *Under Companies Act, 1867 (c. 131), s. 38.*

i. *Whether "Fraudulent."*

492. Omission to state purchase by promoter.]—M. agreed with the owner of a patent to purchase the patent for £65,000, to be paid partly in cash & partly in the shares of a co. to be formed by M. Three months afterwards, M. made an agreement with a trustee for an intended co. to sell the patent to the trustee for £125,000, payable partly in cash & partly in shares in the co. Shortly afterwards the co. was formed, M. being a director. A prospectus was issued which did not mention the first agreement for purchase:—*Held*: (1) under the circumstances, M. was not, when he made the first agreement with the patentee, a promoter of the co. & that the omission to specify that agreement was not fraudulent, either under the general law or under 1867 Act; (2) where the omission to specify any agreement renders the prospectus fraudulent under that statute, the shareholder has his remedy against the person making the omission, but cannot therefore have his name removed from the list of shareholders; (3) as M., after he made the first agreement, became a promoter of the co., he ought to have disclosed that agreement to the co.; but the omission did not, under the statute, make the prospectus fraudulent on the part of the co., & the shareholder could not therefore have his name removed; (4) the omission to disclose the first agreement was not a fraud independently of the statute, but the omission to disclose a contract formerly made by a promoter, & likely to affect the mind of a subscriber for shares, was fraudulent under the statute; & the remedy of the shareholder was to have her name removed from the list of shareholders.—*Re* COAL ECONOMISING GAS CO., GOVER'S CASE (1875), 1 Ch. D. 182; 45 L. J. Ch. 83; 33 L. T. 619; 24 W. R. 125, C. A.

Annotations:—As to (1) Consd. Twycross v. Grant (1877), 2 C. P. D. 469. *Reid.* Ladywell Mining Co. v. Brookes, Ladywell Mining Co. v. Huggons (1887), 35 Ch. D. 400; *Re* Olympia, [1898] 2 Ch. 153; *Re* Jubilee Cotton Mills (1921), 91 L. J. Ch. 169. *As to (2) Reid.* Cackett v. Keswick, [1902] 2 Ch. 456. *As to (4) Consd.* Sullivan v. Mitcalfe (1880), 5 C. P. D. 455. *Reid.* Craig v. Phillips (1876), 3 Ch. D. 722; Arkwright v. Newbold (1880), 28 W. R. 828; Howard v. Escombe (1887), 3 T. L. R. 316;

could not have been disclosed in the prospectus & moreover that the plts. were in no way damnified as the co. would have been equally responsible for the debt as for the mtge. which was subsequently given to secure it.—PETRIE v. GUELPH LUMBER CO. (1886), 11 S. C. R. 450.—CAN.

PART III. SECT. 8, SUB-SECT. 2.—C. (b) i.

t. *Omission to state contract be-*

Capel v. Sim's Ships Compositions Co. (1888), 57 L. J. Ch. 713. *Generally, Reid.* Craig v. Phillips (1877), 7 Ch. D. 249; *Re* Cape Breton Co. (1884), 26 Ch. D. 221. *Mentd.* New Sombrero Phosphate Co. v. Erlanger (1877), 5 Ch. D. 73; Vacher v. London Soc. of Compositors, [1912] 3 K. B. 547.

493. ———.]—CRAIG v. PHILLIPS, No. 470, *ante*.

494. Omission to state understanding between directors.]—ARKWRIGHT v. NEWBOLD, No. 145, *ante*.

495. Omission combined with material misrepresentation.]—CAPEL & Co. v. SIM'S SHIPS COMPOSITIONS Co., LTD., No. 462, *ante*.

496. Omission to state consideration received by founder.]—*Re* WEST AUSTRALIAN TRUST, *Ex p.* BROCK (1900), 44 Sol. Jo. 658.

See, also, Nos. 480, 481, *ante*.

Omission distinguished from misrepresentation.]—*See* No. 525, *post*.

497. "Knowingly issuing"—Intentional omission of contracts—Though with bonâ fide belief that disclosure unnecessary.]—TWYCROSS v. GRANT No. 29, *ante*.

See, also, Nos. 499, 502, *post*.

498. ——— Duty to inquire—Director relying on legal adviser.]—WATTS v. BUCKNALL, No. 528, *post*.

499. ———.]—A director issued a prospectus which omitted to disclose a contract in accordance with the requirements of 1867 Act, s. 38, but at the meeting of directors at which the prospectus was approved he forgot the existence of the contract in question, although the minutes of the previous meeting, at which this contract was considered, were read & confirmed in his presence, & although he had himself approved the contract. He had, however, a general knowledge of the existence of contracts which might fall within the section, & he made no inquiry into these contracts, but relied upon the assurance of the co.'s solr. that the prospectus disclosed all the contracts which the section required to be disclosed:—*Held*: he knowingly issued the prospectus within the meaning of sect. 38.—TAIT v. MACLEAY, [1904] 2 Ch. 631; 20 T. L. R. 710; *sub nom.* TRECHMANN v. CALTHORPE, DE LA COUR v. CLINTON, TAIT v. MACLEAY, 74 L. J. Ch. 43; 91 L. T. 474; 20 T. L. R. 706; 11 Mans. 444, C. A.; *reversd.* on other grounds, *sub nom.* MACLEAY v. TAIT, [1906] A. C. 24, H. L.

Annotations:—Mentd. Nash v. Calthorpe, [1905] 2 Ch. 237; Shephard v. Bray, [1906] 2 Ch. 235.

500. ——— No defence that contract forgotten.]—TAIT v. MACLEAY, No. 499, *ante*.

See, also, No. 460, *ante*.

501. ——— Prospectus issued without authority—Though ratified & benefit taken.]—A director of a co. cannot be made liable under 1867 Act, s. 38, for culpable omissions in a prospectus issued without his previous knowledge or authority, although he subsequently ratifies it & derives an advantage from it.

Advance copies of a prospectus which was eventually approved & issued by the directors without material alteration were issued without the knowledge or authority of the directors. The prospectus omitted to disclose a material contract within sect. 38. Subsequently applications for shares made on the faith of the advance copies were accepted by the directors, as the ct. inferred, with

*tween promoter & director—Misrepresentation as to capital—Liability of director on shares received from vendor.]—*JURY v. STOKER & JACKSON (1882), 9 L. R. Ir. 385.—IR.

a. Omission to state agreement—But applicant must show he was misled by prospectus.]—A person applied for shares in a joint stock co. on a form which requested allotment "upon the terms of the prospectus" & shares were allotted to him.

In an action brought by his representative against the directors for declarator that the prospectus was fraudulent within Companies Act, 1867, s. 38, in respect that it did not specify a certain agreement, the pursuers proved that the prospectus had been widely advertised in G., where deceased was living. There was no evidence that the deceased had read the prospectus. Defenders proved that deceased had applied for the shares

Sect. 8.—The prospectus: Sub-sect. 2, C. (b) i. & ii., (c) & D.]

knowledge of all the facts:—*Held*: the directors had not “knowingly issued” the advance copies within the meaning of sect. 38, & were not liable under the sect. in respect of that issue.—*HOOLE v. SPEAK*, [1904] 2 Ch. 732; 73 L. T. Ch. 719; 91 L. T. 183; 20 T. L. R. 649; 11 Mans. 421.

“Issue.”—*See* No. 446, *ante*.

502. “Deemed to be fraudulent”—Intentional omission of contracts—Though with bona fide belief that unnecessary—& on legal advice.]—A director of a limited co. knew that a prospectus issued by the directors did not disclose a contract & a resolution of the board of directors which were in fact material but which he was advised were not, & which he honestly believed not to be material. A shareholder who had subscribed for shares in the co. having brought an action against the director for misrepresentation:—*Held*: though the director was not in fact fraudulent, he must be “deemed to be fraudulent” within 1867 Act, s. 38, & proof that pltf. took shares upon the faith of the prospectus would make the director liable both under 1867 Act, & Directors Liability Act, 1890 (c. 64), s. 3 (1).—*SHEPHEARD v. BROOME*, [1904] A. C. 342; 73 L. J. Ch. 608; 91 L. T. 178; 53 W. R. 111; 20 T. L. R. 540; 11 Mans. 283, H. L.; *affg. S. C. sub nom. BROOME v. SPEAK*, [1903] 1 Ch. 586, C. A.

Annotations:—*Refd. Watts v. Bucknall*, [1903] 1 Ch. 766; *Hoole v. Speak* (1904), 73 L. J. Ch. 719; *Nash v. Calthorpe*, [1905] 2 Ch. 237; *Macleay v. Tait*, [1906] A. C. 24; *Shepherd v. Bray*, [1906] 2 Ch. 235.

Liability of directors generally, *see* Sect. 28, *post*.
See, also, No. 29, *ante*.

ii. Remedies.

503. Whether statutory cause of action provided.]—(1) 1867 Act, s. 38, which provides for the disclosure in the prospectus of a co. of certain particulars with regard to the class of contracts specified in the sect., is applicable only for the protection of shareholders in the co., & creates no statutory duty towards bondholders of the co. or others for breach of which an action on the statute will lie. *Qu.*: as to the nature of the contracts to which the provision is applicable. (2) *Semble*: the sect. creates no statutory cause of action, but merely amounts to a declaration that, as between shareholders & those issuing the prospectus, the latter shall be deemed to have acted fraudulently.

(3) The action would not lie under the statute, against a trustee of the co., even if it had been brought by a shareholder. A trustee does not come under the word officer.—*CORNELL v. HAY* (1873), L. R. 8 C. P. 328; 42 L. J. C. P. 136; 28 L. T. 475; 21 W. R. 580.

Annotations:—*As to* (1) *Consd. Twycross v. Grant* (1877), 2 C. P. D. 469. *Refd. Sullivan v. Mitcalfe* (1880), 4 C. P. D. 455. *Generally, Mentd. Craig v. Phillips* (1877), 7 Ch. D. 249.

504. To whom available—Confined to shareholders.]—*CORNELL v. HAY*, No. 503, *ante*.
—*Underwriter.*—*See* No. 446, *ante*.

505. Against whom available—Trustee—Not “officer” of company.]—*CORNELL v. HAY*, No. 503, *ante*.

506. Particular remedies—Against company—Rescission—Omission to disclose purchase by promoter.]—*Re* COAL ECONOMISING GAS CO., GOVER’S CASE, No. 492, *ante*.

507. ——— Omission combined with

material misrepresentation.]—*CAPEL & CO. v. SIM’S SHIPS COMPOSITIONS CO., LTD.*, No. 462, *ante*.

See, also, No. 524, *post*.

508. ——— Against promoters—Measure of damages—Price paid for shares.]—*TWYXCROSS v. GRANT*, No. 29, *ante*.

509. ——— Becoming directors—Recovery of price paid for shares.]—*SULLIVAN v. MITCALFE* No. 467, *ante*.

See, also, No. 528, *post*.

510. ——— Against directors—Damages—Omission combined with misrepresentation.]—*CAPEL & CO. v. SIM’S SHIPS COMPOSITIONS CO., LTD.*, No. 462, *ante*.

511. ——— Conditions precedent—Proof that contract material.]—*STEVENS v. HOARE* (1904), 20 T. L. R. 407.

512. ———]—In an action by a shareholder against directors of a co. to recover damages, on the ground that the prospectus, on the faith of which he applied for his shares, did not, as required by 1867 Act, s. 38, disclose a contract entered into by the co.:—*Held*: pltf., in order to maintain the action must prove, not only that the undisclosed contract was a material one, but also that he had suffered damage by its non-disclosure.

In order that pltf. may prove that he suffered damage the evidence must be such as to satisfy the ct. that, if the undisclosed contract had been disclosed, pltf. would not have applied for shares.—*NASH v. CALTHORPE*, [1905] 2 Ch. 237; 74 L. J. Ch. 493; 93 L. T. 585; 21 T. L. R. 587; 12 Mans. 260, C. A.

Annotations:—*Consd. Macleay v. Tait*, [1906] A. C. 24. *Refd. Marshall v. Morrison*, [1907] W. N. 29.

513. ——— Proof of damage.]—*STEVENS v. HOARE* (1904), 20 T. L. R. 407.

514. ——— That disclosure would have deterred shareholder.]—*NASH v. CALTHORPE*, No. 512, *ante*.

515. ———]—To recover damages under 1867 Act, s. 38, a pltf., who has subscribed for shares on the faith of a prospectus which did not disclose a material contract must prove that he has sustained damage, & that if he had known of the undisclosed contract he would not have become a shareholder.

Where there is no fraud in fact & the non-disclosure is owing to an honest mistake, a subscriber for shares who has agreed to waive any fuller compliance with sect. 38 than is contained in the prospectus, cannot maintain an action for damages.—*MACLEAY v. TAIT*, [1906] A. C. 24; *sub nom. CALTHORPE v. TRECHMANN*, *MACLEAY v. TAIT*, 75 L. J. Ch. 90; 94 L. T. 68; 54 W. R. 365; 22 T. L. R. 149; 50 Sol. Jo. 125; 13 Mans. 24, H. L.; *reversg. S. C. sub nom. TAIT v. MACLEAY*, [1904] 2 Ch. 631, C. A.

Annotations:—*Mentd. Nash v. Calthorpe*, [1905] 2 Ch. 237; *Shepherd v. Bray*, [1906] 2 Ch. 235.

516. ———]—*MARSHALL v. MORRISON*, [1907] W. N. 29.

517. ——— Measure of damages—Difference between price paid & value at date of allotment.]—*BROOME v. SPEAK*, No. 460, *ante*.

518. ——— Price paid for shares.]—*WATTS v. BUCKNALL*, No. 528, *post*.

—*Effect of bankruptcy of director.]—**See* BANKRUPTCY & INSOLVENCY, Vol. V., p. 1014, No. 8274.

—*Effect of death of shareholder.]—**See* No. 739, *post*.

—*See, also*, No. 467, *ante*.

in reliance on the advice of one of the directors who was a personal friend:—*Held*: pursuers had failed to prove

that the shares had been applied for on the faith of the prospectus.—*M’MORLAND’S TRUSTEES v. FRASER*

(1896), 24 R. (Ct. of Sess.) 65; 34 Sc. L. R. 99; 4 S. L. T. 128.—*SCOT*

519. Loss of right to relief—Action for rescission—Acquiescence—Price of shares paid & dividends received—Though in ignorance of omitted contract.]—The Ct. of Exchequer will not, where complete justice cannot be done, direct the name of a shareholder in a public co. to be removed under 1862 Act, s. 35.

Where, therefore, a person has been induced by a prospectus, in which no mention was made of a certain contract between some of the directors of a co. & the promoters, entered into before the formation of the co., he will not, upon application made upon discovery of the omitted contract, be entitled to have his name removed from the register of shareholders, even though the omission to mention the contract in the prospectus was fraudulent, if it appears that he paid up a portion or the whole of the price of the shares, & has received dividends in respect of them in ignorance of the existence of the contract so omitted.—*Re BAGNALL & Co., LTD., Ex p. DICK* (1875), 32 L. T. 536.

520. — By notice—Knowledge before issue of prospectus.]—*HOWARD v. ESCOMBE* (1887), 3 T. L. R. 316.

521. — — Must be notice of contents.]—*WATTS v. BUCKNALL*, No. 528, *ante*.

Compare cases in Sub-sect. 3, E., post.

(c) *Under Companies (Consolidation) Act, 1908*
(c. 69).

See, now, 1908 Act, s. 81 (6).

522. Ground for action against directors—Need not be in fact fraudulent.]—*SHEPHEARD v. BROOME*, No. 502, *ante*.

523. — Damage must be proved.]—*STEVENS v. HOARE* (1904), 20 T. L. R. 407.

524. Ground for rescission—Non-compliance with statutory requirements alone insufficient.]—The mere fact that a prospectus issued by a co. does not contain some of the facts or contracts required to be stated by 1908 Act, s. 81, does not entitle a person who has taken shares on the faith of the prospectus to rectification of the register. The difference of the wording of that sect. & 1867 Act, s. 38, has not, in this respect, altered the law.—*Re WIMBLEDON OLYMPIA, LTD.*, [1910] 1 Ch. 630; 79 L. J. Ch. 481; 102 L. T. 425; 17 Mans. 221.

Annotation:—Appld. Re South of England Natural Gas & Petroleum Co., [1911] 1 Ch. 573.

Compare No. 519, ante.

525. — Not equivalent to misrepresentation—Shareholder must prove inconsistency of prospectus with facts not disclosed.]—In Feb., 1910, applt. was allotted shares in a co. In the middle of May, or at latest by the end of July, applt. became fully aware of misrepresentations in the prospectus. In Dec. he moved to have his name removed from the register:—*Held*: the unexplained delay of five months precluded him from obtaining relief.

When a shareholder comes to the ct. to be relieved of his shares on the ground of misrepresentation arising from non-disclosure, it is not enough for him to say that had he known the fact he would not have applied for shares; he must be prepared to put his finger on the statements which he relies upon as contradictory of or inconsistent with the facts not disclosed.

There must be something more than mere non-disclosure proved before misrepresentation is established—it must, I think, be shown that the non-disclosure is the non-disclosure of something the disclosure of which would falsify some state-

ment in the prospectus (*EVE, J.*).—*Re CHRISTINEVILLE RUBBER ESTATES, LTD.* (1911), 81 L. J. Ch. 63; 106 L. T. 260; 28 T. L. R. 38; 56 Sol. Jo. 53; 19 Mans. 78.

See, also, No. 439, ante.

D. Waiver Clauses.

See, now, 1908 Act, s. 81 (4).

526. When court will give effect to—Not when “tricky”—Must disclose all circumstances conferring rights agreed to be waived.]—(1) 1867 Act, s. 38, cannot be evaded by a general waiver clause in the prospectus, or in the form of application for shares, to the effect that a subscriber for shares shall waive all claim for non-compliance with the section. A waiver clause, to be effectual as against a subscriber, must fairly disclose the circumstances which confer the rights which by the clause he agrees not to enforce. The ct. will refuse to give effect, as against a shareholder, to a “tricky” waiver clause in a prospectus or application form, upon the same principles as are applicable to catching conditions of sale as between vendor & purchaser or to general words in releases.

(2) Notice of contract in 1867 Act, s. 38, means such notice as brings home to the mind of a reasonably intelligent & careful reader such knowledge as fairly & in a business sense amounts to notice of a contract.

(3) A misleading statement in a prospectus is untrue within the meaning of Directors' Liability Act, 1890 (c. 64), s. 3, even though it may be true in the sense in which it is used by those who issue the prospectus. A prospectus so framed as to convey to the ordinary reader that an invention referred to in it has passed the experimental stage, & that numerous orders besides mere trial orders have been given, when in fact no orders have been given except for trial & experiment, contains untrue statements within the meaning of sect 3.—*GREENWOOD v. LEATHER SHOD WHEEL CO.*, [1900] 1 Ch. 421; 69 L. J. Ch. 131; 81 L. T. 595; 16 T. L. R. 117; 44 Sol. Jo. 156; 7 Mans. 210, C. A.

Annotations:—As to (1) Expld. Cackett v. Keswick, [1902] 2 Ch. 456. *Refd. Watts v. Bucknall*, [1903] 1 Ch. 766; *Macleay v. Tait*, [1906] A. C. 24. *As to (3) Refd. Thomson v. Clarendon* (1899), 81 L. T. 286.

527. — — —.]—*CACKETT v. KESWICK*, No. 458, *ante*.

528. — Conditions to render general release effectual necessary.]—(1) The prospectus of a co., formed for the purpose of acquiring & working some breweries, stated that a contract for purchase, dated Dec. 1, 1896, had been entered into between two persons, whose names were given, one of them being a trustee for the co. It was further stated that, “during the negotiations for the purchase of the properties & the formation of the co., contracts have been entered into between various parties with reference to the formation & promotion of the co. & the subscription of its capital, but to none of which the co. is a party. The contracts referred to in this paragraph are, or may be, contracts within the meaning of 1867 Act, s. 38, & accordingly, applicants for shares are to be deemed to have notice of the said contracts, & to have agreed with the co., as trustees for the directors & other persons liable, to waive all claims, if any, against them for not more fully complying with the requirements of the said section, & allotments will only be made upon this express condition.” Neither the dates of nor the names of the parties to the contracts thus referred to were stated in the prospectus.

A shareholder, who had applied for his shares on the faith of this prospectus brought an action

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for damages against one of the directors, who was responsible for the issue of the prospectus, on the ground that the requirements of sect. 38 had not been complied with. Deft. admitted that he had read through the prospectus, but said that he knew nothing of the nature or contents of the contracts referred to, having left all statements in the prospectus as to legal matters to his co-directors & solrs., & that he was ignorant of sect. 38:—*Held*: deft. had knowingly issued the prospectus within the meaning of sect. 38. He was not protected by the waiver clause, & he was liable to refund to pltf. the sum which he had paid for his shares.

(2) The statement in the prospectus, though it was sufficient to fix deft. with knowledge of the existence of the contracts in question, & thus to make him liable under sect. 38, as having knowingly issued the prospectus without specifying the contracts, was not a sufficient notice of the contracts within sect. 38, so as to deprive pltf. of his remedy under that section, the position of a director & that of an application for shares being for this purpose entirely different.

In order that the applicant may be effected with notice of a contract within sect. 38, he must have notice, not only of the existence of the contract, but also of its contents.

(3) A waiver clause in a prospectus of this kind cannot operate to excuse compliance with the requirements of sect. 38, except under such conditions as would render a release in general terms effectual.—*WATTS v. BUCKNALL*, [1903] 1 Ch. 766; 72 L. J. Ch. 447; 88 L. T. 845; 51 W. R. 433; 19 T. L. R. 320; 47 Sol. Jo. 367; 10 Mans. 176, C. A.

Annotation:—As to (1) & (2) *Refd.* *Tait v. Macleay*, [1904] 2 Ch. 631.

529. — Absence of fraud—Non-disclosure arising from honest mistake.]—MACLEAY v. TAIT, No. 515, *ante*.

Compare No. 401, *ante*, No. 787, *post*.

SUB-SECT. 3.—MISREPRESENTATION.

A. In General.

530. Question for jury.]—In an action or defence, by a shareholder in a joint-stock co., on the ground of fraud, it is for the jury to say, upon the whole of the evidence, including the prospectus, & the arts. of assocn., & other documents, whether there were material & fraudulent misrepresentations, by which the shareholder was really induced to subscribe. If this partly depends upon the sense & meaning in which any statement in the prospectus might fairly be intended to be, or would naturally be understood, then that is for them to consider on the whole of the prospectus, & the other evidence in the case. If the prospectus is ambiguous, & in one sense is consistent with truth, they are bound to construe it in that sense, unless satisfied that it was meant to mislead. But the question, in such a case, is not whether the statements put forth are strictly, literally, or technically correct, nor even whether they are in any degree really incorrect; but whether they

are so far substantially false & wilfully so, as that they must be deemed to have been intended to deceive, & to have, in fact, deceived. Thus the wilful publication of the name of a person of credit as a director, without any reason to believe that he is so, or will be so, with intent to induce others to subscribe on the credit of his name, which intent may be inferred from the very use thus made of the name assuming it to be wilful, may be deemed fraud; but if there was reason to believe that the person would be a director, though, in fact, he never is so, it is not necessarily fraudulent. So as to a statement that all, or so much of the "capital required" has been subscribed. So of the omission in the prospectus of matters disclosed in the articles. In all such cases, the intent & materiality of the misstatement, as well as the fact of a misstatement, must be considered by the jury with a view to judge whether it was fraudulent. Although on that question they may & ought to look at the whole of the prospectus, it must be with reference to some particular statements in it; & they must be satisfied that on some one or more points it was proved.—*CLEVELAND IRON CO. v. STEPHENSON* (1865), 4 F. & F. 428; *subsequent proceedings, sub nom. Re CLEVELAND IRON CO., Ex p. STEVENSON* (1867), 16 W. R. 95, L. J.

Annotation:—*Mentd.* *Re Scottish Petroleum Co.* (1883), 23 Ch. D. 413.

531. — Unless statement capable of one construction only.]—In one of the paragraphs of a prospectus issued by the directors of a co. there was a statement that "the completion of the works will enable the co. to increase their present capacity for manufacture from 400 to 1,000 tons *per annum*"; & in the margin was this note: "Increase of present manufacture." Each paragraph of the prospectus had a marginal note indicating its contents. The jury found that the marginal note, coupled with the statement against which it was written, amounted to a statement that the present manufacture of the works was 400 tons *per annum*, & that this was a fraudulent misrepresentation:—*Held*: the paragraph & the marginal note could only be construed in one way, as referring to the capacity of the works for manufacture, & therefore the question whether the two taken together could be construed so as to imply that the present manufacture was 400 tons *per annum* ought not to have been left to the jury.

The construction of the prospectus was for the judge & not for the jury.—*MOORE v. EXPLOSIVES CO., LTD.* (1887), 56 L. J. Q. B. 235, C. A.

532. What jury may consider.]—CLEVELAND IRON CO. v. STEPHENSON, No. 530, *ante*.

533. What amounts to representation—Endorsement on prospectus that bank concerned in issue—Not representation that bank shareholders.]—The prospectus of a co. stated that the Credit Foncier, in conjunction with Agra & Masterman's & the National Banks, would receive applications for the capital of the co. On the back of the prospectus was printed, "issued by the Credit Foncier in conjunction with Agra & Masterman's & the National Banks." Agra & Masterman's had no connection with the co. except as its bankers:—*Held*: there was no misrepresentation in the prospectus, nor anything to induce a reasonable man to think that Agra & Masterman's

PART III. SECT. 8, SUB-SECT. 3.—A.

b. What amounts to representation—Matter of opinion—"Great financial success."]—A representation in a prospectus that a company "has proved a great success both financially &

otherwise, providing as it does outlets for the beef and mutton of the district, & increasing the trade of the port to the advantage of the producer," is a representation that the company has itself been a financial success, & not merely that its operations have been

a financial gain to the district, & to the producers resident therein.—*HUTCHISON v. WESTERN PACKING CO.* (1900), 19 N. Z. L. R. 236.—N.Z.

c. What amounts to misrepresentation—"That company would start

were shareholders in the co.—*Re* IMPERIAL LAND CO. OF MARSEILLES, PARBURY'S CASE (1871), 19 W. R. 584.

534. — Statements in report of expert—General rule.]—A co., formed for the purpose of acquiring a rubber estate, issued a prospectus which quoted a report made before the incorporation of the co. by one of its directors who was stated to be acquainted with the locality. The prospectus also stated that no portion of the price of the estate would be paid until the co. had received an independent report confirming the statements of the director. The report stated that the estate contained wild rubber trees in such quantities that immediate profits were assured. In an action brought by a shareholder against the co. for rescission of his contract to take shares the pursuer averred by his condescendence that he had applied for the shares in reliance upon the statements in the prospectus & the report, & that he had since learned that those statements were false & fraudulent, & in particular that there was no rubber on the estate. The co. pleaded that these averments were irrelevant to support the conclusions of the summons:—*Held*: the co. was responsible, at all events, for the absence of fraud in the representations made by its agent, & the pursuer was entitled to a proof of his averments.

Prima facie, a co. which issues a prospectus embodying a report made by a director is responsible for the truth of, as well as for the absence of fraud in, the statements of fact contained in the report.—*MAIR v. RIO GRANDE RUBBER ESTATES, LTD.*, [1913] A. C. 853; 83 L. J. P. C. 35; 109 L. T. 610; 29 T. L. R. 692; 57 Sol. Jo. 728; 20 Mans. 342, H. L.

Annotation:—*Apld. Re Pacaya Rubber & Produce Co., Burns' Appln.*, [1914] 1 Ch. 542.

535. — Unless liability for accuracy expressly excluded.]—Where a co. issues a prospectus inviting applications for shares on the faith of *bond fide* statements of fact expressly based on the *bond fide* report of an expert, the accuracy of those statements is *prima facie* the basis of the contract. If the co. does not intend to contract on that basis, it must dissociate itself from the report in such clear & unambiguous terms as to warn intending applicants that it does not vouch for the accuracy of the report or any statement based thereon. Otherwise, if the report proves to be inaccurate, any material inaccuracy in the co.'s statements, though based thereon, will be ground for rescission.—*Re PACAYA RUBBER & PRODUCE CO., LTD., BURNS' APPLICATION*, [1914] 1 Ch. 542; 83 L. J. Ch. 432; 110 L. T. 578; 30 T. L. R. 260; 58 Sol. Jo. 269; 21 Mans. 186.

See, also, Nos. 570, 593, 774, 1187, *post*.

536. What amounts to misrepresentation—Degree of correctness or incorrectness of representation.]—CLEVELAND IRON CO. *v.* STEPHENSON, No. 530, *ante*.

with credit of £4,000."—Pltf. on the faith of a representation in a prospectus put forward by the provisional directors of a co. that the co. would start with a credit of £4,000, took 500 shares in the co. paying £50 for the shares. The co. started with a credit of only £900:—*Held*: pltf. was entitled to recover the money so paid.—*DE KAUTZOW v. INGLIS* (1889), 10 N. S. W. L. R. 297; 6 N. S. W. W. N. 110.—AUS.

538 i. — May be expression of fact—Distinguished from statement of fact.]—The distinction between a representation of an existing fact & one of intention (recognised in J. does not apply to the case of a shareholder

seeking to be relieved of a contract to take shares in a co. on the ground of a misrepresentation in the prospectus. In the case of a contract entered into on the faith of a representation a statement of intention may be a statement of fact.—*Re NEW BRIGHTON RECREATION GROUND CO., LTD.* (1889), 10 N. S. W. Eq. 66.—AUS.

d. — Delay in commencing business—Company formed to establish works—Establishment delayed for good reason.]—The prospectus, on the faith of which deft. applied for shares, set out the objects of the proposed co. as the establishment of freezing, cold storage, & canning works. Prior

to the formation of the co. & after its formation, but before allotment, the promoters & directors were advised to postpone the erection of the canning works until the completion of the freezing works:—*Held*: delay in carrying out one of the objects set out in the prospectus, was not a misrepresentation entitling deft. to repudiate his shares.—*NORTH WEST CO-OPERATIVE FREEZING & CANNING CO., LTD. v. EASTON* (1915), 11 Tas. L. R. 65.—AUS.

e. — Reasonable time.]—PATTERSON *v.* TURNER (1902), 22 C. L. T. Occ. N. 163; 3 O. L. R. 373; 1 O. W. R. 82.—CAN.

f. — Undrawn profits "appro-

537. — Belief in accuracy of statement.]—CLEVELAND IRON CO. *v.* STEPHENSON, No. 530, *ante*.

538. — May be expression of fact.]—CENTRAL RY. CO. OF VENEZUELA (DIRECTORS, ETC.) *v.* KISCH, No. 405, *ante*.

— **Distinguished from non-disclosure.]—***See* Nos. 439, 491, 524, 525, *ante*.

— **Omission not amounting to.]—***See* No. 405, *ante*.

539. — Representation made with knowledge that it will not remain true.]—A prospectus was issued which stated that a certain D. was to be chairman of the K. Co., which would have the benefit of his services, & that he was a man of great experience in the particular business to be carried on by the co. Before the date of allotment D. refused to have anything more to do with the co., & resigned, though such resignation was not made formally in writing prior to the time of allotment. There were also other misleading statements in the prospectus. Upon an application by shareholders to have their names removed from the register, & for repayment of moneys paid by them in respect of their shares:—*Held*: the shareholders were materially influenced by the misrepresentation, & that being so, the law was they were entitled to rescission.—*Re KENT COUNTY GAS LIGHT & COKE CO., LTD., Ex p. BROWN* (1906), 95 L. T. 756.

Departure from prospectus, *see, generally*, Subsect. 4, *post*.

— **Suggestion of untruth.]—***See* No. 584, *post*.

540. — Name of director—No shares taken.]—

—*HALLOWS v. FERNIE*, No. 588, *post*.

541. — "Available capital"—Power of borrowing included.]—CENTRAL RY. CO. OF VENEZUELA (DIRECTORS, ETC.) *v.* KISCH, No. 405, *ante*.

542. — Former issue subscribed—Deposits not paid.]—In an action for fraudulent misrepresentation in the prospectus of a joint-stock co., the false statements alleged in the declaration were that half the first issue of the shares had been subscribed for, & that certain persons were directors of the co. It was stated that defts., who were directors, thereby induced pltf. to apply for, & become the holder of, shares. At the trial it was proved that both when the application by, & the allotment to, pltf. took place, although half the first issue of shares had been applied for, the deposit had not been paid upon that number. It was also proved that at the time of pltf.'s application, the persons mentioned in the declaration were directors of the co., but that before the allotment of the shares to pltf., these persons had, without his knowledge, retired:—*Held*: the judge misdirected the jury in saying that it was not material whether the deposit was paid, on the whole of the shares applied for.—*BEVAN v. ADAMS* (1870), 22 L. T. 795; 19 W. R. 76.

543. — "Formation expenses" paid by vendors—Purchase price fraudulently increased—

Sect. 8.—The prospectus: Sub-sect. 3, A. & B. (a) & (b).]

To cover promotion-money.]—ARKWRIGHT v. NEWBOLD, No. 145, ante.

544. — Numbers of shares subscribed—Vendors shares included.]—Persons took debenture stock in a co. in reliance on a statement in a prospectus issued by the directors that £200,000 of share capital had been subscribed, when it had in fact only been allotted in fully-paid shares to the contractor. £20 per cent. of the amount subscribed for was to be paid on allotment, & the rest by instalments, with an option to pay up in full on allotment & receive a discount. After allotment the directors sent to the allottees, along with their stock certificates, a circular which, amid statements about other matters, stated the truth as to the matter misrepresented, but did not admit the misrepresentation, nor inform the allottees that they could retire & get back their money. After this the allottees who had paid up in full received their discount, & those who had not went on paying up the remaining £80 per cent. by instalments. The concern having proved a failure, some of the debenture stock holders sued the directors to recover damages for misrepresentation:—*Held*: the untrue statement in the prospectus was to be taken as inducing the allottees to enter into the contract, & entitled the allottees to damages, & its effect was not done away with by the circular, & the allottees who went on to pay in full after receiving the circular could recover damages for the loss of the money paid by them after receiving it, as well as in respect of what they had paid at first.

Qu.: how the case would have stood if the circular had admitted the misrepresentation & informed the allottees that they could have their money back.—*ARNISON v. SMITH* (1889), 41 Ch. D. 348; 61 L. T. 63; 37 W. R. 739; 5 T. L. R. 413; 1 Meg. 388, C. A.

Annotations:—*Consd.* *Knox v. Hayman* (1892), 67 L. T. 137; *Scott v. Snyder Dynamite Projectile Co.* (1892), 66 L. T. 278. *Refd.* *Derry v. Peek* (1889), 14 App. Cas. 337; *Glasier v. Rolls* (1889), 42 Ch. D. 436; *Angus v. Clifford*, [1891] 2 Ch. 449; *Andrews v. Mockford*, [1896] 1 Q. B. 372; *Greenwood v. Leather Shod Wheel Co.*, [1900] 1 Ch. 421; *Cackett v. Keswick* (1901), 85 L. T. 14; *Broome v. Speak* (1903), 72 L. J. Ch. 251; *Re Wimbledon Olympia*, [1910] 1 Ch. 630. *Mentd.* *Re London & Colonial Finance Corp.* (1897), 77 L. T. 146; *Drineqbier v. Wood*, [1899] 1 Ch. 393.

See, also, No. 145, ante, No. 583, post.

545. Where prospectus ambiguous—Construction.]—CLEVELAND IRON CO. v. STEPHENSON, No. 530, ante.

See, also, No. 631, post.

546. — Contract price “considerably within

prorated to reserve fund”—Application of subscribed capital to replace working capital.]—Pltfs. sought to recover payments made to deft. co. & damages on account of statements alleged to be false & fraudulent contained in a prospectus issued by the directors of the co. on the faith of which pltf. was induced to subscribe and pay for a number of a new issue of preference shares. One of the principal matters complained of was a statement to the effect that undrawn profits or assets of the company to a large amount had been appropriated to a “reserve fund,” whereas, as pltf. alleged, the company never had any reserve or sinking fund.

The evidence showed that profits which were supposed to have been earned, instead of being distributed in dividends, were transferred to an account referred to and known as the “reserve fund”:—*Held*: the words

“reserve fund,” as used in the prospectus, did not necessarily mean a reserve fund which was invested, but the important thing was the reserving of the amount out of property available for distribution in dividends, & appropriating it in the books of the co. to meet contingencies, which was shown in this case to have been done. Even if pltf. understood the fund to be invested, this, in the case of a manufacturing co., would not be a material representation which would influence the conduct of pltf. in taking shares.—*KENNEDY v. ACADIA PULP & PAPER MILLS CO., LTD.* (1905), 38 N. S. R. 291.—CAN.

g. — Speculations as to future—Not existing facts.]—Representations as to earnings are as to future events & not as to existing facts & did not avoid the contract.—*PIONEER TRACTOR CO., LTD. v. PEEBLES* (1914), 18 D. L. R.

available capital”—Amounts deductible from available capital suppressed.]—CENTRAL RY. CO. VENEZUELA (DIRECTORS, ETC.) v. KISCH, No. 4 ante.

547. Correction of misrepresentation—By circular issued with share certificate—Sufficiency.]—ARNISON v. SMITH, No. 544, ante.

548. — Proof that correction received shareholder—Onus of proof.]—W. subscribed shares in a co. upon the faith of a prospectus containing a material misrepresentation. The misrepresentation was subsequently corrected by the directors in a report which was posted to the registered address of every shareholder. W. deposed that he had never received the report. The arts. of assocn. of the co. contained the usual provision as to notices:—*Held*: that the burden of proving that the report had reached W. was upon the co., & that the co. could not rely upon the posting of the report for the purpose of fixing a period from which time would run against W. upon the question of laches in seeking rescission of his contract to take shares in the co.—*Re LONDON & STAFFORDSHIRE FIRE INSURANCE CO.* (1883), 24 Ch. D. 149; 53 L. J. Ch. 78; 48 L. T. 955; 31 W. R. 781.

Annotation:—*Refd.* *Re Metropolitan Coal Consumer Assocn., Karberg's Case*, [1892] 3 Ch. 1.

As a ground for winding up.]—See No. 5359, post. Rescission of contract obtained by misrepresentation—On other grounds—Shareholder ignorant of misrepresentation.]—See No. 2731, post.

B. As Ground for Relief.

(a) In General.

See, now, 1908 Act, s. 84.

549. General rule.]—CLEVELAND IRON CO. v. STEPHENSON, No. 530, ante.

550. —.]—LAGUNAS NITRATE CO. v. LAGUNA SYNDICATE, No. 38, ante.

551. —.]—Deft. co. was registered in 1897 but no public issue of its shares was then made. On May 12, 1904, an agreement was entered into between pltfs. & defts. that pltfs. should bear the expense of issuing & advertising a prospectus, which had been prepared by defts., in return for certain payments. The prospectus was duly issued. It stated that the minimum number of shares upon which allotment would be made was 40,000. As soon as the subscriptions amounted to 40,003 the directors proceeded to allot shares to the appcts., including pltfs., & received the application money. It turned out that some of the applications were not effective, & that the minimum subscription had not been reached. The directors of deft. co. proposed to give to each

477; 29 W. L. R. 371; 7 W. W. R. 124; 8 W. W. R. 632; 7 Sask. L. R. 322.—CAN.

h. — That company is incorporated—In fact only about to be incorporated.]—The statement in a prospectus that a co. is incorporated when in reality it is only about to be incorporated is not such misrepresentation as will enable an applicant for shares to rescind his contract after they have been duly allotted to him.—*Re WAIPORI RIVER-DREDGING CO., (LTD.), SHAW'S CASE* (1892), 10 N. Z. L. R. 24.—N.Z.

PART III. SECT. 8, SUB-SECT. 3.—B. (a).

549 i. General Rule.]—JOHNSON v. JOHNSON (1913), 18 B. C. R. 60.—CAN.

k. Contract voidable at shareholder's option—Prompt repudiation.]—a person has been induced

allottee the option to have the allotment cancelled & the application money returned. Pltfs. moved for an injunction to restrain them from doing so :—*Held* : the agreement gave pltfs. no right to the injunction. The allotment was irregular under Cos. Act, 1900 (c. 48), s. 4, & was voidable, & under that section the allottees had a right at any time to rescind their contract to take shares. The allottees could also rescind on the double ground that there was an untrue statement in the prospectus, & that the condition with respect to the minimum number of shares had been broken. The proposed action of the directors was not *ultra vires*.—FINANCE & ISSUE, LTD. v. CANADIAN PRODUCE CORPN., LTD., [1905] 1 Ch. 37; 73 L. J. Ch. 751; 91 L. T. 685; 53 W. R. 170; 20 T. L. R. 807; 11 Mans. 412.

Must be of fact.—See Nos. 66, 491, *ante*, Nos. 569, 586, *post*.

Must have induced shareholder to subscribe.—See Nos. 585, 591, 592, 595, 598, 600, 601, *post*.

Compare Nos. 631, 635, 652, *post*.

552. How far subscriber put on inquiry.—CENTRAL RY. CO. OF VENEZUELA (DIRECTORS, ETC.) v. KISCH, No. 405, *ante*.

553. Effect of several misstatements — Not alone sufficient.—CENTRAL RY. CO. OF VENEZUELA (DIRECTORS, ETC.) v. KISCH, No. 405, *ante*.

554. Whether material — Question for jury.—CLEVELAND IRON CO. v. STEPHENSON, No. 530, *ante*.

555. — Name of director.—CLEVELAND IRON CO. v. STEPHENSON, No. 530, *ante*.

556. — — — — ——(1) A misstatement of the names of the directors of a co. in the prospectus is an important misrepresentation.

(2) A shareholder complaining of misrepresentation in the prospectus of a co. must do so within a reasonable time after becoming aware of the misrepresentation.

(3) Where a person who is himself a director of a co. is placed on the list of contributories to it, & afterwards seeks to have his name removed from the list, & so to get rid of his liabilities to the co. of which he is such director, the ct. will narrowly watch his conduct in the matter, & will hold him strictly to his engagements.

In pursuance of the above principles, the ct. refused the application of a director to have his name taken off the list of contributories to a co., although he alleged that he had taken shares in, & become a director of, it on the faith of a statement in the prospectus which was not true.—RE LAND CREDIT CO. OF IRELAND, *Ex p.* MUNSTER (1866), 14 L. T. 723; 14 W. R. 957.

557. — — — — ——RE KENT COUNTY GAS LIGHT & COKE CO., LTD., No. 539, *ante*.

558. — — — — ——RE JOHANNESBURG HOTEL CO., LTD., SARLE'S CASE (1890), 6 T. L. R. 439.

See, also, Nos. 576, 783, 784, *post*.

Names of council of administration.—See No. 614, *ante*.

Name of company.—See No. 785, *post*.

Nature of company.—See No. 602, *post*.

559. — Amount of subscribed capital.—CLEVELAND IRON CO. v. STEPHENSON, No. 530, *ante*.

See, also, Nos. 542, 544, *ante*, Nos. 576, 583, 603-606, 2731, *post*.

Formation expenses paid by vendor.—See No. 618, *post*.

Amount of purchase money, payable to vendor.—See No. 462, *ante*, No. 603, *post*.

Compare Nos. 463, 467, *ante*.

Business to be acquired competing.—See No. 572, *post*.

Possession of monopoly.—See No. 616, *post*.

Property held in perpetuity.—See No. 616, *post*.

Process novel & valuable.—See No. 615, *post*.

Remuneration of directors.—See No. 447, *ante*.

See, further, Sub-sect. 3, C. (b) iii., *post*.

560. Statement in prospectus issued by promoters—Basis of contract.—K. applied for shares before the co. was registered. An application was made by him to have his name removed from the register on the ground of misrepresentation in a preliminary prospectus issued by the promoters :—*Held* : the statement in the prospectus, though issued by the promoters before the formation of the co., was the basis of the contract between the co. & K., & was material to the contract, & he could repudiate.

K. was entitled to rescind, & to have the money paid by him on calls repaid with interest at four per cent.—RE METROPOLITAN COAL CONSUMERS' ASSOCN., KARBERG'S CASE, [1892] 3 Ch. 1; 61 L. J. Ch. 741; 66 L. T. 700; 8 T. L. R. 608, C. A.

Annotations :—*Folld. Re Canadian Direct Meat Co.* (1892), 36 Sol. Jo. 865. *Consd. Re Pacaya Rubber & Produce Co.*, Burns' Appln., [1914] 1 Ch. 542. *Reid. Re Consort Deep Level Gold Mines, Ex p. Stark, Ex p. Elliston* (1896), 45 W. R. 227; *Lynde v. Anglo-Italian Hemp Spinning Co.*, [1896] 1 Ch. 178; *Re Metal Constituents, Lurgan's Case*, [1902] 1 Ch. 707; *Hilo Manufacturing Co. v. Williamson* (1911), 28 T. L. R. 164; *Mair v. Rio Grande Rubber Estates*, [1913] A. C. 853; *Goldrei, Foucard v. Sinclair & Russian Chamber of Commerce in London*, [1918] 1 K. B. 180.

See, also, No. 581, *post*.

See, generally, MISREPRESENTATION AND FRAUD. **Form of relief.**—See Sub-sect. 3, C., *post*.

Loss of right to relief.—See Sub-sect. 3, E., *post*.

(b) Who Entitled to Relief.

Member of public misled by prospectus—Action against director.—See Nos. 630, 631, *post*.

561. Transferee—Relief limited to rights of original allottee.—PEEK v. GURNEY, No. 439, *ante*.

562. — Original allottee not misled.—M., by the instructions of pltf., who was induced by statements in a prospectus, applied for in his own name & was allotted 100 shares in a co., the calls being paid with pltf.'s money. M. subsequently transferred the shares to pltf., who, having discovered misrepresentations in the prospectus, sought to rescind the contract :—*Held* : he was not entitled to relief, as he claimed through one who had not been misled by the misrepresentations.—HYSLOP v. MOREL (1891), 7 T. L. R. 263.

563. — Misled by prospectus—Though purchasing in open market.—The promoters of a co. issued prospectuses to the public, & sent a copy to pltf. amongst others. The co. was a sham, & the prospectus fraudulent. Pltf. read the prospectus, but did not apply for shares. Afterwards defts. caused to be published in a financial newspaper a telegram concerning the co. which to their knowledge was false. Pltf., on reading the telegram,

It is sufficient repudiation of such a contract if the holder promptly requires the directors to remove his name from the register, though he does not take proceedings under Cos. Act, 1862, s. 35.—RE ETNA INSURANCE CO., LTD., *Ex p.* SHIELDS, LORRIMER &

WOOD (1873), 7 I. R. Eq. 264.—IR.

PART III. SECT. 8, SUB-SECT. 3.—B. (b).

1. *Debenture-holder.*—The holder of a debenture bond of a joint-stock co. registered under Companies Acts

Sect. 8.—The prospectus: Sub-sect. 3, B. (b) & C. (a) & (b) i.]

purchased shares in the co. in the market, & thereby suffered damage which he sought to recover from defts. At the trial the jury found that one of the objects which defts. had in view, both when issuing the prospectus & when publishing the telegram, was to induce pltf. as one of the public to purchase shares in the co. in the market. Upon an application by defts. for judgment:—*Held*: there was evidence on which the jury might reasonably come to the conclusion that the function of the prospectus was not exhausted upon the allotment of the shares, & that there had been one continuous fraud, commencing with the prospectus & culminating in the publication of the telegram, practised by defts. upon pltf. with the object of inducing him to purchase shares in the co. in the market, & pltf., having suffered damage in consequence of having been thereby induced to purchase shares in the co. in the market, was entitled to judgment.—*ANDREWS v. MOCKFORD*, [1896] 1 Q. B. 372; 65 L. J. Q. B. 302; 73 L. T. 726; 12 T. L. R. 139, C. A.

Compare No. 439, *ante*.

Underwriter.—*See* Nos. 581, 1158, *post*.

Whether action survives—On death of shareholder.—*See* No. 739, *post*.

C. Forms of Relief.

(a) Defence to Action to take up Shares or for Calls.

564. General rule.—*OAKES v. TURQUAND & HARDING*, *PEEK v. TURQUAND & HARDING*, *Re OVEREND, GURNEY & Co.*, No. 1, *ante*.

See, further, Sect. 17, sub-sect. 1, G., *post*.

565. Conditions precedent—Repudiation.—To a declaration for calls against deft. as a holder of shares in a joint-stock co., in the form given by 1844 Act, s. 55, a plea that deft. was induced to become a shareholder by the fraud of pltf. is bad, for not averring that deft. had repudiated the contract, & had done nothing to make himself liable as a shareholder after he became aware of the fraud.—*DEPOSIT LIFE ASSURANCE v. AYS-COUGH* (1856), 6 E. & B. 761; 26 L. J. Q. B. 29; 27 L. T. O. S. 183; 2 Jur. N. S. 812; 4 W. R. 611; 119 E. R. 1048.

Annotations:—*Consd. Re Royal British Bank, etc.*, Nicol's Case (1859), 3 De G. & J. 387; *Aaron's Reefs v. Twiss*, [1896] A. C. 273; *Reid. Lawton v. Elmore* (1858), 27 L. J. Ex. 141; *Re Overend, Gurney, Ex p. Oakes & Peek* (1867), L. R. 3 Eq. 576; *First National Reinsurance v. Greenfield*, [1921] 2 K. B. 260. *Mentd. Anderson v. Costello* (1871), 19 W. R. 628; *Dawes v. Harness* (1875), 44 L. J. C. P. 194.

566. ——— **Within reasonable time.**—In an action by a co. for calls the plea was that deft. was induced to become a holder of shares by means of the fraud of pltf.:—*Held*: (1) fraud of the directors as a board, & as a body, was fraud within the plea, & would avoid the contract; (2) the

has a good title to sue an action of damages against the promoter of the co., on the ground that by false & fraudulent representations of the promoter he had been induced to advance money to the co.—*DUNNETT v. MITCHELL* (1885), 12 R. (Ct. of Sess.) 400.—*SCOT*.

PART III. SECT. 8, SUB-SECT. 3.—C. (a).

566 i. Conditions precedent—Repudiation—Within reasonable time—What amounts to.—A person applied for shares in a projected co., but having discovered a variation between the prospectus & the articles of assocn., he wrote, before any shares were

allotted, to the co.'s agent withdrawing his application, notwithstanding which the shares were allotted; on his receiving notice of the allotment, he again wrote persisting in his repudiation, & when applied to for calls he always refused to contribute, & his shares were declared forfeited within a year before the winding up of the co.:—*Held*: he was not a contributory.—*Re ETNA INSURANCE CO., SLATTERY'S CASE* (1872), 7 I. R. Eq. 245.—*IR*.

566 ii. ——— **Where a person subscribes for shares in a co. upon the faith of a prospectus in which the promoters of that co. have as well made misrepresentations of material**

publication, by the directors, of statements in their prospectus, false in fact, & calculated to mislead the public, if careless whether their statements were true or false, would amount to fraud; (3) this would not the less be so, merely because the prospectus referred to reports of surveyors, which had in fact been received, & might have been referred to by the shareholders, if in point of fact they relied upon, & were influenced by, the prospectus; (4) the publication, by the directors of a prospectus prepared by the attorneys, the main promoters, without referring to the reports, or taking any pains to verify its statements, was evidence of such recklessness as would tend to show fraud, within the above definition.

(5) A person who has been induced to subscribe for shares by reason of such false statements is not liable in an action for payments of calls, provided he had, within a reasonable time, repudiated the allotment to him of such shares, & had taken no advantage of such allotment.—*GLAMORGANSHIRE IRON & COAL CO. v. IRVINE* (1866), 4 F. & F. 947; 15 L. T. 52.

Annotations:—*As to (5) Foll. Bwlch-y-Plwm Lead Mining Co. v. Baynes* (1867), L. R. 2 Exch. 324. *Consd. First National Reinsurance v. Greenfield*, [1921] 2 K. B. 260.

567. ——— **—**—*AARON'S REEFS v. TWISS*, No. 483, *ante*.

568. ——— **—**— **& prompt steps taken for rectification of register.**—To an action by a co. for calls on shares it is not a sufficient answer for deft. to say that he has repudiated the contract because of misrepresentation in the prospectus. In order to succeed he must show not only that he has repudiated the contract, but that he has, after discovering the misrepresentation complained of, taken prompt steps to have his name removed from the register of the co.

With regard to the rectification of the register an application to the ct. is only essential when the co. disputes the right to rectification. There is no reason why the directors, if they *bonâ fide* agree that a shareholder has a right to avoid the contract, should not thereupon assent to the rescission of the contract & rectify the register in the appropriate manner (*MCCARDIE, J.*).—*FIRST NATIONAL REINSURANCE CO. v. GREENFIELD*, [1921] 2 K. B. 260; 90 L. J. K. B. 617; 125 L. T. 171; 37 T. L. R. 235.

Compare No. 1596, *post*.

569. On what misrepresentation relief granted—Misrepresentation of fact—Whether intentional or not.—Pltf. issued a prospectus containing, among other things, a statement that the co. had succeeded in obtaining from the colonial govt. the free grant of the unallotted land, ten miles in width, for the whole extent of the Crown territory through which the line would pass, being estimated at upwards of 200,000 acres, & that each holder of shares in classes A. & B. would be entitled to the land in certain proportions, upon the completion

facts, that were false to their knowledge as suppressed material facts that were within their knowledge, such person, if he takes no benefit under the contract, & repudiates within a reasonable time, after he becomes aware of the fraud, can successfully rely on the fraud of the promoters as a defence to an action by the co. for calls, can rescind his contract, & can recover all monies paid in respect of the shares subscribed for by him.—*COMPONENTS' TUBE CO. v. NAYLOR*, [1900] 2 I. R. 1.—*IR*.

m. Onus of proof—That statements in prospectus false to knowledge of promoter—On defendant.—The de-

of a specified section of the railway. Deft., who had signed an agreement to take shares, but had not actually accepted them, discovered that the right to the land was only contingent upon the completion of the line within a limited period. He then declined to accept the shares:—*Held*: upon bill filed by the co. to enforce acceptance of the shares, that although the ct. will direct specific performance of a contract to take shares, yet it will not enforce the contract where the prospectus, upon the faith of which the shares were taken, contains misrepresentations of facts, whether intentionally or otherwise. Every fact must be stated with scrupulous accuracy, & no fact must be omitted, the existence of which might affect the interests of those who take shares.

Those who issue a prospectus, holding out to the public the great advantages which will accrue to those who will take shares in a proposed concern, & inviting persons to take shares on the faith of the representations therein contained, are bound to state everything with strict & scrupulous accuracy, & not only to abstain from stating as fact that which is not so, but to omit no fact within their knowledge, the existence of which might in any degree affect the nature, or extent, or quality of the privileges & advantages which the prospectus holds out as inducements to take shares (KINDERSLEY, V.C.).—NEW BRUNSWICK & CANADA RY., ETC. CO. v. MUGGERIDGE (1860), 1 Drew. & Sm. 363; 30 L. J. Ch. 242; 3 L. T. 651; 7 Jur. N. S. 132; 9 W. R. 193; 62 E. R. 418.

Annotations:—*Consd.* Accidental & Marine Insee. Corp'n. v. Davis (1866), 15 L. T. 182. *Apld.* Central Ry. of Venezuela v. Kisch (1867), L. R. 2 H. L. 99. *Consd.* Langham v. East Wheel Rose Consolidated Silver-Lead Mining Co. (1868), 37 L. J. Ch. 253; Scott v. Snyder Dynamite Projectile Co. (1892), 66 L. T. 278. *Refd.* Re Little Down & Ebber Rocks Mineral & Mining Co., Olerenshaw's Case (1860), 2 L. T. 522; Henderson v. Lacon (1867), L. R. 5 Eq. 249; Kent v. Freehold Land & Brickmaking Co. (1867), L. R. 4 Eq. 588; Re Overend, Gurney, Ex p. Oakes & Peek (1867), L. R. 3 Eq. 576; Chester v. Spargo (1868), 16 W. R. 576; Byrne v. Millom & Askam Hematite Iron Co. (1901), 46 Sol. Jo. 85.

570. — Not anticipation of profits.] — BENTLEY & CO., LTD. v. BLACK (1893), 9 T. L. R. 580, C. A.

Annotations:—*Distd.* Re Pacaya Rubber & Produce Co., Burns' Appln., [1914] 1 Ch. 542. *Refd.* First National Reinsurance v. Greenfield, [1921] 2 K. B. 260.

— Material misrepresentation.]—See No. 572, post.

— Inaccurate report incorporated in prospectus.]—See No. 570, ante.

571. — Name of company suggesting connection with another—Though connection expressly negatived on prospectus—Question for jury.]—TRUFFAULT CYCLE & TUBE MANUFACTURING CO., LTD. v. SAUNDERS (1897), 14 T. L. R. 40, C. A.

572. How given—Leave to defend—Under R. S. C., Order XIV.—Misrepresentation material.]—DRY DOCKS CORPN. OF LONDON v. DELVIN (1887), 4 T. L. R. 132.

573. — Misrepresentation question for jury.]—TRUFFAULT CYCLE & TUBE MANUFACTURING CO., LTD. v. SAUNDERS (1897), 14 T. L. R. 40, C. A.

574. Onus of proof—That statements in report adopted by directors—On defendant.]—BENTLEY & CO., LTD. v. BLACK (1893), 9 T. L. R. 580, C. A.

Annotations:—*Mentd.* Re Pacaya Rubber & Produce Co., Burns' Appln., [1914] 1 Ch. 542; First National Reinsurance v. Greenfield, [1921] 2 K. B. 260.

575. — On plea of repudiation.]—AARON'S REEFS v. TWISS, No. 483, ante.

(b) Rescission.

i. In General.

576. General rule.]—A person who takes shares in a co. on the faith of material representations made by the co., which turn out to be false, may repudiate them.

B. took shares in a co. on the faith of the prospectus in which certain persons were stated to be directors & relying on the statements of the agent of the co. that the London share list was closed. Both these statements were false. He repudiated the shares & the directors acquiesced therein:—

Held: he was not a contributory.—*Re* LIFE ASSOCN. OF ENGLAND, LTD., BLAKE'S CASE (1865), 34 Beav. 639; 5 New Rep. 352; 34 L. J. Ch. 278; 12 L. T. 43; 11 Jur. N. S. 359; 13 W. R. 486; 55 E. R. 782.

Annotations:—*Refd.* Re Overend, Gurney, Ex p. Oakes & Peek (1867), L. R. 3 Eq. 576; Re Scottish Petroleum Co., Anderson's Case (1881), 17 Ch. D. 373; Smith v. Chadwick (1882), 46 L. T. 702. *Mentd.* Hallows v. Fernie (1868), 3 Ch. App. 467.

577. Fraudulent misrepresentation.]—In order to entitle a party to rescind a contract, it is sufficient to show that there was a fraudulent representation as to any part of that which induced him to enter into the contract. But when there has been only an innocent misrepresentation, it is not ground for a rescission, unless it was such as that there is a complete difference in substance between the thing bargained for & that obtained, so as to constitute a failure of consideration. A co., already carrying the intercolonial mails under contracts with the government of New Zealand, issued a prospectus that they were "prepared to receive applications for new shares in order to enable the co. to perform the contract recently entered into with the govt. of New Zealand, for a monthly mail service between Sydney, New Zealand & Panama, in correspondence with the West Indian Mail Co.'s steamers between Southampton & Panama." K., induced by this statement in the prospectus, applied for & obtained some of the new shares. The contract alluded to in the prospectus had been made by the co. with the agent of the New Zealand govt., both parties *bona fide* believing that he had authority to make it; but it turned out that he had no such authority & the govt. refused to ratify the contract:—*Held*: the prospectus by implication alleged that there was a binding contract, but being an innocent misrepresentation it did not entitle K. to rescind the contract under which he became a shareholder, as it did not affect the substance of the matter, K. having got shares in the very co. for which he had applied, & which shares were of considerable value.—KENNEDY v. PANAMA, ETC. MAIL CO. (1867), L. R. 2 Q. B. 580; 8 B. & S. 571; 36 L. J. Q. B. 260; 17 L. T. 62; 15 W. R. 1039.

Annotations:—*Refd.* Mackay v. Dick (1881), 6 App. Cas. 251; Edgington v. Fitzmaurice (1884), 32 W. R. 848; Newbigging v. Adam (1886), 34 Ch. D. 582; Re Addlestone Linoleum Co. (1887), 37 Ch. D. 191; Re Murray, Dickson v. Murray (1887), 57 L. T. 223; Peters v. Planner (1895), 11 T. L. R. 169; Lagunas Nitrate Co. v. Lagunas Syndicate, [1899] 2 Ch. 392; Seddon v. North Eastern Salt Co., [1905] 1 Ch. 326; Bristol Tramways, etc., Carriage Co. v. Fiat Motors, [1910] 2 K. B. 831; Angel v. Jay, [1911] 1 K. B. 666. *Mentd.* Corcoran v. Proser (1873), 22 W. R. 222; Sharpley v. Louth & East Coast Ry. (1876), 2 Ch. D. 663.

fence to an action against deft. as maker of a promissory note, given in part payment for shares in a co. which was being promoted by a firm of brokers describing themselves as "trustees," was that the prospectus

of the co., through which deft. was induced to subscribe for stock, contained certain false & misleading statements to the knowledge of the pltf., to whom the note was indorsed by the brokers:—*Held*: the burden

of proof rested upon deft. &, in the absence of evidence to satisfy such burden, pltf. must recover.—BORDEN v. STANFORD (1915), 48 N. S. R. 532.—CAN.

Sect. 8.—The prospectus : Sub-sect. 3, C. (b) ii.

592. —.]—*SMISSEN v. DERRY* (1887), 4 T. L. R. 19.

593. —.]—(1) The prospectus of a mining co., registered under the Companies Acts, contained statements which were based upon a report appended to the prospectus, & made by the vendor to the co., concerning the mining property sold by him to it, which was situate in British Burmah. Upon an engineer being subsequently sent out by the co. to work the mine, the vendor's report was found to be absolutely untrue, & the mine was shown to be an entire failure & utterly worthless. Relying upon this information as to the property afforded by the co.'s mining engineer a shareholder applied to have his name removed from the register of members of the co. on the ground of misrepresentations in & suppression of material facts from its prospectus:—*Held*: the promoters of the co. had not guaranteed the truth of the vendor's report, nor were they the persons by whom the shareholder had been deceived. The shareholder was aware of all the circumstances from the first, & knew as much as the promoters did, & he had no right to be put in a better position than the other shareholders. Therefore his application must be refused.

(2) Such applications will not be heard on motion.—*Re BRITISH BURMAH LEAD CO., LTD., Ex p. VICKERS* (1887), 56 L. T. 815.

Annotation:—As to (1) *Consd. Re Pacaya Rubber & Produce Co., Burns' Appln.*, [1914] 1 Ch. 542.

594. —.]—*Re BRITISH BURMAH LAND CO., LTD.* (1888), 4 T. L. R. 631.

595. —.]—*BYRNE v. MILLOM & ASKHAM HEMATITE IRON CO., LTD.* (1902), 46 Sol. Jo. 685, C. A.

596. —.]—*Re KENT COUNTY GAS LIGHT & COKE CO., LTD., Ex p. BROWN*, No. 539, *ante*.

597. —.]—*TAYLOR v. OIL & OZOKERITE CO., LTD.* (1913), 29 T. L. R. 515.

598. —.]—*DYSTER, NALDER & CO. v. LEAVER* (1915), 140 L. T. Jo. 50.

599. —.]—*Prospectus referring to surveyor's reports—Shareholders relying on prospectus.*—*GLAMORGANSHIRE IRON & COAL CO. v. IRVINE*, No. 566, *ante*.

— *Pleading.*—*See* No. 585, *ante*.

600. —.]—*What shareholder must prove.*—Where a person seeks to rescind a contract to take shares on the ground of misrepresentation, it is not necessary that he should prove that if the misrepresentation had not been made he would not have taken the shares. It is sufficient if there is evidence to show that he was materially influenced by the misrepresentation.—*Re LONDON & LEEDS BANK, LTD., Ex p. CARLING, CARLING v. LONDON & LEEDS BANK* (1887), 56 L. J. Ch. 321; 56 L. T. 115; 35 W. R. 344; 3 T. L. R. 349.

601. —.]—*Onus of proof.*—*Re PHOTOGRAPHIC CO., LTD., Ex p. COMBER* (1888), 4 T. L. R. 429.

Compare Sub-sect. 4, *post*.

time after he had knowledge of the falsity of the representations.—*ROBERT v. MONTREAL TRUST CO.* (1917), 56 S. C. R. 342.—CAN.

o. Claim for rescission must not be inconsistent with other relief—Election to confirm contract by claim for damages.—*WARD v. SIEMON* (1918), 43 O. L. R. 113.—CAN.

PART III. SECT. 8, SUB-SECT. 3.—C. (b) iii.

603 i. Amount of capital subscribed.]—A party bought shares in a joint-

stock banking co. from the co. The bank subsequently carried on business for seven years, during which time it incurred losses to the amount of two & a half millions. Liquidators were then appointed to wind up its affairs. The purchaser who had drawn dividends & taken part in various proceedings affecting the constitution of the bank, thereafter raised an action against the bank & its liquidators concluding for reduction of the sale & for *restitutio in integrum*, on the allegations that the purchase had been induced by the fraudulent misrepresentations of the directors contained in their annual report, to the effect that the bank had an intact capital of one & a half millions while they knew that a third of this sum had been lost; & that the pursuer had only come to the knowledge of the fraud after the stoppage of the bank. The summons also contained an alternative conclusion for damages:—*Held*: (1) in order to try the conclusions for reduction & restitutions pursuer was entitled to an issue founded on fraud, but not to one founded upon essential error; (2) pursuer was not entitled also, & at

iii. What Representations are Material.

See, generally, Sub-sect. 3, B. (a), ante.

602. Nature of company—Cost-book mining company.]—The prospectus of a mining co., containing a glowing description of its prospects of success, & stating that a sett was held under a 21 years' lease from the Prince of Wales as Duke of Cornwall, C. applied for ten shares & paid £250. Two years after, it appearing at a meeting which he attended, that the mine was a cost-book mine, & C., being forced to sign the book before voting, refused to pay a call, no one but himself having paid a shilling. On a bill filed to recover the £250, for declaration that he was induced to sign the book by fraud, that he was not bound, that his name might be removed, & to restrain enforcing the call:—*Held*: decree granted, with £5 per cent. interest, & costs.—*CHESTER v. SPARGO* (1868), 18 L. T. 314; 16 W. R. 76.

Annotation:—*Reid. Re Union Hill Silver Co.* (1870), 22 L. T. 400.

603. Amount of capital subscribed.]—By the prospectus of a freehold land & brickmaking co., issued in Oct. 1865, by the promoter & certain directors who had been induced to join in project of starting the co. by a bonus of £100 & a promise of £600 a year remuneration more it was announced that the capital was to be £25,000 in 5,000 shares; that a dividend of 15 per cent., had been guaranteed for five years; that a freehold estate had been purchased for £6,250; that one-half the required capital had been subscribed by the directors & their friends; & that A., the land proprietor, had taken 500 shares. In the same prospectus were embodied reports of surveyors, which spoke of the land as the "property" & the "estate" of A. By the memorandum of assocn., registered on Nov. 21, 1865, the objects of the co. were given as more extensive than those announced in the prospectus. By the arts. of assocn. it was stated that the co. was established for the purpose of purchasing a particular piece of land for £6,250, & that the directors were to pay the promoter, as a reimbursement for all costs, charges, & expenses of every kind, £1,500. The facts were that no guarantee other than a verbal guarantee by the promoter was ever entered into; that in Sept. & Oct. 1865, the promoter contracted with A. for the purchase from him of the land described in the prospectus & arts. for £1,500, of which £500 was to be paid in shares, & then verbally agreed with the directors to resell it to them for £6,250; that the directors took only twenty shares each, & that the whole of the shares subscribed for did not amount to one-half of the capital. Pltf. having on Nov. 7, 1865, applied for 100 shares & paid £100 for deposit, £100 for allotment, & two calls of £100 each, filed the bill in Oct. 1866, against the co., the directors, & the promoter, seeking to have his name removed from the list, & to have the moneys returned, on the ground of fraudulent misrepresentation, & suppression of facts. A petition for winding up the

co., which had paid one quarterly dividend only, was presented in Sept. 1866, & a winding-up order was made in Nov. following:—*Held* (WOOD, V.-C.): was not entitled to relief on the ground of failure of the promised guarantee, he having made no inquiry into its nature or existence; but he was entitled to relief on the ground of the misrepresentations as to the amount of subscribed capital, & as to the purchase-money; & his name was ordered to be removed from the list of members, together with an account of receipts & payments, & repayments of the balance to him, with costs, against all debts.

It is not open to a shareholder who has taken a dividend to complain that the objects of the co., as stated in the arts., are more extensive than those stated in the prospectus.

On appeal:—*Held*: a pltf. cannot be relieved from shares in a co. upon the ground of misrepresentation in the prospectus, on a bill filed after the presentation of a petition for winding up the co., on which an order was subsequently made.—*KENT v. FREEHOLD LAND & BRICK-MAKING CO.* (1868), 3 Ch. App. 493; 37 L. J. Ch. 653; 32 J. P. 742; 16 W. R. 990, L. C.; *reusg.* (1867), L. R. 4 Eq. 588.

Annotations:—*Consd.* First National Reinsurance Co. v. Greenfield, [1921] 2 K. B. 260. *Reid.* London & County General Agency Asscn., Hare's Case (1869), 4 Ch. App. 503; Reese River Silver Mining Co. v. Smith (1869), L. R. 4 H. L. 64; Peek v. Gurney (1871), L. R. 13 Eq. 79; *Re* Scottish Petroleum Co. (1883), 23 Ch. D. 413; *Re* Lennox Publishing Co., *Ex p.* Storey (1890), 62 L. T. 791; *Re* Preservation Syndicate, [1895] 2 Ch. 768; *Re* General Ry. Syndicate, Whiteley's Case, [1899] 1 Ch. 770; *Re* Meter Cabs. [1911] 2 Ch. 557. *Mentd.* Henderson v. Lacon (1867), L. R. 5 Eq. 249; *Re* Massey, *Re* Freehold Land & Brickmaking Co. (1870), L. R. 9 Eq. 367.

604. —.]—The prospectus of a co. formed for the purpose of investing in estates, stated, (1) that more than one-half of the first issue of 5,000 shares had been subscribed for; (2) that upwards of £70,000 had been expended by the vendor in buildings & improvements upon an estate, contracted to be purchased by the co.; (3) that the co. had contracted to buy the L. estate. The real facts were, with regard to (1) that S., the principal promoter of the co., had agreed to place out one half of the first issue of shares, & had applied for 2,510 shares for this purpose, but that very few were actually placed when the prospectus was signed; with regard to (2) that S., who was the vendor of the estate, had not spent anything in improvements. As to the third statement, the promoter had no binding contract with the owner of the estate. R. saw the prospectus, applied for & was allotted ten shares in the co.:—*Held*: as regarded the first & second statements, pltf. was entitled to relief on the ground of misrepresentation in the prospectus. *Semble*: as regarded the third statement, only, the ct., though not without doubt, would have granted the same relief.—*ROSS v. ESTATES INVESTMENT CO.* (1868), 3 Ch. App. 682; 37 L. J. Ch. 873; 19 L. T. 61; 16 W. R. 1151, L. C.; *affg.* (1866), L. R. 3 Eq. 122.

Annotations:—*Distd.* Hallows v. Fernie (1867), L. R. 3 Eq. 520. *Consd.* *Re* Scottish Petroleum Co., Wallace's Case

(1883), 31 W. R. 846. *Reid.* *Re* Estates Investment Co. McNeill's Case (1870), L. R. 10 Eq. 503. *Mentd.* Aberman Ironworks v. Wiockens (1868), 18 L. T. 305; *Re* Estates Investment Co., Pawle's Case (1869), 4 Ch. App. 497; *Re* Estates Investment Co., Ashley's Case (1870), L. R. 9 Eq. 263; *Re* London & Leeds Bank, *Ex p.* Carling, Carling v. London & Leeds Bank (1887), 56 L. J. Ch. 321.

605. —.]—*Re* SILVER PEAK SILVER MINING Co., No. 591, *ante*.

606. — Former issue of shares.]—The G. Co. issued a prospectus headed, "Second issue of 10,000 shares," & stating, among other things, that the first issue of 10,000 having been fully subscribed for, the directors had resolved on a second issue, which they anticipated would be quite sufficient for the requirements of the assocn. On the faith of this prospectus B. applied for & was allotted fifty shares in the co. Subsequently, on its appearing that although 10,000 shares had been issued, 7,500 only had been subscribed for, B. filed a bill against the co. asking to have his shares cancelled on the ground of fraud & misrepresentation in the prospectus:—*Held*: he was not entitled to the relief asked.—*GREEN v. GENERAL PROVIDENT ASSURANCE CO., LTD.* (1868), 18 L. T. 500.

See, also, No. 542, *ante*.

607. That money expended by vendor on property.]—*ROSS v. ESTATES INVESTMENT CO.*, No. 604, *ante*.

608. Existence of binding contract—To carry mails.]—*KENNEDY v. PANAMA, ETC. MAIL CO.*, No. 577, *ante*.

609. — To purchase property.]—*ROSS v. ESTATES INVESTMENT CO.*, No. 604, *ante*.

610. — For supply of company's manufacture.]—*SELF-ACTING SEWING MACHINE CO., LTD. v. RICHARDS* (1885), 1 T. L. R. 630.

611. — Proposed to be assigned.]—*Re* WEST AUSTRALIAN TRUST, *Ex p.* BROCK (1900), 44 Sol. Jo. 658.

612. Amount payable to vendor.]—*KENT v. FREEHOLD LAND & BRICK-MAKING CO.*, No. 603, *ante*.

613. —.]—*CAPEL & CO. v. SIM'S SHIPS COMPOSITIONS CO., LTD.*, No. 462, *ante*.

Names of directors.]—*See* Nos. 530, 556, *ante*.

614. Names of council of administration.]—W. had been induced to take shares in a co. on the faith of a statement in the prospectus that certain gentlemen were members of the council of administration, & that the council consisted of members of the co. These gentlemen were not members of the co., & had not been duly elected members of the council, & the prospectus contained other misstatements of material facts:—*Held*: (by Ct. of Appeal) (1) W. was entitled to have his name removed from the register of shareholders of the co., & the deposits repaid to him: (*KAY, J.*) (2) W. was entitled to interest on the deposits paid by him from the date of such payment; (3) the ct. was not bound by a hard & fast rule as to the rate of interest & having regard to the present mercantile rate of interest, 4 per cent. was

the same time, to an issue to try the alternative conclusion for damages; (3) defenders were entitled to a counter issue "whether pursuer had barred himself from repudiating the purchase."—*GRAHAM v. WESTERN BANK* (1864), 2 Macph. (Ct. of Sess.) 559; 36 So. Jur. 272; (1865), 3 Macph. (Ct. of Sess.) 617; 37 So. Jur. 304.—*SCOT.*

p. Names of directors.]—*CHAMBERS EDINBURGH & GLASGOW AERATED BREAD CO., LTD.* (1891), 18 R. (Ct. of Sess.) 1039; 28 So. L. R. 803.—*SCOT.*

q. —.]—B., who had received an allotment of shares in a limited co. in March, 1893, in June presented a petition to have his name removed from the register of shareholders & for repetition of payments, on the ground that he had been induced to apply for shares by the statement in the prospectus that S., whom he knew to have a high reputation for business ability & integrity, was one of the directors; that he had subsequently learned that prior to the allotment S. had intimated to the co. that he withdrew his consent to become a director, & that the co. had made the allotment

to the petitioner without intimating to him that S. was not to be a director:—*Held*: B. was entitled to have his petition granted.—*BLAKISTON v. LONDON SCOTTISH BANKING & DISCOUNT CORPN., LTD.* (1894), 21 R. (Ct. of Sess.) 417; 31 So. L. R. 342; 1 S. L. T. 462.—*SCOT.*

r. Qualifications of directors.—"In the Trade."—The prospectus of a joint-stock co. set forth that "a large number of gentlemen in the trade & others have become shareholders" at the time the register was made up there were 55 shareholders of

Sect. 8.—The prospectus: Sub-sect. 3, C. (b) iii. & iv., (c), & D. (a) i.]

sufficient.—*Re* METROPOLITAN COAL CONSUMERS' ASSOCN., LTD., WAINWRIGHT'S CASE (1890), 63 L. T. 429; 6 T. L. R. 413, C. A.

Annotations:—As to (1) Consd. Re Metropolitan Coal Consumers' Asscn., Karberg's Case, [1892] 3 Ch. 1. *Re* Metropolitan Coal Consumers' Asscn., Grieb's Case (1890), 6 T. L. R. 416; *Cocksedge v. Metropolitan Coal Consumers' Asscn.* (1891), 64 L. T. 826; *Re* Metropolitan Coal Consumers' Asscn., Dunkley's Case (1891), 7 T. L. R. 234. *As to (2) & (3) Re* L. C. & D. Ry. v. S. E. Ry., [1892] 1 Ch. 120; *Re* Davis, Davis v. Davis (1902), 71 L. J. Ch. 539.

See, also, No. 560, ante.

615. That process novel & valuable.]—STIRLING v. PASSBURG GRAINS SYNDICATE, LTD. (1891), 8 T. L. R. 71.

616. That company possessed of monopoly.]—HYDE v. NEW ASBESTOS CO., LTD., NEW ASBESTOS CO., LTD. v. DUNCAN (1891), 8 T. L. R. 121.

617. That property held in perpetuity.]—HYDE v. NEW ASBESTOS CO., LTD., NEW ASBESTOS CO., LTD. v. DUNCAN (1891), 8 T. L. R. 121.

618. That preliminary expenses borne by vendor.]—Re LIBERIAN GOVERNMENT CONCESSIONS & EXPLORATION CO., LTD. (1892), 9 T. L. R. 136.

iv. Interest on Return of Deposit.

619. How calculated—From payment of deposits.]—Re METROPOLITAN COAL CONSUMERS' ASSOCN., LTD., WAINWRIGHT'S CASE, No. 614, *ante*.

620. Rate of—No fixed rule.—Re METROPOLITAN COAL CONSUMERS' ASSOCN., LTD., WAINWRIGHT'S CASE, No. 614, *ante*.

621. — Five per cent.]—CAPEL & Co. v. SIM'S SHIPS COMPOSITIONS CO., LTD., No. 462, *ante*.

622. — Four per cent.]—Re METROPOLITAN COAL CONSUMERS' ASSOCN., LTD., WAINWRIGHT'S CASE, No. 614, *ante*.

623. — —.]—HYDE v. NEW ASBESTOS CO., LTD., NEW ASBESTOS CO., LTD. v. DUNCAN (1891), 8 T. L. R. 121.

624. — —.]—Re METROPOLITAN COAL CONSUMERS' ASSOCN., KARBERG'S CASE, No. 560, *ante*.

(c) Action of Deceit.

625. Against company—Does not lie.]—WESTERN BANK OF SCOTLAND v. ADDIE, ADDIE v. WESTERN BANK OF SCOTLAND, No. 579, *ante*.

See, generally, Sect. 31, sub-sect. 7, A., post.

Against directors.]—See Sub-sect. 3, D., *post*.

D. Proceedings against Directors and Promoters.

(a) Action of Deceit.

i. When Action lies.

626. General rule.]—In an action against directors of a joint stock co. for false & fraudulent representations, by which pltf. alleges he was induced to take shares, the question of the truth of the statements set forth in the prospectus, even as to such of the directors as are parties, is to be considered, not in a strict or legal, but in a substantial, practical sense; & especially in the case of ambiguity, the fact that the scheme was honest in its origin, is material, though not conclusive, as

to the question of fraudulency; while, on the other hand, the privity of any of defts. to an improper conduct, though not laid as one of the charges in the declaration, as, for instance, "rigging the market," or getting up a fictitious premium before allotment, or an improper allotment, may be regarded as throwing light upon the question, whether the representations complained of were fraudulent. In such cases the question is as to their falsehood & fraudulency at the time they are communicated to pltf.; & it is necessary that it should appear that they, at all events, materially influenced him, & co-operated to induce him to take shares. Defts., who became directors after the prospectus was issued, are not liable in such an action, even assuming the falsehood & fraudulency of its statements as regards those who were parties to its preparation, merely because they did not satisfy themselves of its truth, provided they did not know the falsehood, & had no reason to suppose them to be false, but honestly relied on the representations of others.—*MOORE v. BURKE* (1865), 4 F. & F. 258; 15 L. T. 118, N. P.

627. —.]—The directors of a co. circulated a prospectus which offered the issue of 7 per cent. preference shares to the amount of £50,000 of £10 each, & represented that "guaranteed dividends at the minimum rate of 7 per cent. *per annum*, or £3 10s. each half-year's dividend," were payable half-yearly on these shares until a specified date; that this dividend was "secured by deposit with trustees of a sufficient amount of Govt. securities & first-class bank & insurance stock to cover same"; & that any profits made in the meantime by the co. were open to distribution on these shares in addition to the guarantee. There was, in fact, no such guarantee for the payment of the dividends, nor were the dividends secured by deposit of any Govt. securities or first-class bank or insurance stock to cover the same. Pltf. alleged that she, upon the faith of the prospectus, & believing the statement to be true, applied for & was allotted thirty of the £10 7 per cent. preference shares, for which she paid £300. The shares proved worthless. Shortly afterwards the co. was ordered to be wound up. Pltf. then brought an action against the directors, claiming a declaration that she was induced to take the shares by the fraudulent misrepresentations contained in the prospectus, & also judgment against defts. jointly & severally for repayment of the £300 with interest:—*Held*: the statement in the prospectus, which was most material, was wholly & absolutely false at the time it was made, & false to the knowledge of the directors who made it; the statement was inserted for the purpose of inducing persons to take shares in the co., & was calculated to mislead; & consequently, it was impossible to say that an action of deceit would not lie.—*KNOX v. HAYMAN* (1892), 67 L. T. 137; 8 T. L. R. 654, C. A.

628. —.]—ARNISON v. SMITH, No. 544, *ante*.

629. Against directors personally—Directors fixed with knowledge of misrepresentation.]—In Feb., 1865, a co. was incorporated with a capital of £25,000, in 2,500 shares. The arts. provided that the first directors should be determined by

whom 10 or 12 were connected with the trade:—*Held*: there was here no such misrepresentation as to entitle a person who had taken shares on the faith of the prospectus to have his name deleted from the register.—*CITY OF EDINBURGH BREWERY CO. v. GIBSON'S TRUSTEE* (1869), 7 Macph. (Ct. of Sess.) 886; 41 Sc. Jur. 507.—*SCOT*.

PART III. SECT. 8, SUB-SECT. 3.—C. (c).

s. Against company—Does not lie—As long as he remains a partner.]—Where a person has been induced to become a partner in a joint-stock co. by the fraud of the agents of the co., & cannot or will not rescind the contract whereby he became a partner,

he can have no damages for fraud against the co. itself.—*F. WORTH v. CITY OF GLASGOW LIQUIDATORS* (1880), 7 R. (Ct. c.) 53; 17 Sc. L. R. 510.—*SCOT*.

PART III. SECT. 8, SUB-SECT. 3.—D. (a) i.

t. General rule—Must prove moral turpitude—Statements true when made

the subscribers to the memorandum of assocn.; that the qualification of the directors so appointed should be ten shares, & of future directors, thirty shares; & that the promoter should receive £2,500 as promotion money. In the same month a prospectus was issued, giving the names of seven persons of position, not the subscribers to the memorandum, one of them of considerable local influence, as directors, & stating that "the directors & their friends have subscribed a large portion of the capital, & they now offer to the public the remaining shares." The facts were that the directors had subscribed for, nominally, only ten shares each, & actually nothing, for the shares agreed to be allotted to them were fully paid-up shares, for which they paid, & were, by a private arrangement with the promoter, afterwards repaid out of the £2,500. The number of shares taken by "friends" of the directors consisted only of 140, which were taken by one firm. The whole number of shares taken was 762, & agreed to be taken besides, 430. Pltf. applied, on the faith of the above prospectus, for fifty shares, which on Mar. 15 were allotted to him, & on which he paid £25 deposit, & £75 allotment money. The directors admitted that the prospectus was issued by their authority:—*Held*: the statement in the prospectus was a clear misrepresentation, which overthrew the contract between pltf. & the co.; & as the statement related to the directors' own acts, they must be fixed with a guilty knowledge of the misrepresentation.

Since the filing of the bill, & the hearing of a motion for an injunction to stay proceedings in an action upon a call, the co. had been ordered to be wound up:—*Held*: pltf. was entitled to repayment of his £100, but without interest, & costs, against the directors, & notwithstanding the winding-up, against the co.; to have his name removed from the register of shareholders; to an injunction to restrain the co. from taking further proceedings on the judgment, & from instituting any other proceedings against pltf., in respect of his having been a shareholder; with liberty to proceed as he might be advised in the winding up matter in respect of the payment of his £100 & costs.

Pltf., having filed his bill & applied for an injunction before the winding-up, is entitled to the decree, in order to save him from all the consequences from the time of filing the bill that would result from any suit or action on the part of the co. against him in respect of calls (WOOD, L.-C.).

The costs of an application in the liquidation or leave to proceed in this suit, were ordered to be included in the costs of the suit.—*HENDERSON v. LACON* (1867), L. R. 5 Eq. 249; 17 L. T. 527; 32 P. 326; 16 W. R. 328.

Annotations:—*Consd.* *Ship v. Crosskill* (1870), L. R. 10 Eq. 73; *Re London & Colonial Finance Corpn.* (1897), 77 L. T. 146. *Reid.* *Hall v. Old Talargoch Lead Mining Co.* (1876), 3 Ch. D. 749; *Weir v. Bell* (1878), 3 Ex. D. 238; *Arkwright v. Newbold* (1881), 17 Ch. D. 301; *Capel v. Sim's Ships Compositions Co.* (1888), 57 L. J. Ch. 713. *Mentd.* *Arnison v. Smith* (1889), 41 Ch. D. 348.

See, also, No. 654, post.

630. Direct representation unnecessary.—A count alleged that deft. & others had formed a co. that 12,000 shares were offered to the public; that deft. as promoter & managing director, intending to deceive the public & to cause it to be publicly represented & advertised that the co. was likely to be a safe & profitable undertaking, & also

to deceive the public who might become purchasers of the shares, & to induce them to become such purchasers, falsely, fraudulently & deceitfully caused it to be publicly advertised & made known in & by a prospectus issued by deft. as director, that the promoters of the co., in proposing to issue to the public the 12,000 shares at 12s. 6d. per share free from all further calls, did not hesitate to guarantee to the bearers of the 12,000 shares a minimum annual dividend of £33 per cent., payable in half-yearly dividends of £16 10s. per cent. each, & that the guarantee should remain in force until the 12s. 6d. per share should be thus repaid to the shareholder; that deft. by means of the false, fraudulent & deceitful representation, fraudulently induced pltf. to become, & pltf. by reason thereof became, the purchaser & bearer of 2,500 of the 12,000 shares at 12s. 6d. for each of the shares; whereas, in fact at the time of making the statement the same was false & fraudulent to the knowledge of deft., & deft. had no ground whatever for offering such guarantee to the public, as deft. well knew; by means whereof pltf. had lost the money so paid by him:—*Held*: the count contained a sufficient allegation for a false representation by deft., & pltf. was entitled to judgment upon it, as there was no necessity for any privity between the parties to support an action of tort for a false representation.—*GERHARD v. BATES* (1853), 2 E. & B. 476; 22 L. J. Q. B. 364; 22 L. T. O. S. 64; 17 Jur. 1097; 1 W. R. 383; 1 C. L. R. 868; 118 E. R. 845.

Annotations:—*Consd.* *Rogers v. Rajendro Dutt* (1860), 8 Moo. Ind. App. 103; *Peek v. Gurney* (1873), L. R. 6 H. L. 377. *Reid.* *Eastwood v. Bain* (1858), 28 L. J. Ex. 74; *Dutton v. Powles* (1861), 2 B. & S. 174; *Richardson v. Silvester* (1873), L. R. 9 Q. B. 34. *Mentd.* *Addison v. Tate* (1855), 3 C. L. R. 1075; *Neville v. Kelly* (1862), 12 C. B. N. S. 740; *Glamorganshire Iron & Coal Co. v. Irvine* (1866), 4 F. & F. 947; *R. v. Most* (1881), 7 Q. B. D. 244; *Carlill v. Carbolic Smoke Ball Co.*, [1893] 1 Q. B. 256.

631. —[An action for false representation, contained in the prospectus of a co., of which deft. is a director, is maintainable, although such representation may be capable of a meaning in which it would not be literally false. In such a case it is for the jury to say whether the representation was made in the sense necessary to maintain the action.

In order to maintain such action it is not necessary that there should have been any direct personal representation made by deft. to pltf.; it is sufficient if deft. authorised the circulation of the prospectus to the public knowing it to contain false statements.

The fact that other inducements were held out by other parties in addition to such false representation, by which pltf. was also partially influenced, is in itself no defence.—*CLARKE v. DICKSON* (1859), 6 C. B. N. S. 453; 28 L. J. C. P. 225; 33 L. T. O. S. 136; 23 J. P. 326; 5 Jur. N. S. 1029; 7 W. R. 443; 141 E. R. 533.

Annotations:—*Appld.* *Edgington v. Fitzmaurice* (1885), 29 Ch. D. 459. *Mentd.* *Nicholson v. Ricketts* (1860), 2 E. & E. 497.

632. Misrepresentation must be of fact—Mere omission insufficient.—*PEEK v. GURNEY*, No. 439, ante.

See, also, No. 525, ante.

633. —Not mere estimate of profits.]—Defts. were largely interested as shareholders in the Date-Coffee Co., a co. whose objects were declared to be the acquisition of licences to use an invention for manufacturing from dates a substitute for coffee, for which a patent had been

becoming subsequently untrue.]—An action for deceit against directors of a co., in respect of representations made in a prospectus, cannot be main-

tained without showing something in the nature of moral turpitude. If the statements be true at the time of issue, though the prospectus is undated,

the directors are not liable for not withdrawing it when some of the statements became untrue.—*ALLAN v. GORCH* (1883), 9 V. L. R. 371.—AUS.

Sect. 8.—The prospectus: Sub-sect. 3, D. (a) i.]

granted to H., one of defts., & to sell, etc., the patent rights when acquired by the co. H. was also possessed of a patent for the manufacture & sale of date-coffee in France; & a co. was formed for that purpose, called the French Date-Coffee Co., with a capital of £100,000 in 100,000 shares of £1 each, under substantially the same management as that of the English co., by whom H.'s patent for France was purchased for £50,000, which sum it was agreed should be divided as a bonus amongst the shareholders in the English co. Early in Feb. 1881, defts. prepared & issued a prospectus of the French co., containing the following passage:—"From the success attending the co. formed for the working of H.'s English patent, when a duty of 2d. per lb. is payable, & the coffee sold at 1s. per lb., the directors feel justified in stating they confidently believe the profits of this co. will be more than sufficient to pay dividends of at least 50 per cent. on the nominal capital, & will exceed those of the co. working the English patent, which, having only been formed a little over twelve months, has entered into a contract which will yield the return by way of annual dividends of a sum equal to the whole paid-up capital of the co. of £34,000." At the time at which this prospectus was issued the period had not arrived at which "profits" in a commercial sense could have been acquired by the English co.; but the article had been sold in the English market & received with some favour, & an agreement had been entered into by the co. with a merchant or broker in London to take all they could make. Pltf., influenced, as he said, partly by the above statement in the prospectus, partly from information derived from another source, & partly by the favourable opinion he had formed of the article to be manufactured, purchased 100 shares in the French co., & paid the deposit. He had no connection with the English co. Owing, as it was said, to the duty imposed upon the date-coffee in England, & to other circumstances, the hopes held out in the prospectus were not realised, & the French Date-Coffee Co. was ultimately wound up; & when pltf. was called upon as a contributory, he sought to recover from defts. the sum he had paid as deposit money & the amount of calls for which he had become & would become liable, as damages for the alleged false & deceitful representations contained in the above statements in the prospectus:—*Held*: the statements complained of, though expressing the strongest confidence that the co. referred to would be successful & would make large profits by the sale of the article to be manufactured, could not fairly be read as alleging that profits in a commercial sense had actually been made, & consequently there was no evidence which could be properly left to a jury in support of the charge of wilful & fraudulent misrepresentation.—**BELLAIRS v. TUCKER** (1884), 13 Q. B. D. 562.

Annotations:—**Consd.** *Edgington v. Fitzmaurice* (1885), 29 Ch. D. 459. **Refd.** *Re London & Leeds Bank, Ex p. Carling, Carling v. London & Leeds Bank* (1887), 56 L. J. Ch. 321.

634. — Payment of promotion-money.]—A shareholder in a co. sought to recover from the directors & promoter the amount he had paid on his shares in the co., on the ground that a fraudulent prospectus has been issued by them. The misrepresentation relied upon was a statement in

the prospectus that no promotion money had been or would be paid, whereas, in fact it was agreed at the date of the issue of the prospectus that a certain amount in cash & shares should be paid to the promoter, which was afterwards so paid. The jury found a verdict for pltf. against defts. for the amount claimed.—**LODWICK v. PERTH (EARL)** (1884), 1 T. L. R. 76.

635. — Misstatement of intention.]—A misstatement of the intention of deft. in doing a particular act may be a misstatement of fact, & if pltf. was misled by it an action of deceit may be founded on it.

The directors of a co. issued a prospectus inviting subscriptions for debentures & stating that the objects of the issue of debentures were to complete alterations in the buildings of the co., to purchase horses & vans & to develop the trade of the co. The real objects of the loan was to enable the directors to pay off pressing liabilities. Pltf. advanced money on some of the debentures under the erroneous belief that the prospectus offered a charge upon the property of the co. & stated in his evidence that he would not have advanced his money but for such belief, but that he also relied upon the statements contained in the prospectus:—*Held*: the misstatement of the objects for which the debentures were issued was a material misstatement of fact influencing the conduct of pltf. & rendered the directors liable to an action for deceit, although pltf. was also influenced by his own mistake.—**EDGINGTON v. FITZMAURICE** (1885), 29 Ch. D. 459; 65 L. J. Ch. 650; 53 L. T. 369; 50 J. P. 52; 33 W. R. 911; 1 T. L. R. 326 C. A.

Annotations:—**Consd.** *Re London & Leeds Bank, Carling, Carling v. London & Leeds Bank* (1887), 56 L. 321; *Peek v. Derry* (1887), 37 Ch. D. 541. **Refd.** *De la Cour v. Peek* (1889), 14 App. Cas. 337; *Oliver v. Bank of England*, [1902] 1 Ch. 610; *Yorkshire Insce. Co. v. Craine*, [1922] 2 A. C. 541.

Departure from prospectus.]—*See, generally, Sub-sect. 4, post.*

Compare Nos. 38, 530, 551, ante.

636. Representation must be false—Representation capable of true construction—Falsity questioned for jury.]—**CLARKE v. DICKSON**, No. 631, *ante*.

See, also, No. 38, ante, & compare No. 644, post.

637. — Representation becoming true—A date of prospectus.]—A statement in the prospectus, that half the capital had been subscribed for, which was false at the date of the issue of the prospectus, but true when pltf. applied for shares:—*Held*: not to entitle pltf. to sue a director privy to the issue of the prospectus.—**SHIP v. CROSSKILL** (1870), L. R. 10 Eq. 73; 39 L. J. Ch. 550; 22 L. T. 365; 18 W. R. 618.

Annotation:—**Consd.** *De la Cour v. Clinton, Trechmann v. Calthorpe* (1904), 90 L. T. 615.

638. Representation must be made without honest belief that true.]—To entitle a party to maintain an action upon the case against the directors of a joint stock co., for false & fraudulent representations contained in the prospectus & scrip certificate issued by them, it must distinctly appear that he became the purchaser of shares upon the faith of such representations.

To render the directors liable to such an action, it is not enough to show that the representations are false: if the directors acted upon a fair & reasonably well grounded belief that they were true, they are not responsible for them, however unfounded they may turn out to be.—**SHREWSBURY**

638 i. Representation must be made without honest belief that true.]—In an action for deceit against promoters, it was alleged that the pro-

spectus contained misrepresentations as to the position of a lumber business proposed to be sold to the company. The lumber business was in embar-

rassed circumstances, but the promoters did not honestly believe the business to be insolvent. In fact it was held that there was no such

v. BLOUNT (1841), 2 Man. & G. 475; Drinkwater, 70; 2 Scott, N. R. 588; 133 E. R. 836.

639. —.]—In an action against directors of a co. for false & fraudulent representations contained in a prospectus issued with their knowledge, & the material statements in which were untrue in fact, but were made, as the prospectus stated, on the authority of vouchers which were mentioned & declared as believed to be true, but which turned out to be false & fraudulent:—*Held*: it was for the jury whether the representation of the directors was that they believed the statements of the facts to be true, or that they believed the vouchers to be genuine; in either view the question would be whether they honestly believed in the truth of the representation they made; & if they had such honest belief they were not liable; if they had no such honest belief, & pltf. took his shares & paid his money on the faith of the prospectus, & not on his own judgment on the voucher set forth, then defts. were liable.—*CHARLTON v. HAY* (1875), 32 L. T. 96, N. P.

Annotation:—*Reid*. *Twycross v. Grant* (1877), 2 C. P. D. 469.

640. —.]—The directors of a co. issued a prospectus containing statements upon the faith of which pltf. applied for shares. The co. was not successful, & pltf.'s shares having become of no value, he commenced an action against the directors for damages upon the ground that a fraudulent prospectus had been issued by them:—*Held*: the directors had acted in good faith, & the action must be dismissed.—*ROSS v. DELACRE'S EXTRACT OF BEEF CO.* (1884), 1 T. L. R. 40, C. A.

641. —.]—R., the principal partner in a trading firm, concurred in steps for turning the partnership into a co. with limited liability. His name appeared in the prospectus as managing director of the new co., with a note that he would not join the board till after the transfer of the business to the co. had been completed. He did not issue the prospectus, but furnished materials for it, saw it in draft though not in its final shape, & made alterations in it. The prospectus contained a statement that the business had paid 17 per cent. upon the capital employed in it. This statement it appeared might be true if "capital employed" did not include the business premises, or only included their value subject to mortgages upon them, but was grossly untrue if the whole value of the business premises was taken as part of the capital. A person who took shares on the faith of the prospectus sued R. for damages for misrepresentation:—*Held*: in order to make a person liable for damages for misrepresentation it is not enough that the statement should be untrue & made without any reasonable ground for believing it to be true, but it must be made dishonestly; the *onus* of proving dishonesty lies on pltf.; if the party making the statement believed, however unreasonably, that it was true, he is not liable; pltf. in the present case had not shown that the statement was made dishonestly, & the action must be dismissed.—*GLASIER v. ROLLS* (1889), 42 Ch. D. 436; 58 L. J. Ch. 820; 62 L. T. 133; 38 W. R. 113; 5 T. L. R. 691; 1 Meg. 196, 418, C. A.

Annotation:—*Consd.* *Angus v. Clifford* (1891), 60 L. J. Ch. 443.

642. — Must be actual fraud.]—In an action of deceit pltf. must prove actual fraud. Fraud is

proved when it is shown that a false representation has been knowingly, or without belief in its truth, or recklessly, without caring whether it be true or false. A false statement made through carelessness & without reasonable ground for believing it to be true, may be evidence of fraud but does not necessarily amount to fraud. Such a statement, if made in the honest belief that it is true, is not fraudulent & does not render the person making it liable to an action of deceit.

A special Act incorporating a tramway co. provided that the carriages might be moved by animal power, & with the consent of the Board of Trade, by steam power. The directors issued a prospectus containing a statement that by their special Act the co. had the right to use steam power instead of horses. Pltf. took shares on the faith of this statement. The Board of Trade afterwards refused their consent to the use of steam power, & the co. was wound up. Pltf. brought an action of deceit against the directors founded upon the false statement:—*Held*: defts. were not liable, the statement as to steam power having been made by them in the honest belief that it was true.—*DERRY v. PEEK* (1889), 14 App. Cas. 337; 58 L. J. Ch. 864; 61 L. T. 265; 54 J. P. 148; 38 W. R. 33; 5 T. L. R. 625; 1 Meg. 292, H. L.; *reversg.* S. C. *sub nom.* *PEEK v. DERRY* (1887), 37 Ch. D. 541, C. A.

Annotations:—*Consd.* *Cann v. Willson* (1888), 39 Ch. D. 39; *Priestley v. Stone* (1888), 4 T. L. R. 730; *Glasier v. Rolls* (1889), 42 Ch. D. 436; *Angus v. Clifford*, [1891] 2 Ch. 449. *Expld.* *Low v. Bouverie*, [1891] 3 Ch. 82. *Expld.* & *Distd.* *Tomkinson v. Balkis Consolidated Co.*, [1891] 2 Q. B. 614. *Appld.* *Knox v. Hayman* (1892), 67 L. T. 137. *Consd.* *Scott v. Snyder Dynamite Projectile Co.* (1892), 66 L. T. 278; *Le Lievre & Donnes v. Gould*, [1893] 1 Q. B. 491; *Greenwood v. Leather Shod Wheel Co.* (1899), 80 L. T. 462; *Lagunas Nitrate Co. v. Lagunas Syndicate*, [1899] 2 Ch. 392; *Oliver v. Bank of England*, [1902] 1 Ch. 610. *Expld.* *Starkey v. Bank of England*, [1903] A. C. 114. *Consd.* *Jones v. Hulton*, [1909] 2 K. B. 444; *Parsons v. Barclay & Goddard* (1910), 103 L. T. 196; *Heilbut, Symons v. Buckleton*, [1913] A. C. 30; *Nocton v. Ashburton*, [1914] A. C. 932; *Banbury v. Bank of Montreal*, [1917] 1 K. B. 409. *Reid.* *Arnison v. Smith* (1889), 41 Ch. D. 348; *Bishop v. Balkis Consolidated Co.* (1890), 25 Q. B. D. 512; *L. & N. W. Ry. v. Boulton* (1890), 63 L. T. 727; *Scholes v. Brook* (1891), 63 L. T. 837; *Thiodon v. Tindall & Lloyd's Register of British & Foreign Shipping Committee* (1891), 60 L. J. Q. B. 526; *Scott v. Snyder Dynamite Projectile Co.* (1892), 67 L. T. 104; *Balkis Consolidated Co. v. Tomkinson* (1893), 42 W. R. 204; *Re Ottos Kopje Diamond Mines*, [1893] 1 Ch. 618; *Greenwood v. Leather Shod Wheel Co.*, [1900] 1 Ch. 421; *Cackett v. Keswick*, [1902] 2 Ch. 456; *Sheffield Corpn. v. Barclay*, [1903] 1 K. B. 1; *Dawson v. Bingley U. C.*, [1911] 2 K. B. 149; *Tackey v. McBain*, [1912] A. C. 186; *Armstrong v. Jackson*, [1917] 2 K. B. 822; *First National Reinsurance v. Greenfield*, [1921] 2 K. B. 260. *Mentd.* *Butler v. Goundry* (1888), 4 T. L. R. 711; *Duncan v. Scaife* (1888), 4 T. L. R. 716; *Re Postlethwaite, Postlethwaite v. Rickman* (1888), 59 L. T. 58; *Re Duce & Duce, Ex p. Duce* (1889), 6 Morr. 290; *McKeown v. Boudard-Peveril Gear Co.* (1896), 65 L. J. Ch. 735; *Williams v. Pinckney* (1897), 67 L. J. Ch. 34; *Davis v. Ohrlly* (1898), 14 T. L. R. 260; *Whittington v. Seale-Hayne* (1900), 82 L. T. 49; *Pritty v. Child* (1902), 71 L. J. K. B. 512; *Bell v. Marsh* (1903), 72 L. J. Ch. 360; *Broome v. Speak*, [1903] 1 Ch. 586; *McConnel v. Wright*, [1903] 1 Ch. 546; *Exploring Land & Minerals Co. v. Kolckmann* (1905), 94 L. T. 234; *Nash v. Calthorpe*, [1905] 2 Ch. 237; *Yonge v. Toynbee*, [1910] 1 K. B. 215; *Cork (Eastern Division) Case* (1911), 6 O'M. & H. 318; *Blacker v. Lake & Elliot* (1912), 106 L. T. 533; *Fry v. Smellie*, [1912] 3 K. B. 282; *Mair v. Rio Grande Rubber Estates*, [1913] A. C. 853.

643. —.]—*WATTS v. ATKINSON* (1892), 8 T. L. R. 235, C. A.

644. — Possibility of untruth not appreciated.]—Defts., directors of a mining co., in a prospectus issued before the passing of the

misrepresentation as to found an action for deceit.—*PETRIE v. GUELPH ER CO.* (1886), 11 S. C. R. 450.—

— Directors may rely on in- of competent manager.]—

Where the directors of a co. employed competent managers, upon whom they were dependent for information, & their auditor used due care in the performance of his duties:—*Held*: the directors were not responsible for a representation in regard to the cost of

materials affecting profits which was not discovered to be mistaken for some time after their prospectus had been issued.—*KENNEDY v. ACADIA PULP & PAPER MILLS CO., LTD.* (1905), 38 N. S. R. 291.—CAN.

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Directors' Liability Act, 1890 (c. 64), stated that certain reports of experts as to the value of the co.'s property had been prepared for the directors. Pltf. took shares in the co. on the faith of this statement. The reports in question had been made by the instructions & in the interest of the vendors, & not of the directors:—*Held*: upon the evidence, it was not present to the minds of defts. when they issued the prospectus that the statement, in the sense in which it would be understood, was or might be untrue; it was therefore not fraudulently made; & the action of deceit could not be maintained.—**ANGUS v. CLIFFORD**, [1891] 2 Ch. 449; 60 L. J. Ch. 443; 65 L. T. 274; 30 W. R. 498; 7 T. L. R. 447, C. A.

Annotations:—**Expld. & Distd.** *Knox v. Hayman* (1892), 67 L. T. 137. **Consd.** *Nocton v. Ashburton*, [1914] A. C. 932. **Refd.** *Watts v. Atkinson* (1892), 8 T. L. R. 235; *Le Lievre & Dennes v. Gould*, [1893] 1 Q. B. 491. **Mentd.** *Pritty v. Child* (1902), 71 L. J. K. B. 512.

645. — Reckless disregard of truth.] — *GLAMORGANSHIRE IRON & COAL CO. v. IRVINE*, No. 566, *ante*.

646. — —.] — *COATS (J. & P.), LTD. v. CROSSLAND* (1904), 20 T. L. R. 800.

647. Representation must have induced subscription.] — *SHREWSBURY v. BLOUNT*, No. 638, *ante*.

648. —.] — *MACLEAY v. TAIT*, No. 515, *ante*.

649. Misrepresentation need not be sole inducement to subscribe.] — *CLARKE v. DICKSON*, No. 631, *ante*.

650. — Shareholder's own mistake.] — *EDGINGTON v. FITZMAURICE*, No. 635, *ante*.

651. Shareholder must have been misled — Direct connection between shareholder & directors.] — *PEEK v. GURNEY*, No. 439, *ante*.

652. — Onus of proof—Statement ambiguous.] — The prospectus of a co. which was being formed to take over ironworks, contained a statement that "the present value of the turnover or output of the entire works is over £1,000,000 sterling per annum." If that statement meant that the works had actually in one year turned out produce worth at present prices more than a million, or at that rate per year, it was untrue. If it meant only that the works were capable of turning out that amount of produce it was true. In an action of deceit for fraudulent misrepresentation whereby pltf. was induced to take shares he swore in answer to interrogatories that he understood the meaning of the statement to be that which the words obviously conveyed, & at the trial was not asked either in examination or cross-examination what interpretation he had put upon the words:—*Held*: the statement taken in connection with the context was ambiguous & capable of the two meanings; it lay on pltf. to prove that he had interpreted the words in the sense in which they were false & had in fact been deceived by them into taking the shares, & as he had as a matter of fact failed to prove this, the action could not be maintained.—**SMITH v. CHADWICK** (1884), 9 App. Cas. 187; 53 J. L. Ch. 873; 50 L. T. 697; 48 J. P. 644; 32 W. R. 687, H. L. *Annotations*:—**Apld.** *Bellairs v. Tucker* (1884), 13 Q. B. D.

656 i. Proof that misrepresentation fraudulent—Onus of proof—On Plaintiff —Very strict.] — Pltf. sued defts. for damages caused to him by their having induced him, through fraudulent misrepresentation of fact issued in a prospectus, to take shares in a gold-mining syndicate promoted by themselves & of which they were the directors. The misrepresentations complained of were

that auriferous reefs extended for miles through the properties in which the syndicate was interested & that the results of work done by the defts. on these reefs showed that they were exceptionally rich. On the facts:—*Held*: as the action was based on fraud & the ct. therefore required very strict proof of pltf.'s case, the evidence as to negative results obtained in

subsequent independent operations did not, in all the circumstances, disprove the genuine character of the positive results previously obtained by defts., & pltf. had not proved that the representations contained in the prospectus were of the character, alleged by him.—**BENJAMIN v. MINTER** (1896), 8 H. C. 37.—S. AF.

652. Consd. *Smith v. Reed* (1886), 2 T. L. R. 44; *Arnison v. Smith* (1889), 41 Ch. D. 348; *Derry v. Peck* (1889), 14 App. Cas. 337; *Macleay v. Tait*, [1906] A. C. 24. **Refd.** *Edgington v. Fitzmaurice* (1885), 29 Ch. 1459; *Hughes v. Twisden* (1886), 55 L. J. Ch. 481; *F. London & Leeds Bank, Ex p. Carling*, *Carling v. London Leeds Bank* (1887), 56 L. J. Ch. 321; *Moore v. Explosive Co.* (1887), 56 L. J. Q. B. 235; *Glasier v. Rolls* (1889), 4 Ch. D. 436; *Angus v. Clifford*, [1891] 2 Ch. 449; *Andrew v. Mockford* (No. 1) (1896), 73 L. T. 728; *Greenwood v. Leather Shod Wheel Co.*, [1900] 1 Ch. 421; *Cackett v. Keswick*, [1902] 2 Ch. 456; *Broome v. Speak*, [1903] 1 Ch. 586; *Nash v. Calthorpe*, [1905] 2 Ch. 237; *Shepherd v. Bray*, [1906] 2 Ch. 235; *Tackey v. McBain*, [1912] A. C. 186. **Mentd.** *Capel v. Sim's Ships Compositions Co.* (1888), 57 L. J. Ch. 713; *Knox v. Hayman* (1892), 67 L. T. 137; *Re Metropolitan Coal Consumers' Assocn.*, *Karberg's Cas* (1892), 66 L. T. 700; *McKeown v. Boudard-Peveril Gea Co.* (1896), 65 L. J. Ch. 735; *Pearson v. Dublin Corpn.* [1907] A. C. 351.

Compare Nos. 38, 530, 551, *ante*, No. 812, *post*.

653. Shareholder must have suffered damage. — *MACLEAY v. TAIT*, No. 515, *ante*.

654. Proof that misrepresentation fraudulent—Falsification of facts & figures.] — In an action against the secretary, the solr., & several of the directors of a joint-stock co. for false & fraudulent representations, by which, as pltf. alleged, he had been induced to take shares, the representations being in the prospectus & balance sheet as to profit deduced from actual working, & a dividend declared as arising out of such profit so derived; & the two fundamental facts on which the representations of profit were based, the supply of the raw material, & the cost of it, being falsified, & the accounts being altered so as to conceal the falsifications, & also so as to bring into the year's account only a portion of the preliminary expenses:—*Held*: (1) though the latter alone, or any error in the mere mode of keeping the accounts, would not be evidence of fraudulent representations, the falsification of facts & figures was so, as against any defts. who were aware of the issue of the prospectus, but *semble*, not against those who merely had the means of knowledge; (2) as by 1856 Act, it is the directors who are to declare the dividend, though with the sanction of the shareholders, if it is to the knowledge of the directors or officers paid otherwise than out of profit, they are responsible for it, & for the circulation of any declaration of it acted upon by innocent shareholders; (3) any representations by defts. prior to the letters of allotment would be admissible, & a prospectus received from the person through whom the shares were applied for was admissible, without formal proof of agency, & before it was proved who were directors; (4) evidence was admissible as to statements made by an agent employed to sell shares, provided the agency was proved; (5) a copy of a newspaper supposed to contain a quotation of the shares was not evidence.—**BALE v. CLELAND** (1864), 4 F. & F. 117.

655. — Adoption of prospectus prepared by promoters—Without verification.] — *GLAMORGANSHIRE IRON & COAL CO. v. IRVINE*, No. 566, *ante*.

656. — Onus of proof—On plaintiff.] — *GLASIER v. ROLLS*, No. 641, *ante*.

Compare No. 3190, *ante*.

— Admissibility of evidence.] — See Sub-sect. 3, F. (g), *post*.

657. Proof of honest belief—Certificate of third

party—Proof of existence at date of prospectus.]—

COATS (J. & P.), LTD. v. CROSSLAND, No. 646, *ante*.

658. Effect of waiver clause.]—MACLEAY v. TAIT, No. 515, *ante*.

Compare Nos. 439, 652, *ante*.

ii. Measure of Damages.

659. Amount paid for shares.]—HENDERSON v. LACON, No. 629, *ante*.

660. Difference between price paid for shares & real value at date of purchase.]—In an action for deceit against the directors of a co. by a person who has been induced to take shares by a misrepresentation contained in the prospectus, the measure of damages is the difference between the price paid for the shares & their real value at the date of the purchase; but the real value is not necessarily the price for which the shares would sell on the market; it may be ascertained by the light of subsequent events showing that the co. was originally worthless.—PEEK v. DERRY (1887), 37 Ch. D. 541; 57 L. J. Ch. 347; 59 L. T. 78; 36 W. R. 899; 4 T. L. R. 84, C. A.; *reusd.* on other grounds *sub nom.* DERRY v. PEEK (1889), 14 App. Cas. 337, H. L.

Annotations:—**Folld.** Broome v. Speak, [1903] 1 Ch. 586. **Consd.** McConnell v. Wright, [1903] 1 Ch. 546. **Apld.** Exploring Land & Minerals Co. v. Kolekman (1905), 94 L. T. 234. **Refd.** Duncan v. Scaife (1888), 4 T. L. R. 716. **Mentd.** Butler v. Goundry (1888), 4 T. L. R. 711; Cann v. Willson (1888), 39 Ch. D. 39; *Re* Postlethwaite, Postlethwaite v. Rickman (1888), 59 L. T. 58; Priestley v. Stone (1888), 4 T. L. R. 730; Arnison v. Smith (1889), 41 Ch. D. 348; *Re* Duce & Duce, *Ex p.* Duce (1889), 6 Morr. 290; Glasier v. Rolls (1889), 42 Ch. D. 436; Bishop v. Balkis Consolidated Co. (1890), 25 Q. B. D. 512; L. & N. W. Ry. v. Boulton (1890), 63 L. T. 727; Angus v. Clifford, [1891] 2 Ch. 449; Low v. Bouverie, [1891] 3 Ch. 82; Scholes v. Brook (1891), 63 L. T. 837; Thiodon v. Tindall & Lloyd's Register of British & Foreign Shipping Committee (1891), 60 L. J. Q. B. 526; Tomkinson v. Balkis Consolidated Co. [1891] 2 Q. B. 614; Knox v. Hayman (1892), 67 L. T. 137; Scott v. Snyder Dynamite Projectile Co. (1892), 67 L. T. 104; Balkis Consolidated Co. v. Tomkinson (1893), 42 W. R. 204; Le Lievre & Dennes v. Gould, [1893] 1 Q. B. 491; *Re* Ottos Kopje Diamond Mines, [1893] 1 Ch. 618; McKeown v. Boudard-Peveril Gear Co. (1896), 65 L. J. Ch. 735; Williams v. Pinckney (1897), 67 L. J. Ch. 34; Davis v. Ohrlly (1898), 14 T. L. R. 260; Lagunas Nitrate Co. v. Lagunas Syndicate, [1899] 2 Ch. 392; Greenwood v. Leather Shod Wheel Co., [1900] 1 Ch. 421; Whitlington v. Seale-Hayne (1900), 82 L. T. 49; Cackett v. Keswick, [1902] 2 Ch. 456; Oliver v. Bank of England, [1902] 1 Ch. 610; Pritty v. Child (1902), 71 L. J. K. B. 512; Bell v. Marsh (1903), 72 L. J. Ch. 360; Sheffield Corp'n. v. Barclay, [1903] 1 K. B. 1; Starkey v. Bank of England, [1903] A. C. 114; Nash v. Calthorpe, [1905] 2 Ch. 237; Jones v. Hulton, [1909] 2 K. B. 444; Parsons v. Barclay & Goddard (1910), 103 L. T. 196; Yonge v. Toynbee, [1910] 1 K. B. 215; Cork (Eastern Division) Case (1911), 6 O'M. & H. 318; Dawson v. Bingley U. C., [1911] 2 K. B. 149; Blacker v. Lake & Elliot (1912), 106 L. T. 533; Fry v. Smellie, [1912] 3 K. B. 282; Tackey v. McBain, [1912] A. C. 186; Heilbut, Symons v. Buckleton, [1913] A. C. 30; Mair v. Rio Grande Rubber Estates, [1913] A. C. 853; Nocton v. Ashburton, [1914] A. C. 932; Armstrong v. Jackson, [1917] 2 K. B. 822; Banbury v. Bank of Montreal, [1917] 1 K. B. 409; First National Reinsurance v. Greenfield, [1921] 2 K. B. 260.

661. — & real value at date of allotment — What is date of allotment.]—STEVENS v. HOARE (1904), 20 T. L. R. 407.

Compare Nos. 29, 512, *ante*.

iii. Rights and Liabilities in Relation to Co-Directors and Agents.

662. Liability for misrepresentation of others —Brokers—Authorised to issue prospectus.]—A co., formed to work a mine was compelled from want of funds to cease working; money was advanced to them by some of the directors, amongst them A. & C. At a general meeting of the co. held, amongst other things, to provide for the existing deficit & working expenses, the directors were authorised to issue debentures on such terms & for such amounts as they in their

discretion might think fit. The directors authorised the secretary to employ a firm of brokers to place the debentures. The brokers prepared & issued prospectus, bearing the names of B. & others as directors, containing statements as to the condition & prospects of the co., on faith of which pltf. & others purchased debentures. The money thus raised was paid to the co.'s bankers & part of it applied by the directors on behalf of the co. to repay the advances made by A. & C. The debentures having become worthless, pltf. brought an action for damages against B. & others in respect of statements in the prospectus, some of which were alleged to be fraudulent. The jury found the prospectus contained statements of fact false to the knowledge of the brokers, by which pltf. was induced to part with his money; none of the false statements were made by B. personally or by his authority; the brokers had authority to issue a prospectus, but no authority to include in it fraudulent statements; & B. derived no benefit from money raised by the debentures:—*Held*: deft. B. had been guilty of no moral fraud, & not being the principal of the brokers could not be held to have impliedly undertaken for absence of fraud in them in issuing the prospectus.—WEIR v. v. BELL (1878), 3 Ex. D. 238; 47 L. J. Q. B. 704; *sub nom.* WEIR v. BARNETT, BELL, ETC., 38 L. T. 929; 26 W. R. 746, C. A.

Annotations:—**Consd.** Cargill v. Bower (1878), 10 Ch. D. 502; Mair v. Rio Grande Rubber Estates, [1913] A. C. 853. **Refd.** Houldsworth v. City of Glasgow Bank (1880), 5 App. Cas. 317; Derry v. Peek (1889), 14 App. Cas. 337; Glasier v. Rolls (1889), 42 Ch. D. 436; Lloyd v. Grace, Smith, [1912] A. C. 716. **Mentd.** Mirehouse v. Barnett (1878), 47 L. J. Ch. 689; Watt v. Barnett (1878), 3 Q. B. D. 363; Joliffe v. Baker (1883), 11 Q. B. D. 255; Baldry v. Bates (1885), 1 T. L. R. 311.

663. — Co-directors.]—A director of a co. is not liable for a fraud, such as the issue of a fraudulent prospectus of the co., committed by his co-directors or by any other agent of the co., unless he has either expressly authorised or tacitly permitted its commission.

On Nov. 22, a shareholder in a co. commenced an action against the co. & its directors. By the indorsement on the writ he claimed to have the allotment of shares to him cancelled, on the ground that he had been induced to take the shares by the fraudulent misrepresentations of defts.: & that defts. might be declared jointly & severally liable to repay him what he had paid for the shares & to indemnify him against any further liability. On Nov. 29, a petition was presented to wind up the co. On Dec. 18, the petition was heard, & a winding-up order was made, pltf. then appearing as a contributory to support the petition, & the order providing for the payment of his costs in that character. On Apr. 3, pltf. delivered a statement of claim in the action, by which he claimed the same relief as that which he had claimed by the indorsement on the writ, with this exception, that he did not expressly ask that the allotment of shares might be cancelled. There was a claim for further or other relief. After this the liquidator applied in the winding-up to put pltf. on the list of contributories; pltf. resisted the application, & it was ordered to stand over until after the trial of the action:—*Held*: on the pleadings as they stood pltf. could not claim the rescission of his contract to take the shares.

Leave to amend the statement of claim was refused, on the ground that by his conduct pltf. had elected to claim the rescission of the contract, not in the action, but in the winding-up.

Semble: pltf. not having claimed rescission of the contract, he could not have any other relief in.

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the action as against the co.—**CARGILL v. BOWER** (1878), 10 Ch. D. 502; 47 L. J. Ch. 649; 38 L. T. 779; 26 W. R. 716.

Annotations:—**Reid**, *Capel v. Sim's Ships Compositions Co.* (1888), 57 L. J. Ch. 713. **Mentd.** *Symonds v. City Bank* (1886), 34 W. R. 364; *Lewis & Lewis v. Durnford* (1907), 24 T. L. R. 64.

664. — **Agents.]—CARGILL v. BOWER**, No. 663, *ante*.

665. — **Certificate included in prospectus—Pleaded as defence—Existence at date of prospectus must be proved.]—COATS (J. & P.), LTD. v. CROSSLAND**, No. 646, *ante*.

666. — **Statement in report of expert—Non-repudiation on discovery of inaccuracy—Whether gross negligence amount to misfeasance.]—The B. Co.** was incorporated on Jan. 31, 1906, with the object of purchasing certain estates in Brazil, & for that purpose entering with or without modification into a specified contract with a syndicate, which had been already prepared. On the same day the directors issued a prospectus inviting subscriptions for shares which contained statements, specially as to area of the estate & number of rubber trees thereon, which were untrue. These statements were taken from a report furnished to the directors by M., a member of a firm who had obtained an option to purchase the estate & had sold to the syndicate at an increased price. The report was fraudulent, but the directors believed it to be an honest report & adopted it without inquiry. Subsequently, before the whole of the purchase-money was paid, the directors received information from a manager whom they sent out to Brazil that the statements contained in the report & prospectus were untrue, but notwithstanding this they went on with & completed the purchase. The arts. of assocn. contained a provision that no director should be liable for any loss or damage occasioned by any error of judgment or oversight on his part or for any other loss, damage, or misfortune whatever which should happen in the execution of the duties of his office or in relation thereto, unless the same happened through his own dishonesty. The co. having been ordered to be wound up compulsorily, the liquidator took out this summons claiming damages against the directors for misfeasance consisting in gross negligence in entering into the contract without proper examination & in not repudiating it when they discovered the errors in the report:—**Held**: the conduct of the directors did not amount to gross negligence. **Semle**: even if it had been gross negligence the directors were protected by the provision in the arts.—**Re BRAZILIAN RUBBER PLANTATIONS & ESTATES, LTD.**, [1911] 1 Ch. 425; 80 L. J. Ch. 221; 103 L. T. 697; 27 T. L. R. 109; 18 Mans. 177; *subsequent proceedings*, 103 L. T. 882, C. A.

— **See, also**, Nos. 534, 535, *ante*.

See, further, Sect. 28, sub-sect. 6, F. (f), *post*.

Statutory right of contribution against co-directors—Extends to damages recovered in action of deceit.]—See No. 680, *post*.

(b) **Under Companies (Consolidation) Act, 1908** (c. 69), s. 84.

NOTE.—1908 Act, s. 84, substantially re-enacted *Directors Liability Act, 1890* (c. 64), s. 3: cases decided on the earlier enactment are accordingly included under this Heading.

667. — **“Loss or damage”—Property acquired after issue of prospectus.]—A statement in a**

prospectus that the co. has acquired a valuable property is untrue within *Directors' Liability Act, 1890* (c. 64), s. 3, if the property has not in fact been acquired when the prospectus is issued, though the director issuing it believes that it will be acquired, & though it is in fact acquired a few days afterwards.

The subscriber for shares on the faith of the prospectus cannot be said to have suffered no loss or damage merely because the property in question was in fact afterwards acquired by the co.

The true measure of damage is the difference between the value which the shares would have had at the date of the allotment to the subscriber if the statement had been true, & the value which they actually had at that date, when there was merely a possibility or chance of the property being afterwards acquired.—**MCCONNEL v. WRIGHT**, [1903] 1 Ch. 546; 72 L. J. Ch. 347; 88 L. T. 431; 51 W. R. 661; 10 Mans. 160, C. A.

Annotations:—**Consd.** *De La Cour v. Clinton, Trechmann v. Calthorpe, Tait v. MacLeay* (1904), 91 L. T. 474. **Reid.** *MacLeay v. Tait*, [1906] A. C. 24.

668. — **Condition precedent to action.]—STEVENS v. HOARE** (1904), 20 T. L. R. 407.

669. — **“Untrue statement”—Misleading statement—Though true in sense in which used by directors.]—GREENWOOD v. LEATHER SHOD WHEEL Co.**, No. 526, *ante*.

Compare No. 584, ante.

670. — **Suggestion that process past trial stage.]—GREENWOOD v. LEATHER SHOD WHEEL Co.**, No. 526, *ante*.

671. — **Statement that property acquired—Property acquired afterwards.]—MCCONNEL v. WRIGHT**, No. 667, *ante*.

Compare No. 637, ante.

672. — **Non-disclosure of contract—Under 1867 Act, s. 38.]—SHEPHEARD v. BROOME**, No. 502, *ante*.

See, generally, Sect. 8, sub-sect. 2, *ante*.

673. — **“Reasonable ground to believe” that statement true—Duty of directors.]—The uncorroborated statements of a vendor-promoter of a co. afford by themselves no “reasonable ground” to the directors for believing such statements in a prospectus issued by them to be true, so as to relieve the directors from liability to persons subscribing for shares on the faith of the prospectus for the loss or damage sustained by reason of such statements, if untrue.**

Appl. said that the other directors had signed the prospectus before he did, & that that was quite sufficient justification for him to believe that what they had signed must be true—reasonable ground for belief—although he did not know what the statements in the prospectus were. That proposition is unreasonable & cannot be supported. It has been argued that a director cannot be expected of his own knowledge to verify the truth of all the statements in a prospectus. Nobody said he could. Even if he alone or other members of the intended board had taken the opinion or obtained a report of competent people as to the material facts in the prospectus that might have afforded a reasonable ground of belief. It is not necessary that an intending director should play the part of a lawyer or accountant by examining into facts or figures, nor that he should act as a patent agent. But if he will sign a prospectus without obtaining or even asking for any information of this kind, it is quite clear that he cannot protect himself under 1908 Act, s. 84 (1) (a), even though the directors who signed the prospectus before him might & did believe the statements contained in it to be true (**LORD COZENS-HARDY**,

M.R.).—ADAMS v. THRIFT, [1915] 2 Ch. 21; 84 L. J. Ch. 729; 113 L. T. 569, C. A.

674. — Director relying on belief of other directors.]—ADAMS v. THRIFT, No. 673, *ante*.

675. — Particulars of grounds of belief ordered.]—In an action against directors of a co. claiming compensation under Directors' Liability Act, 1890 (c. 64), in respect of untrue statements contained in the prospectus of the co., defts. by their defence said that they *bonâ fide* believed the statements to be true, & that they had reasonable grounds for their belief:—*Held*: defts. must deliver particulars of the grounds of their belief.—ALMAN v. OPPERT, [1901] 2 K. B. 576; 70 L. J. K. B. 745; 84 L. T. 828; 17 T. L. R. 620; 45 Sol. Jo. 615; 8 Mans. 316, C. A.

Annotation:—*Mentd.* Weinberger v. Inglis, [1918] 1 Ch. 133.

676. — Proof—Uncorroborated statement of vendor promoter insufficient.]—ADAMS v. THRIFT, No. 673, *ante*.

677. "Reasonable public notice"—Time for giving.]—Where several persons, separately, apply for debentures in a co., relying on a prospectus & covering letter which contain misrepresentations, they may jointly sue the directors, as they have, within R. S. C., Ord. 16, r. 1, a claim for relief arising out of the "same transaction."

Where a director knows that a prospectus is being issued inviting persons to take debentures, & abstains from asking to see it until after action brought on account of misrepresentations therein, it is too late then for him to give "reasonable public notice," within Directors' Liability Act, 1890 (c. 64), s. 3, that it was issued without his knowledge or consent.—DRINCQUIER v. WOOD, [1899] 1 Ch. 393; 68 L. J. Ch. 181; 79 L. T. 548; 47 W. R. 252; 15 T. L. R. 18; 43 Sol. Jo. 29; 6 Mans. 76.

Annotations:—*Consd.* Greenwood v. Leather Shod Wheel Co., [1900] 1 Ch. 421. *Mentd.* Markt v. Knight S.S. Co., Sale & Franzar v. Knight S.S. Co. (1910), 103 L. T. 369.

Claim for damages—Whether provable in bankruptcy.]—See BANKRUPTCY & INSOLVENCY, Vol. V., p. 1014, No. 8274.

678. Measure of damages—Difference between actual value at date of allotment—& value if misrepresentation true.]—McCONNEL v. WRIGHT, No. 667, *ante*.

Joinder of claims.]—See Sub-sect. 3, F. (c), *post*.

Limitation of action.]—See Sub-sect. 3, E. (a), *post*.

Effect of death of director.]—See Sub-sect. 3, E. (d), *post*.

679. — On statutory right of contribution between directors.]—SHEPHEARD v. BRAY, No. 681, *post*.

680. Right of contribution against co-directors—Extends to damages recovered in action of deceit.]—Where two co-promoters of a co. join in the issue of a prospectus inviting subscriptions for shares in the co. with knowledge that a statement contained in that prospectus is untrue & damages are recovered by a person induced to take shares in the co. by that statement in an action for fraudulent misrepresentation against one of them, he is entitled to contribution from the other under Directors' Liability Act, 1890 (c. 64), s. 5.

To this question the statute itself gives an answer; it states that, with reference to this particular class of test, & to this class of persons, namely, co-promoters & co-directors, who have issued a prospectus as in the present case, the ordinary rule that there shall be no contribution between tortfeasors shall not apply, but the rights of the parties shall be treated as though it were a question of contract, & not of tort (LORD HALS-

BURY, C.).—GERSON v. SIMPSON, [1903] 2 K. B. 197; 72 L. J. K. B. 603; 89 L. T. 117; 51 W. R. 610; 19 T. L. R. 544; 47 Sol. Jo. 13; 10 Mans. 382, C. A.

Annotations:—*Consd.* Geipel v. Peach, [1917] 2 Ch. 108. *Refd.* Shephard v. Bray, [1906] 2 Ch. 235.

681. — Enforceable against estates of deceased directors.]—The directors of a co. issued a prospectus on the faith of which B. applied for & was allotted shares in the co. The co. went into liquidation. B. brought an action under Directors' Liability Act, 1890 (c. 64), s. 3, against three of the directors for compensation on the ground that the prospectus contained an untrue statement. Judgment was given in his favour with costs & an inquiry as to damages directed. Defts. appealed but the appeal was dismissed with costs. A compromise was arrived at under which the inquiry was dropped, & B. was paid compensation at the rate of 15s. per share, his taxed costs of the inquiry, & £700 additional costs. Many other shareholders made claims, which were also compromised, & the three defts. in B.'s action & some of the other directors paid large sums in this way. They did not take advantage of third party procedure, but brought this action against the remaining directors & the exors. of three of them, who had died since the prospectus was issued, to enforce, under Directors' Liability Act, 1890 (c. 64), s. 5, contribution by them of their share of the compensation which had been paid:—*Held*: if B. had brought an action against all the directors, including those who were now dead, he would have succeeded; the right to contribution, inasmuch as under the statute it arose as if from contractual relations between the parties, could be enforced against the estates of the deceased directors; & defts. must pay, with interest, their share of the compensation & the costs of B. & other shareholders which had been paid; but they were not liable to contribute in respect of the costs of defts. in B.'s action, B.'s extra costs, the costs of the appeals, & other payments which had been made otherwise than under the provisions of the Act.—SHEPHEARD v. BRAY, [1906] 2 Ch. 235; 75 L. J. Ch. 633; 95 L. T. 414; 54 W. R. 556; 22 T. L. R. 625; 50 Sol. Jo. 526; 13 Mans. 279; *on appeal*, [1907] 2 Ch. 571, C. A.

Annotation:—*Consd.* Geipel v. Peach, [1917] 2 Ch. 108.

682. — Extent of—Costs of proceedings.]—SHEPHEARD v. BRAY, No. 681, *ante*.

(c) Criminal Proceedings.

See Larceny Act, 1861 (c. 96), s. 84.

683. Indictment for conspiracy to cheat & defraud—Liability for acts of others—Though not participating personally.]—On an indictment for conspiracy to cheat & defraud the public by means of the circulation of a false prospectus, to induce them to take shares in a worthless co., assuming the intent to cheat & defraud, defts., who were parties to the design, are liable for any of the overt acts done by the others in pursuance of such common design. The overt act laid being the making & circulating a false prospectus, a deft., if party to such a design, might be liable, although he took no part in drawing the prospectus, & though he was absent at the time it was circulated:—*Held*: such a deft. was not, on those grounds, entitled to acquittal, as distinguished from the others.

In such a case, the co. being formed for the purpose of taking the transfer of a business, the prospectus stating that, in the opinion of the directors, who included the members of the old firm, the business was such as would secure a

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highly remunerative return to the shareholders; that the vendors guaranteed deficiencies in the assets & liabilities transferred; & there being no proof to falsify any of the statements in the prospectus, beyond evidence that at the time of the transfer there was an enormous deficiency in the trade assets of the firm, which, however, would, upon estimates, shown to have been honest & reasonable, have been in time made up by other assets & by the partners' private estates, & the business itself being extremely lucrative, & indeed of enormous magnitude:—*Held*: the substantial question would be whether defts. had an honest, although erroneous, belief in this view, or intended to cheat & defraud; & in the former view they could not be convicted, as the essence of the charge was the intent to cheat & defraud.—*R. v. GURNEY* (1869), 11 Cox, C. C. 414; *Finlason's Report*, 99.

Annotations:—*Reid. Peek v. Gurney* (1871), L. R. 13 Eq. 79; *R. v. Parker & Bullock* (1916), 25 Cox, C. C. 145.

684. — Defence—Honest though erroneous belief.]—R. v. GURNEY, No. 683, *ante*.

Compare No. 3190, *post*.

See, further, Sect. 28, sub-sect. 6, G., *post*, & generally, CRIMINAL LAW & PROCEDURE, Vol. XV., pp. 939 *et seq.*

685. "Publish"—Within jurisdiction of Central Criminal Court—Filing in London document made elsewhere.]—There is "publication" under Larceny Act, 1861 (c. 96), s. 84, within the jurisdiction of the Central Criminal Ct. if a document made or executed anywhere is filed in London.—R. v. HOOLEY, R. v. MACDONALD, R. v. WALLIS (1922), 92 L. J. K. B. 78; 127 L. T. 228; 87 J. P. 4; 38 T. L. R. 724; 27 Cox, C. C. 248; 16 Cr. App. Rep. 171, C. C. A.

E. Loss of Right to Relief.

(a) By Delay.

686. General rule—Application must be made in reasonable time.]—Re LAND CREDIT CO. OF IRELAND, Ex p. MUNSTER, No. 556, *ante*.

687. — No needless delay.]—CENTRAL RY. CO. OF VENEZUELA (DIRECTORS, ETC.) v. KISCH, No. 405, *ante*.

In action for calls.]—See Nos. 482, 556, 568, *ante*.

688. Shareholder seeking rescission—Must apply within reasonable time.]—OAKES v. TURQUAND & HARDING, PEEK v. TURQUAND & HARDING, Re OVEREND, GURNEY & Co., No. 1, *ante*.

689. — No further steps taken after repudiation—Statements by directors as to negotiations.]—M., a shareholder in a co., discovered fraudulent misrepresentations in the prospectus on the faith of which he had taken his shares, & thereupon repudiated the shares, both privately, in an interview with the secretary, & publicly, at a meeting

of shareholders. Other shareholders also repudiated their shares, & instituted proceedings for the purpose of having their names removed from the register, while the co. commenced actions against them for the recovery of unpaid calls; but M. took no steps whatever, nor were any steps taken against him. After the public meeting, M. received two circulars issued by the directors of the co., one of which stated that, at the request of the dissentient shareholders, they had consented to stay legal proceedings for a time, with a view, if possible, of amicably settling their differences, & that they would, as soon as possible, communicate the result to the shareholders; & the other stated that the directors intended to appeal against a decision in a suit instituted by one of the shareholders for the purpose of being relieved from his shares. The co. having been ordered to be wound up:—*Held*: under the circumstances, M. was not a contributory.—*Re ESTATES INVESTMENT CO. MCNIELL'S CASE* (1870), L. R. 10 Eq. 503; 39 L. J. Ch. 822; 23 L. T. 297; 18 W. R. 1126.

Annotations:—*Reid. Re Scottish Petroleum Co.* (1883), 2 Ch. D. 413; *Re Central Klondyke Gold Mining & Trading Co., Thomson's Case* (1898), 5 Mans. 282; *Re General Railway Syndicate, Whiteley's Case*, [1900] 1 Ch. 365.

690. — Delay in claiming on one misrepresentation—Claim on another misrepresentation not barred.]—H. desired to repudiate his shares in a certain co. & relied on two distinct misrepresentations contained in the prospectus issued by the co. The co. was in course of being wound up, & the liquidator opposed H.'s application:—Held: as to the first misrepresentation complained of, H. had applied too late; but the fact of H. failing on the first misrepresentation did not preclude him from raising a case on the second misrepresentation, there being no allegation of delay in proceeding after discovery by H. of the second misrepresentation, & no allegation that the two misrepresentations were in anywise connected with each other; therefore H. was entitled to have his name removed from the register of shareholders.—*Re LONDON & PROVINCIAL ELECTRIC LIGHTING & POWER GENERATING CO., LTD., Ex p. HALE* (1886), 55 L. T. 670.

691. — What delay operates as bar—Five years.]—DENTON v. MACNEIL, No. 66, *ante*.

692. — — One year.]—Re PENINSULAR, WEST INDIAN, & SOUTHERN BANK, DIXON'S CASE, No. 482, *ante*.

693. — — Seven months from allotment—Three months from discovery of misstatement—Correspondence meanwhile.]—A co.'s prospectus stated that the vendors of certain mines proposed to be worked by the co. had agreed to sell them for £3,750, & that the arts. of assocn. were ready for inspection. The arts. stated the true agreement by which the vendors were to receive £5,750. Nearly four months after the allotment to him pltf. for the first time dis-

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6861. General rule—Application must be made in reasonable time.]—The rule in regard to voidable, not void, subscriptions for company shares is, that the right to avoid must if exercised at all, be exercised promptly on discovering the facts.—MORRISBURGH & OTTAWA ELECTRIC RY. CO. v. O'CONNOR (1915), 8 O. W. N. 485; 34 O. L. R. 161; 23 D. L. R. 748.—CAN.

6881. Shareholder seeking rescission—Must apply within reasonable time.]—The ct., while of opinion that the board of directors who passed on the contracts were not an independent board & that this would be ground for

voiding the contract if action had been taken in time & the parties could be restored to their original status, refused to void the contract in view of the notice thereof received by shareholders & the delay in attacking it.—*CLARK v. MOOERS*, [1921] 2 W. W. R. 892.—CAN.

6921. — What delay operates as bar—One year.]—F. in June, 1903, purchased paid-up shares in the capital stock of an industrial co. on the faith of statements in a prospectus prepared by a broker employed to sell them. In January, 1904, he attended a meeting of shareholders & from something he heard there suspected that some of said statements were untrue. After in-

vestigation he wrote to the president & secretary of the co. repudiating his purchase. At subsequent meetings of shareholders he repeated such repudiation & in December, 1904, brought suit for rescission:—*Held*: his delay, from January to December, 1904, in bringing suit was not a bar and he was entitled to recover against the co.—*FARRELL v. MANCHESTER* (1908), 40 S. C. R. 339.—CAN.

b. — — Three months after misrepresentation known—Although protests in meantime.]—A person who has a right on the ground of misrepresentation, to have his name removed from the register of shareholders of a gold-mining co. loses that right if he

covered the misstatement, & asked for a return of the money paid on his shares. A correspondence ensued, & the bill was not filed till seven months after the allotment:—*Held*: pltf. had a right to be relieved from his shares.—*LANGHAM v. EAST WHEAL ROSE CONSOLIDATED SILVER-LEAD MINING Co., LTD.* (1868), 37 L. J. Ch. 253.

694. ————.]—*TAYLOR v. OIL & OZOKERITE Co., LTD.* (1913), 29 T. L. R. 515.

695. ———— Seven months from time misrepresentation suspected—Two months from time fully ascertained.]—(1) A person seeking to set aside a voidable contract to take shares in a co., on the ground of misrepresentation, must take steps for that purpose immediately on discovering the misrepresentation.

In June, 1865, shares in a joint-stock co. were allotted to pltf. Towards the end of the same year suspicions arose in his mind, & on May 30, 1866, he became fully aware that the prospectus, on the faith of which he had applied for the shares, contained misrepresentations; but he took no steps to repudiate the shares till July 21:—*Held*: the delay was such as to disentitle him to repudiate the shares, either as between himself & the creditors of the co., or as between himself & the other shareholders.

(2) A person who by his own laches has barred his right to repudiate a voidable contract to take shares in a co. on the ground of fraudulent misrepresentation, cannot maintain against the directors a bill for damages founded on the same misrepresentations.—*OGILVIE v. CURRIE* (1868), 37 L. J. Ch. 541; 18 L. T. 593; 16 W. R. 769, L. C.; *revsg.* (1867), 16 L. T. 309.

Annotations:—As to (1) *Consd. Morrish v. Edwards* (1867), 16 L. T. 339. *Distd. Imperial Ottoman Bank v. Trustees, Exors. & Securities Insc. Corp.* (1895), 13 R. 287. *Refd. Hill v. Lane* (1870), L. R. 11 Eq. 215; *First National Reinsurance v. Greenfield*, [1921] 2 K. B. 260.

696. ———— Some months from discovery of misrepresentation.]—*Re METROPOLITAN COAL CONSUMERS' ASSOCN., LTD., DUNKLEY'S CASE* (1891), 7 T. L. R. 234.

697. ———— Five months from discovery of misrepresentation.]—*Re CHRISTINEVILLE RUBBER ESTATES, LTD.*, No. 525, *ante*.

698. ———— Awaiting result of action by another shareholder—Agreement by company that shareholder not prejudiced.]—Eleven shareholders of a co. repudiated their shares, & refused to pay the calls thereon, on the ground that they had been induced to become shareholders by fraudulent misrepresentations, in the prospectus of the co. One of the eleven, acting in conjunction with the other ten, filed a bill to be relieved from his shares; & it was agreed between the solrs. of the co. & the ten that they should not be prejudiced by their not taking proceedings pending the suit. A decree was made in favour of pltf. in the suit, & was affirmed on appeal. Pending the appeal, & while the names of the ten remained on the register of shareholders, the co. was ordered to be wound up:—*Held*: in the case of one of the ten, he was not liable as a contributory of the co.—*Re ESTATES INVESTMENT*

Co., PAWLE'S CASE (1869), 4 Ch. App. 497; 38 L. J. Ch. 412; 20 L. T. 589; 17 W. R. 599, L. J.J.

Annotations:—*Distd. Re Estates Investment Co., Ashley's Case* (1870), L. R. 9 Eq. 263. *Consd. Re Scottish Petroleum Co.* (1883), 23 Ch. D. 413. *Refd. Re London & Mediterranean Bank, Wright's Case* (1871), L. R. 12 Eq. 331; *Re Lennox Publishing Co., Ex p. Storey* (1890), 62 L. T. 791; *Re Central Klondyke Gold Mining & Trading Co., Thomson's Case* (1898), 5 Mans. 282.

699. ————.]—In Feb. 1889, A. was induced in consequence of statements contained in the prospectus of a co. to take certain shares therein. In July, 1889, he received from B., a shareholder, a circular, stating that he had commenced an action against the co. for a return of the money paid by him for his shares on the ground of misrepresentations contained in the prospectus. A. thereupon informed his friend C., who was a director of the co., that he intended to pay nothing further in respect of his shares until he had ascertained the result of B.'s action. A. did not, however, give any formal notice of this intention to the co. On Feb. 19, 1892, judgment was given in B.'s action in favour of B. On Mar. 17, 1892, the directors gave notice by a circular issued to all the shareholders, that an extraordinary general meeting of the co. would be held on Mar. 25, 1892, for the purpose of considering a resolution for a voluntary winding up. On Mar. 21, 1892, A. took out an originating summons asking that the register of shareholders might be rectified by removing his name therefrom in respect of the shares held by him, & for repayment of the amount paid by him on account of such shares. On Mar. 25, 1892, the meeting summoned by the notice of Mar. 17, was held, at which a resolution for the voluntary winding up of the co. was passed & a liquidator was appointed:—*Held*: A. was not entitled to await the result of B.'s action before repudiating his shares, but, even if he were so entitled, it was clearly his duty to take very prompt steps after learning the result; the delay between Feb. 19 & Mar. 21 was too long; & consequently his application failed.—*Re SNYDER DYNAMITE PROJECTILE Co., LTD., SKELTON'S CASE* (1893), 68 L. T. 210; 9 T. L. R. 213; 3 R. 289.

——— Delay after acquiescence.]—*See* No. 715, *post*.

——— Right of others affected.]—*See* No. 714, *post*.

——— Constitution of company differing from that set out in prospectus.]—*See* Sub-sect. 4, C., *post*.

Sec, further, Sect. 17, sub-sect. 1, G. (d), post.

——— Notice of misrepresentation.]—*See* Nos. 544, 548, *ante*.

700. Action of deceit—Barred if right of rescission barred.]—*OGILVIE v. CURRIE*, No. 695, *ante*.

701. ——— At common law—& in equity.]—*PEEK v. GURNEY*, No. 439, *ante*.

702. ——— Limitation of action—When time begins to run—Fraud fraudulently concealed by defendant.]—In an action to recover by way of damage money lost by fraudulent representations:

delays for upwards of three months after such misrepresentation becomes known to him to apply to the ct. for the purpose of having his name removed. Threats of legal proceedings in the meantime, & strenuous efforts to induce the co. to remove the name from their register, will not suffice to keep the right alive.—*Re NENTHORN CONSOLIDATED GOLD-MINING Co., (LTD.), CLEMENTS' CASE* (1891), 9 N. Z. L. R. 233.—N.Z.

c. ——— Four months.]—In the case of a trading co., which is daily getting credit & incurring liabilities, a shareholder who delays repudiation of his shares for four months after knowledge of the facts is precluded from obtaining relief on the ground of misrepresentation.—*HUTCHISON v. WESTERN PACKING Co.* (1900), 19 N. Z. L. R. 236.—N.Z.

d. ——— Two years.]—An alleged misrepresentation in a pro-

spectus on which the debt. relied as ground for rescission of his agreement to take shares having been brought to his notice shortly after the contract to take shares had been made, & he having taken no steps in the matter till two years afterwards, when he had been sued on the contract.—*ADAMANTA DIAMOND MINING Co. v. WEGE* (1883), 2 H. C. 172.—S. AF.

e. Action for deceit—Against promoters—Barred by delay—Four years.]

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—**Held:** a reply to a defence of the Stat. Limitations that pltf. did not discover & had not reasonable means of discovering the fraud within six years before action, & that the existence of such fraud with fraudulently concealed by deft. until within such six years, was good.—**GIBBS v. GUILD** (1882), 9 Q. B. D. 59; 51 L. J. Q. B. 313; 46 L. T. 248; 30 W. R. 591, C. A.

Annotations:—**Consd.** *Oelkers v. Ellis*, [1914] 2 K. B. 139. **Refd.** *Bull Coal Mining Co. v. Osborne*, [1899] A. C. 351. **Mentd.** *Armstrong v. Milburn* (1885), 54 L. T. 247; *Moore v. Knight*, [1891] 1 Ch. 547; *Thorne v. Heard*, [1894] 1 Ch. 599; *Betjemann v. Betjemann*, [1895] 2 Ch. 474; *De La Rochefoucauld v. Boustead* (1896), 75 L. T. 502; *Re Gallard, Ex p. Gallard* (1897), 66 L. J. Q. B. 484; *Re Astley & Tyldesley Coal & Salt Co. & Tyldesley Coal Co.* (1899), 68 L. J. Q. B. 252; *North American Land & Timber Co. v. Watkins* (1904), 73 L. J. Ch. 626; *Molloy v. Mutual Reverse Life Insee.* (1906), 94 L. T. 756; *Palmer v. S.* (1907), 51 Sol. Jo. 653; *Baker v. Courage* (1909), 79 L. J. K. B. 313; *Osgood v. Sunderland* (1914), 111 L. T. 529.

703. Action under 1908 Act, s. 84—Limitation of action—When cause of action arises—When shares subscribed.]—An action against directors & promoters of a co. under Directors' Liability Act, 1890 (c. 64), is not an action for "penalties, damages, or sums of money given to the party grieved" by a statute within the meaning of sect. 3 of Civil Procedure Act, 1833 (c. 42), & is not subject to the limitation of two years imposed by that sect.

An action under Directors' Liability Act, 1890 (c. 64), would under the old forms of pleading have been an action on the case for breach of duty, & by analogy to the old actions the period of limitation would be six years under sect. 3 of Limitation Act, 1623 (c. 16).

The shareholder's cause of action under Directors' Liability Act, 1890 (c. 64), arises when the shares are subscribed for.—**THOMSON v. CLANMORRIS (LORD)**, [1900] 1 Ch. 718; 69 L. J. Ch. 337; 82 L. T. 277; 48 W. R. 488; 16 T. L. R. 296; 44 Sol. Jo. 346; 8 Mans. 51, C. A.

Annotation:—**Mentd.** *Shinman v. Lyons* (1922), 38 T. L. R. 560.

704. ——— Not action for "penalties, damages or sums of money given to party grieved"—Civil Procedure Act, 1833 (c. 42), s. 3.]—**THOMSON v. CLANMORRIS (LORD)**, No. 703, *ante*.

See, generally, LIMITATION OF ACTIONS.

Compare Nos. 1418, 1424, post.

(b) By Acquiescence.

705. How far knowledge necessary.]—Where a party who has been imposed upon, & induced, by false & fraudulent representations, to buy shares in a supposed mining co., after a knowledge of the fraud, adopts the contract, & treats the shares as his own valid shares, he is estopped from afterwards rescinding the contract; & it is immaterial whether he knew the full extent of the fraud or not.—**CAMPBELL v. FLEMING** (1834), 1 Ad. & El. 40; 3 Nev. & M. K. B. 834; 3 L. J. K. B. 136; 110 E. R. 1122.

Annotations:—**Refd.** *Ricketts v. Bowhay* (1847), 3 C. B. 889; *Wontner v. Shairp* (1847), 4 C. B. 404; *East Anglian Ry. v. Eastern Counties Ry.* (1851), 11 C. B. 775; *Steele v. Williams* (1853), 1 C. L. R. 258; *Stevenson v. Newnham* (1853), 13 C. B. 285; *London & County Banking Co. v. London & River Plate Bank* (1887), 4 T. L. R. 179; *Imperial Ottoman Bank v. Trustees, Exors.*

& Securities Insee. Corpn. (1895), 13 R. 287; *Re Duncan, Terry v. Sweeting*, [1899] 1 Ch. 387. **Mentd.** *Horsfall v. Thomas* (1862), 6 L. T. 462.

Compare No. 708, post.

Notice of misrepresentation.]—*See Nos. 544, 548, ante.*

— **How far subscriber put upon inquiry.]—***See No. 405, ante.*

706. Doctrine of restitutio in integrum—Ordinary shares sold before knowledge of fraud—No bar to rescission on preference shares taken under separate contract.]—*Re METROPOLITAN CO CONSUMERS' ASSOCN., LTD., GRIEB'S CASE* (1896 T. L. R. 416, C. A.

707. Conduct amounting to acquiescence Instructions to broker to sell shares.]—*Re HOP MALT EXCHANGE & WAREHOUSE CO., Ex BRIGGS*, No. 401, *ante*.

708. ——— Sale of shares—Unless sold before fraud known.]—Where a shareholder in a co. has sold some of the shares originally taken by him, he is not thereby deprived of his right to have the contract, which is a severable one, rescinded as to the remainder on the ground of fraudulent misrepresentations in the co.'s prospectus, provided that the shares sold were parted with before the fraud was discovered by the shareholder.—*Re MOUNT MORGAN (WEST) GOLD MINE, LTD., Ex p. WEST* (1887), 56 L. T. 622; 3 T. L. R. 556.

Compare No. 706, ante.

709. ——— Receipt of profits.]—A shareholder had been in receipt of profits from the co.:—**Held:** notwithstanding an allegation of fraud in the prospectus he was liable as a contributory.—*Re INTERNATIONAL CONTRACT CO., Ex p. SPARTALI* (1867), 17 L. T. 193.

710. ——— & payment of call.]—**SCHOLEY v. CENTRAL RY. CO. OF VENEZUELA** (1868), L. R. 9 Eq. 266, n., L. C.

Annotations:—**Apld.** *Re Estates Investment Co., Ashley's Case* (1870), L. R. 9 Eq. 263. **Refd.** *Re Estates Investment Co., Ex p. Pawle* (1869), 38 L. J. Ch. 318; *Re Natal Investment Co., Wilson's Case* (1869), 20 L. T. 962; *Sharpley v. Louth & East Coast Ry.* (1876), 2 Ch. D. 663; *Re Snyder Dynamite Projectile Co., Skelton's Case* (1893), 68 L. T. 210.

711. ——— Opposing winding-up petition—& payment of call.]—In June, 1865, B. took shares in a co. In Jan. 1866, he made inquiries as to it, & found that the shareholders were dissatisfied, & that a meeting was to be held to discuss its affairs. A meeting was accordingly held for that purpose, which he attended, but in the middle of it he left. On July 3, the directors made a report, a copy of which was sent to B., from which the falsehood of the prospectus was clearly shown. On July 6, B. paid some calls on his shares, & on July 7, he went abroad. He returned, & making further inquiries as to the condition of the co., was told that a petition had been presented for a winding-up order, & that if he supported it he would be a loser, but if he joined with the directors in opposing it he would be a gainer. He then satisfied himself from the report of the nature of the prospectus, & asked to be relieved from further liability on his shares, but consented to oppose the petition, which he did. A winding-up order was made upon it:—**Held:** B. had so acted as to have precluded himself by acquiescence from now saying he was not liable to be put on the list of contributories, & an order was made accordingly.—*Re BREECH-LOADING ARMOURY CO., LTD., Ex p. BLACKSTONE* (1867), 16 L. T. 273.

—If the individual shareholders in a joint stock co. could bring an action against the promoters for damages caused by alleged misrepresentation

by the latter as to the prospects of the co. when formed, a delay of four years, during which they suffered the business of the co. to go on with a full knowledge

of the alleged misrepresentations, would disentitle them to relief.—**BEATTY v. NEELON** (1886), 13 S. C. R. 1.—**CAN.**

712. — Neglect to ascertain truth.]—KENT v. FREEHOLD LAND & BRICK-MAKING CO., No. 603, ante.

713. — Non-repudiation of shares—On application for payment of calls.]—CROYDON v. PRUDENTIAL LOAN & DISCOUNT CO., LTD. (1886), 2 T. L. R. 535, C. A.

714. — Payment of call—After repudiation.] An appct. for shares in a co., who has repudiated a contract on the ground of having been misled by the prospectus, but who has subsequently paid further sums on account of the shares, with a view of getting back the money originally paid, is not afterwards entitled to rely upon the repudiation & to be removed from the register of shareholders, as his want of promptness in taking proceedings may have then affected the rights of others.—*Re DUNLOP-TRUFFAULT CYCLE & TUBE MANUFACTURING CO., Ex p. SHEARMAN* (1896), 66 L. J. Ch. 25; 75 L. T. 385; 13 T. L. R. 33.

— & receipt of profits.]—See No. 710, ante.

— & opposition to winding-up petition.]—See No. 711, ante.

715. — Discontinuance of proceedings for rescission—Followed by nine months' delay.]—An action was brought to avoid a contract to take shares, on the ground of misrepresentation in a prospectus. Pltf. informed the co. he should discontinue proceedings:—*Held*: by so doing & taking no further steps for nine months, he had elected to adopt the contract, & could not avoid it.—*REID v. LONDON & STAFFORDSHIRE FIRE INSURANCE CO.* (1883), 53 L. J. Ch. 351; 49 L. T. 468; 32 W. R. 94.

Compare Nos. 716, 717, post.

716. — Attendance at meeting—& voting — After issue of writ for rescission.]—Where after issue joined & notice of trial given in an action by a shareholder to have his name removed from the register of shareholders on the ground of fraud, pltf. attended & voted at a meeting of shareholders held in the liquidation of the co.:—*Held*: the issue of the writ was a definitive election to rescind, & this election was not affected by the subsequent voting at the meeting.—*FOULKES v.*

QUARTZ HILL CONSOLIDATED GOLD MINING CO. (1883), 1 Cab. & El. 156, C. A.

Annotation:—*Consd. Re Brinsmead, Tomlin's Case*, [1898] 1 Ch. 104.

717. — Without voting.]—The prospectus of a co. contained a statement that certain persons would form a council of administration from which would be selected an executive & financial committee, which should constitute the board of directors. E. applied for shares in the co., relying upon the representation that those persons were members of the council of administration, & in the belief that they would be responsible for the management of the co. Those persons were not, in fact, members of the co., & upon discovering this, E. gave notice of motion to remove his name from the register of members. Shortly afterwards E. attended a meeting of the co., but did not vote or take any other part in the meeting. Some months after giving notice of motion E. wrote to the secretary of the co. & inquired at what price the shares of the co. were then quoted:—*Held*: there was a material misrepresentation, on which E. relied, & he was entitled to have his name removed from the register of members; he had not, by attending the meeting, or inquiring the price of the shares, acted as a shareholder towards the co. so as to disentitle him to insist on his repudiation of his shares.—*Re METROPOLITAN COAL CONSUMERS' ASSOCN., LTD., Ex p. EDWARDS* (1891), 64 L. T. 561.

718. —]—*Re LIBERIAN GOVERNMENT CONCESSIONS & EXPLORATION CO., LTD.* (1892), 9 T. L. R. 136.

719. — Inquiring price of shares—After notice of motion to rescind.]—*Re METROPOLITAN COAL CONSUMERS' ASSOCN., LTD., Ex p. EDWARDS*, No. 717, ante.

Compare No. 715, ante.

— Non-compliance by company with conditions in prospectus.]—See Sub-sect. 4, C., post.

— Constitution of company differing from prospectus.]—See Sub-sect. 4, C., post.

Compare Nos. 792–799, post.

(c) By Winding up of Company.

720. General rule—Winding up a bar—To rescission.]—*OAKES v. TURQUAND & HARDING*,

PART III. SECT. 8, SUB-SECT. 3.—
E. (b).

721. Conduct amounting to acquiescence—Neglect to ascertain truth.]—A shareholder who has had several years within which he could make himself aware of the terms of the memorandum of association, & who has drawn several dividends, is not entitled to have his name struck off the list of shareholders on the ground that the co. is carrying on business in a manner in which it ought not to do.—*GRAY v. EQUITABLE INSURANCE ASSOCN. OF NEW ZEALAND* (1888), 6 N. Z. L. R. 450.—N.Z.

721 i. — Attendance at meeting.]—H. applied for shares to the promoters of a co. about to be registered under Companies Act, 1869, on the faith of a prospectus issued by them, paid the amount due on application & allotment, & had the shares allotted to him. The co. was registered with some of the promoters as directors, but the capital & objects of the co. as set out in the memorandum of assocn. differed materially from the prospectus. On discovering the discrepancy as to the capital, H. sent a written protest to the directors, & asked for a meeting to be held. The directors called a meeting for the purpose of increasing the capital to the amount stated in the prospectus when H. attended & declined to agree to any smaller

amount of capital than that mentioned in the prospectus & withdrew from the meeting, but a resolution was subsequently passed to increase the capital; he received notice to attend a meeting to confirm this resolution, & withdrew from the meeting in which he took no part. He then applied under section 35 to have his name removed from the register of shareholders:—*Held*: H.'s conduct did not amount to acquiescence in the variance between the prospectus & the memorandum.—*Re TASMANIAN FRUIT GROWERS v. PRODUCE CO-OPERATIVE CO., LTD., HERON'S CASE* (1905), 1 Tas. L. R. 30.—AUS.

i. — Acting as shareholder.]—An action by shareholders against a co. which had been promoted by certain persons carrying on a lumber business for rescission of the contract to take shares on the ground of misrepresentation of the value of the lumber business to be purchased by the co. was dismissed on the ground that the shareholders had acted as shareholders & affirmed their contract after having become aware of the misrepresentation.—*PETRIE v. GUELPH LUMBER CO.* (1886), 11 S. C. R. 450.—CAN.

g. — Payment of call.]—*GOURLY v. CHANDLER* (1906), 1 E. L. R. 433.—CAN.

h. — May create presumption of election to confirm contract.]—Delay in repudiation after knowledge of the falsity of an inducing representation, especially in the case of a subscription for shares, may give rise to a presumption of acquiescence or of an election not to rescind.—*ROBERT v. MONTREAL TRUST CO.* (1917), 56 S. C. R. 342.—CAN.

PART III. SECT. 8, SUB-SECT. 3.—
E. (c).

720 i. General rule—Winding up a bar—To rescission—Even in case of fraud.]—Pltf. co. being in liquidation, the liquidator, on behalf of the co., sued to recover instalments on shares. The instalments had accrued due before winding up & deft. had not repudiated the shares before winding up:—*Held*: it was too late to repudiate the shares on the ground of fraud after the winding up.—*KILKIVAN MINES v. WOODS* (1892), 13 N. S. W. L. R. 301.—AUS.

720 ii. —]—A shareholder, after allotment of shares, & after the commencement of winding-up proceedings, cannot object to have his name put on the list of contributories on the ground that the memorandum of assocn. registered goes beyond the objects mentioned in the prospectus which he signed.—

Sect. 8.—The prospectus: Sub-sect. 3, E. (c) & (d).]

PEEK v. TURQUAND & HARDING, Re OVEREND, GURNEY & Co., No. 1, ante.

721. ———.] — KENT v. FREEHOLD LAND & BRICK-MAKING Co., No. 603, ante.

722. ———.] — Voluntary winding up.]

—The principle of *Oakes v. Turquand*, No. 1, ante, extends to the voluntary winding up of a co. formed under 1862 & 1867 Acts. Where, therefore, a co., its assets being insufficient to meet its liabilities, is voluntarily wound up, a shareholder in such co., who has been induced to take shares by the fraudulent representation of its directors, cannot repudiate his shares, nor seek to rescind a contract in respect of them, nor can he recover back from the co. money paid by him for the shares.—*STONE v. CITY & COUNTY BANK, COLLINS v. CITY & COUNTY BANK* (1877), 3 C. P. D. 282; 47 L. J. Q. B. 681; 38 L. T. 9, C. A.

Annotations:—Reid. Houldsworth v. City of Glasgow Bank (1880), 5 App. Cas. 317; *Re Scottish Petroleum Co., MacLagan's Case* (1882), 46 L. T. 880. *Mentd. Re Pyle Works* (1890), 44 Ch. D. 534; *Thomson v. Henderson's Transvaal Estates*, [1908] 1 Ch. 765; *MacConnell v. Prill*, [1916] 2 Ch. 57.

723. ———.] — EAST BROKEN HILL CONSOLS, LTD. v. MALLABY-DEELEY (1895), 11 T. L. R. 465, C. A.

724. ———.] — Though liabilities & costs of winding up covered by assets.]—A shareholder in a co. who has been induced to apply for shares by fraudulent misrepresentations contained in the promoters' prospectus, is not entitled after winding up to rescind his contract to take the shares, even if the assets in the hands of the liquidators are sufficient to pay in full the whole liabilities of the co. together with the costs of the winding up.—*Re HULL & COUNTY BANK, BURGESS'S CASE* (1880), 15 Ch. D. 507; 49 L. J. Ch. 541; 43 L. T. 54; 28 W. R. 792.

Annotations:—Consd. Re Scottish Petroleum Co. (1883), 23 Ch. D. 413; *East Broken Hill Consols v. Mallaby-Deeley* (1895), 11 T. L. R. 465. *Mentd. Re Addlestone Linoleum Co.* (1887), 37 Ch. D. 191.

725. ———.] — Unless proceedings begin before winding-up order.]—A shareholder who institutes proceedings against a co. to repudiate his shares, & is prosecuting them when a winding-up order is made, is entitled to be struck off the register if he make out his case of misrepresentation.

A shareholder instituted no proceedings of his own against the co., but pleaded misrepresentation to an action for calls, & obtained a verdict. A rule was subsequently made absolute to set the verdict aside. Shortly after the verdict a winding-up order was made:—*Held*: this did not amount to such action on his part as brought his case within the above rule.—*Re CLEVELAND IRON Co., Ex p. STEVENSON* (1867), 16 W. R. 95, L. J.

Annotations:—Distd. Re General Railway Syndicate, Whiteley's Case, [1900] 1 Ch. 365. *Reid. Re Scottish Petroleum Co.* (1883), 23 Ch. D. 413.

726. ———.] — HENDERSON v. LACON, No. 629, ante.

727. ———.] — If, before a winding-up order is made a person files a bill against a co. alleging that he had been induced by fraud & misrepresentation to become a member of the co., & on that ground praying to have his name

removed from the list of its members, he will, on establishing his allegations, be entitled to have his name removed from the list of the co., although between the date of his filing his bill & the decree of the ct. upon it, an order has been obtained to wind up the co.

It is of very great importance, in these cases, to make the register of any one of these cos. as conclusive as, consistently with the proper interpretation of [1862] Act, you are able to do. But it is perfectly clear that you cannot make the register absolutely conclusive. Many cases can be pointed out, without difficulty, in which the register is not conclusive. If names are put upon the register without any authority the owners of those names are in no way responsible. There are also cases, especially those pointed out in sect. 35 [of the Act], where there has been a default, in the performance, by the executive of the co., of its duty in removing names after the owners of those names have ceased to be shareholders; there again the register is not conclusive. Again, under the same sect., there is a class of cases which is thus described, namely, where the name of any person is, without sufficient cause, entered in, or omitted from, the register of members of the co.; in that case the register is not conclusive (LORD CAIRNS).—*REESE RIVER SILVER MINING Co. v. SMITH* (1869), L. R. 4 H. L. 64; 39 L. J. Ch. 849; 17 W. R. 1042, H. L.; *affg. S. C. sub nom. Re REESE RIVER SILVER MINING Co., SMITH'S CASE* (1867), 2 Ch. App. 604, L. JJ.

Annotations:—Consd. Re Cleveland Iron Co., Ex p. Stevenson (1867), 16 W. R. 95; *Oakes v. Turquand & Harding, Peek v. Turquand & Harding, Re Overend, Gurney* (1867), L. R. 2 H. L. 325; *Folld. Henderson v. Lacon* (1867), L. R. 5 Eq. 249. *Distd. Kent v. Freehold Land & Brick-Making Co.* (1868), 3 Ch. App. 493. *Appld. Re Estates Investment Co., Pawle's Case* (1869), 4 Ch. App. 497. *Consd. Re Scottish Petroleum Co.* (1883), 23 Ch. D. 413. *Folld. Re British Burmah Land Co.* (1888), 4 T. L. R. 631. *Expld. Re General Railway Syndicate, Whiteley's Case*, [1899] 1 Ch. 770. *Consd. Mair v. Rio Grande Rubber Estates*, [1913] A. C. 853; *Re Pacaya Rubber & Produce Co., Burns' Appln.*, [1914] 1 Ch. 542. *Reid. Re Canadian Native Oil Co., Fox's Case* (1868), L. R. 5 Eq. 118; *Peek v. Gurney* (1871), L. R. 13 Eq. 79; *Re Ruby Consolidated Mining Co., Askew's Case* (1874), 31 L. T. 55; *Re Coal Economising Gas Co., Gover's Case* (1875), L. R. 20 Eq. 114; *Lodwick v. Perth* (1884), 1 T. L. R. 76; *Re British Burmah Lead Co., Ex p. Vickers* (1887), 56 L. T. 815; *Derry v. Peek* (1889), 14 App. Cas. 337; *Cocksedge v. Metropolitan Coal Consumers' Assocn.* (1891), 64 L. T. 826; *Re Sussex Brick Co.*, [1904] 1 Ch. 598; *First National Reinsurance v. Greenfield*, [1921] 2 K. B. 260; *Abram S.S. Co. v. Westville Shipping Co.*, [1923] A. C. 773. *Mentd. A.-G. v. Ray* (1874), 9 Ch. App. 402, n.; *Eaglesfield v. Londonderry* (1876), 4 Ch. D. 693; *Schroeder v. Mendl* (1877), 37 L. T. 452; *Redgrave v. Hurd* (1881), 20 Ch. D. 1; *Mathias v. Yetts* (1882), 46 L. T. 497; *Nash v. Wooderson* (1884), 52 L. T. 49; *Smith v. Reed* (1886), 2 T. L. R. 442.

728. ———.] — Re BRITISH BURMAH LAND Co., LTD. (1888), 4 T. L. R. 631.

729. ———.] — Where a person has been induced by fraudulent misrepresentations in a prospectus to take shares in a co. he must to escape liability as a contributory on winding up have actually commenced proceedings to have his name removed from the register before the presentation of a petition to wind up the co. If he has not done so nothing short of a bargain with the co. that he shall be bound by pending proceedings will protect him. It makes no difference that he has been active in the assertion of his

Re AUCKLAND CO-OPERATIVE DRAPERY & CLOTHING Co., (LTD.), FRASER'S CASE (1887), 5 N. Z. L. R. 59.—N.Z.

720 iii. ———.] — Even though facts only known after winding up begins.]—Where persons are induced by misrepresentation to take shares in a co., it is too late to repudiate after the co. has gone into liquidation,

even when the grounds of repudiation have not been discovered until after the winding-up order has been made.—*Re BRUCE'S PATENT OATMEAL & MILLING Co., LTD., REID & GRAY'S CASE* (1893), 11 N. Z. L. R. 152.—N.Z.

725 i. ———.] — Unless proceedings begin before winding-up order.]

—*CANADIAN BANK OF COMMERCE v. WATT* (1907), 7 W. L. R. 255; 1 Alta. L. R. 68.—CAN.

k. ———.] — To repudiation as defence to action for calls.]—A shareholder whose name is on the register as such cannot repudiate his obligation to pay calls to the liquidator of the co. on the ground that he was induced

rights & has acted reasonably.—*Re CENTRAL KLONDYKE GOLD MINING & TRADING CO., LTD., THOMSON'S CASE* (1898), 5 Mans. 282.

730. ————*]*—In order that an appct. to whom shares have been allotted, & who seeks to be relieved of his liability on the shares on the ground of a misrepresentation by the co., may be discharged, there must have been either a repudiation by him, & a binding agreement by the co. to accept the repudiation; or else a repudiation by him, & actual proceedings commenced by him for the purpose of getting his name removed from the register before the winding-up of the co.; or else such proceedings commenced by another shareholder, & an agreement by the co. to treat that as a test case, & binding on it in his case also, although he was not a party to such proceedings.

S. had been induced to take shares through a misrepresentation of the directors, & on his discovery of the truth, at once told the secretary that he would have nothing to do with a co. of that sort, & that he withdrew his name; but he took no further steps to have his name removed from the register, the managing director having told him that the co.'s solr. had advised the board that they could not make him pay as a shareholder:—*Held*: S. had not satisfied the requirements for escaping liability, & his name must be settled on the list of contributories.—*Re LENNOX PUBLISHING CO., LTD., Ex p. STOREY* (1890), 62 L. T. 791; 6 T. L. R. 357; 2 Meg. 266.

See, also, Nos. 482, 699, *ante*.

731. ———— **Unless repudiation accepted by company.**—*Re LENNOX PUBLISHING CO., LTD., Ex p. STOREY*, No. 730, *ante*.

Repudiation of shares generally, *see* Sect. 17, sub-sect. 1, G., *post*.

732. ———— **Unless proceedings taken by another shareholder—& company agrees to be bound as to particular member.**—*Re LENNOX PUBLISHING CO., LTD., Ex p. STOREY*, No. 730, *ante*.

See, also, Nos. 689, 698, *ante*, No. 735, *post*.

Compare Nos. 784, 809, *post*.

733. **Sufficiency of proceedings taken before winding up—Plea of misrepresentation to action for calls.**—*Re CLEVELAND IRON CO., Ex p. STEVENSON*, No. 725, *ante*.

See, also, No. 738, *post*.

734. ———— **Bill filed before petition to wind up.**—*REESE RIVER SILVER MINING CO. v. SMITH*, No. 727, *ante*.

735. ———— **Demand for return of deposit—Representative action begun by another shareholder—Company agreeing to be bound as regards members joining—Particularly member not joining.**—A., amongst a number of other persons, was induced by misrepresentations to take shares in a co. On discovering that they had been deceived, a number of the shareholders repudiated their shares & formed themselves into a committee to protect themselves, & agreed to be bound by the result of a representative suit instituted against the co. by one of their number. A. did not join the committee, & did not repudiate his shares until the representative suit had terminated in favour of pltf. He then demanded back the money which he had paid on his shares, but took no active steps

to take the shares by misrepresentation, unless he takes proceedings to have his name removed from the register before the commencement of the winding up.—*Re FRUIT & VEGETABLE CO., LTD.* (1912), 12 S. R. N. S. W. 52; 29 N. S. W. W. N. 29.—AUS.

1. *Sufficiency of proceedings taken before winding up—Mere repudiation*

insufficient.—A shareholder in a co. in course of winding up, seeking to have his name removed from the list of contributories, on the ground that he was fraudulently induced to take the shares, must show that, before the commencement of the winding up, he had repudiated the contract, & taken proceedings to have his name removed

to have his name removed from the register of the shareholders on which he remained at the date of the winding up of the co.:—*Held*: he had lost his remedy, & he must be settled on the list of contributories.—*Re ESTATES INVESTMENT CO., ASHLEY'S CASE* (1870), L. R. 9 Eq. 263; 39 L. J. Ch. 354; 22 L. T. 83; 18 W. R. 395.

Annotations:—*Distd. Re Estates Investment Co., Mc-Niell's Case* (1870), L. R. 10 Eq. 503. *Consd. Re Scottish Petroleum Co.* (1883), 23 Ch. D. 413; *Re Snyder Dynamite Projectile Co., Skelton's Case* (1893), 68 L. T. 210. *Reid. Sharpley v. Louth & East Coast Ry.* (1876), 2 Ch. D. 663. *See, also*, No. 730, *ante*.

736. ———— **Notice of withdrawal from company.**—*Re LENNOX PUBLISHING CO., LTD., Ex p. STOREY*, No. 730, *ante*.

737. ———— **Active assertion of rights.**—*Re CENTRAL KLONDYKE GOLD MINING & TRADING CO., LTD., THOMSON'S CASE*, No. 729, *ante*.

738. ———— **Affidavit of intention to counterclaim for rescission—On application under R. S. C., Ord. 14, in action for calls—Counterclaim delivered after petition & before winding-up order.**—Where, in an action by a co. against one of its shareholders for calls, the shareholder, in opposition to an application by the co. for leave to sign final judgment under R. S. C., Ord. 14, files an affidavit stating that he intends to counterclaim for rescission of his contract to take the shares, on the ground of the misrepresentation of the co., & he obtains leave to defend on that footing, that is equivalent to taking proceedings to have his name removed from the register; & he will be allowed to proceed with his claim for rescission, although a petition to wind up the co., on which an order is subsequently made, is presented between the obtaining leave to defend & the delivery of the counterclaim.—*Re GENERAL RAILWAY SYNDICATE, WHITELEY'S CASE*, [1900] 1 Ch. 365; 69 L. J. Ch. 250; 82 L. T. 134; 48 W. R. 440; 16 T. L. R. 176; 44 Sol. Jo. 228; 8 Mans. 74, C. A.

Annotation:—*Consd. First National Reinsurance v. Greenfield*, [1921] 2 K. B. 260.

See, also, No. 725, *ante*.

(d) *By Bankruptcy or Death of Director or Shareholder.*

Claim for damages against director—Bankruptcy of director before judgment.—*See BANKRUPTCY & INSOLVENCY*, Vol. IV., p. 252, No. 2399.

——— **Whether provable.**—*See BANKRUPTCY & INSOLVENCY*, Vol. V., p. 1014, No. 8274.

739. ———— **Death of shareholder after judgment—Appeal pending—Right of action survives to personal representative.**—An action was brought to recover from the promoters of a public co. the price paid by pltf. for shares which had proved valueless, on the ground that the prospectus issued by them, in breach of 1867 Act, s. 38, omitted to disclose certain contracts which ought to have been specified therein. After judgment & pending appeal pltf. died:—*Held*: under R. S. C., Ord. 50, r. 4, pltf.'s interest in the action survived & was capable of "transmission" to his personal representative.—*TWYCROSS v. GRANT* (1878), 4 C. P. D. 40; 48 L. J. Q. B. 1; 39 L. T. 618; 27 W. R. 87, C. A.

Annotations:—*Mentd. Pulling v. G. E. Ry.* (1882), 9 Q. B. D. 110; *Hatchard v. Mège* (1887), 18 Q. B. D. 771; *Finlay v.*

from the register. The mere repudiation alone is insufficient.—*Re GAMBRINUS LAGER BEER BREWERY CO., LTD.* (1886), 12 V. L. R. 446.—AUS.

m. ———— **Must file bill—Or proceed under Cos. Act, 1862, sect. 35.**—*Re ETNA INSURANCE CO., LTD.* (1873), 6 I. R. Eq. 298.—IR.

Sect. 8.—The prospectus: Sub-sect. 3, E. (d) & F. (a), (b), (c), (d), (e), (f) & (g).]

Chirney (1888), 20 Q. B. D. 494; *London v. London Road Car Co.* (1888), 4 T. L. R. 448; *Quirk v. Thomas*, [1915] 1 K. B. 798.

740. — Death of director—“Actio personalis moritur cum persona.”—Where an action is brought by a shareholder against the co. & its directors in respect of an improperly issued prospectus to have the allotment of shares cancelled & for damages, the fact that the relief claimed against the several defts. may differ in detail is no ground for objection that the action is bad as joining separate causes of action against separate defts., for in substance there is only one cause of action, namely, the improper issue of the prospectus. Neither is it improper to join in such an action the legal personal representatives of a deceased director alleged to have been a party to the issue of the prospectus.

Qu.: whether the maxim “*Actio personalis moritur cum persona*” applies in the case of a deceased director who may have incurred liability under Directors’ Liability Act, 1890 (c. 64), s. 3.—*FRANKENBURG v. GREAT HORSELESS CARRIAGE CO.*, [1900] 1 Q. B. 504; 69 L. J. Q. B. 147; 81 L. T. 684; 44 Sol. Jo. 156; 7 Mans. 347, C. A.

Annotations:—*Reid*. *Bullock v. London General Omnibus Co.*, [1907] 1 K. B. 264; *Compania Sansinena De Carnes Congeladas v. Houlder*, [1910] 2 K. B. 354; *Geipel v. Peach*, [1917] 2 Ch. 108; *Re Beck, Attia v. Seed* (1918), 87 L. J. Ch. 335. *Mentd.* *Oesterreichische Export A. G. v. British Indemnity Insee.*, [1914] 2 K. B. 747.

741. — Whether action lies against executor.—The liability of directors, promoters & others, under 1908 Act, s. 84 (1), to pay compensation to subscribers for shares or debentures for loss or damage sustained by untrue statements in prospectuses or reports is a liability in tort, & an action in respect of such liability does not lie against the exor. of the tortfeasor unless by the latter’s tortious act property or the proceeds or value of property belonging to the person injured have been added to the tortfeasor’s estate.—*GEIPEL v. PEACH*, [1917] 2 Ch. 108; 86 L. J. Ch. 745; 117 L. T. 84; 61 Sol. Jo. 460.

See, generally, EXECUTORS & ADMINISTRATORS.

F. Practice.

(a) What Court has Jurisdiction.

See Nos. 753, 754, post.

Proceedings for rectification of register generally.]

—*See Nos. 1312, 1313, post.*

(b) Parties.

See R. S. C., Ord. 16, r. 1, & generally, PRACTICE & PROCEDURE.

742. Plaintiffs—Several allottees of shares—Deposit paid by one for all.—Three several allottees of shares in an intended railway co. filed a bill against the directors, alleging that the deposit on the shares allotted to them respectively had been wholly paid by one of them, & that they were jointly interested in them; & further alleging circumstances to show that the prospectus, on the faith of which the deposit was paid, contained untrue & delusive statements, which had been put

forth by defts. without any inquiry into their truth, & that the directors had kept back shares for the purpose of selling them at a premium. The bill charged that this was the purpose they had in view in carrying on the scheme, & not the benefit of the public; & prayed for a return of the deposit, with interest. A demurrer for misjoinder of plths. & want of equity was overruled.—*CRIDLAND v. DE MAULEY* (1848), 1 De G. & Sm. 459; 17 L. J. Ch. 190; 13 L. T. O. S. 337; 63 E. R. 1148, L. C.

Annotations:—*Reid*. *Stewart v. Austin* (1866), 15 W. R. 122; *Ramshire v. Bolton* (1869), L. R. 8 Eq. 294.

743. — Representative action—Whether permissible—Action of deceit.—A pltf. suing on the ground of general misrepresentation & suppression by the directors of a registered co., cannot file a bill on behalf of himself & other shareholders, the injury, if any, being a separate injury.

The prospectus of a banking co. announced that negotiations were pending & nearly completed for the purchase of important private banking concerns in Wales. Pltf. alleged that the co. threatened & intended to waste the assets of the co. in the establishment of rival banking concerns in the same towns in which the same private banks were established, & prayed that defts. might be restrained from opening any business in competition with the private banking concerns mentioned in the prospectus:—*Held*: the relief prayed for was inconsistent with the terms of the prospectus.—*CROSKEY v. BANK OF WALES* (1863), 4 Giff. 314; 8 L. T. 301; 9 Jur. N. S. 595; 66 E. R. 726.

Compare No. 4082, post.

—**Death of—Abatement.**—*See No. 29, ante.*

744. — Some of several plaintiffs—Application for order of revivor—After judgment in favour of survivors.—In an action of deceit, by 54 shareholders in a co. having several causes of action, some of plths. died before the trial. No application to postpone the trial or revive the action was made before judgment. At the trial judgment was given in favour of such of plths. as appeared to support their case. After judgment the personal representatives of deceased plths. applied, under R. S. C., Ord. 17, r. 4, for an order that the action should be carried on between them & the continuing parties:—*Held*: if there was jurisdiction, after judgment, to make the order, such order ought not to be made in the present case.—*ARNISON v. SMITH* (1889), 40 Ch. D. 567; 58 L. J. Ch. 335; 60 L. T. 206; 37 W. R. 405, C. A.; *subsequent proceedings*, 41 Ch. D. 98, 348, C. A.

745. Defendants—Relief claimed against company & directors—Legal personal representative of deceased director.—*FRANKENBURG v. GREAT HORSELESS CARRIAGE CO.*, No. 740, *ante*.

—**Action of deceit against director—Director’s trustee in bankruptcy.**—*See BANKRUPTCY & INSOLVENCY*, Vol. V., p. 1014, No. 8274.

—**Death of.**—*See Nos. 740, 741, ante.*

—**In proceedings for rectification generally.]**

—*See No. 1395, post.*

Proceedings against directors generally.]—See Sect. 28, sub-sect. 6, G., post.

PART III. SECT. 8, SUB-SECT. 3.—F. (b).

n. Plaintiffs—Representative action.—H. & H. sold eight leases to W. & B. for money down—promissory notes for more & paid up shares in a mining co. to be formed by W. & B. A prospectus issued by them stated the price in shares & money to be paid

to H. & H. for the purchase of the leases as £36,640, the excess being in an increased number of paid up & partly paid up shares. This excess of shares was appropriated to their own use by W. & B. As to part of them, they were issued in the names of H. & H. who signed transfers in blank of them & handed them to W. to be dealt with, as he thought fit.

The remainder were issued directly to B., who divided them equally between himself & S. who joined in endorsing the promissory notes to H. & H. On suit by a shareholder on behalf & against W. & B., H. & H. & the co.:—*Held*: S. was not a necessary party.—*BENJAMIN v. WYMOND* (1884), 10 V. L. R. 3.—AUS.

(c) *Joinder of Causes of Action.*

See R. S. C., Ord. 18, s. 1, & generally, PRACTICE & PROCEDURE.

746. Action of deceit — & statutory action for damages against three defendants—Joined with action for conspiracy against two defendants.]—Pltf. joined two causes of action founded on deceit & a statutory liability under Directors' Liability Act, 1890 (c. 64), against three defts., with a separate cause of action founded on conspiracy against two only of such defts.:—*Held*: such a joinder of separate causes of action was inadmissible.—*GOWER v. COULDRIDGE*, [1898] 1 Q. B. 348; 67 L. J. Q. B. 251; 77 L. T. 707; 46 W. R. 214; 14 T. L. R. 165; 42 Sol. Jo. 197, C. A.

Annotations:—*Expld.* *Frankenburg v. Great Horseless Carriage Co.*, [1900] 1 Q. B. 504. *Refd.* *Kent Coal Exploration Co. v. Martin* (1900), 16 T. L. R. 486; *Pope v. Hawtrey* (1901), 85 L. T. 263.

747. Action for damages against directors — By several debenture-holders.]—*DRINCQUIER v. WOOD*, No. 677, *ante*.

748. Separate relief claimed against company & directors—Damages—Cancellation of allotment.]—*FRANKENBURG v. GREAT HORSELESS CARRIAGE Co.*, No. 740, *ante*.

Proceedings against directors generally.]—See sect. 28, sub-sect. 6, G., *post*.

(d) *Interlocutory Proceedings.*

See, generally, PRACTICE & PROCEDURE.

Payment into court—Amount of unpaid calls—Action for rescission—As condition of restraining order.]—See Nos. 2149–2152, *post*.

749. Inspection of documents — Application by subscribers for services of company.]—In an action for an alleged misrepresentation in the prospectus of a co. the statement complained of was that 2,500 persons had enrolled themselves as annual subscribers to the co. In an affidavit of documents defts. stated that they had in their possession 2,500 applications by persons wishing to be enrolled as annual subscribers to the co., but that they objected to produce them on the ground that they were part of the evidence supporting defts.' case, & did not support or tend to support pltf.'s case, & contained nothing impeaching the case of defts.:—*Held*: pltf. was not entitled to inspection of the applications.—*FRANKENSTEIN v. GAVIN'S CYCLE CLEANING & INSURANCE CO.*, [1897] 2 Q. B. 62; 66 L. J. Q. B. 668; 76 L. T. 747; 45 W. R. 547, C. A.

See, generally, DISCOVERY, INSPECTION & INTERROGATORIES.

Inspection of company's books by members.]—See Sect. 12, sub-sect. 4, A. (b), *post*.

(e) *Pleading.*

See, generally, PLEADING; PRACTICE & PROCEDURE.

750. What must be pleaded — Action for rescission—Particular representations influencing shareholder.]—*MCEUEN v. WEST LONDON WHARVES & WAREHOUSES CO.*, No. 585, *ante*.

751. — Particulars of falsity — Motives for issue of prospectus.]—*HERRING v. BISCHOFFSHEIM*, [1876] W. N. 77; 3 Char. Pr. Cas. 54.

Annotation:—*Refd.* *Harbord v. Monk* (1878), 38 L. T. 411.

752. — Action against directors & company — Claim for indemnity & rescission—Claim for rescission in subsequent winding up refused—Leave to amend refused.]—*CARGILL v. BOWER*, No. 663, *ante*.

See, also, No. 758, *post*.

Amendment of pleadings.]—See No. 663, *ante*, No. 763, *post*.

Misrepresentation as defence to actions to take up shares or for calls.]—See Sub-sect. 3, C. (a), *ante*.

(f) *Mode of Trial.*

See, generally, PRACTICE & PROCEDURE.

753. Whether with jury — Action for rescission — Discretion of court.]—In a suit by bill against the directors of a co. to rescind pltf.'s contract to take shares on the ground of misrepresentations in the prospectus, one of defts. gave a counternotice of trial before a jury:—*Held*: the judge in the Ch. Div. had a discretionary power under R. S. C., Ord. 36, r. 26, to refuse to allow the case to be tried before a jury, & as the question involved was one of fraud, & therefore peculiarly within the jurisdiction of the Ch. Div., a jury was refused.—*BACK v. HAY* (1877), 5 Ch. D. 235; 36 L. T. 295; 25 W. R. 392.

Annotations:—*Apld.* *Pilley v. Baylis* (1877), 5 Ch. D. 241. *Folld.* *Mirehouse v. Barnett* (1878), 47 L. J. Ch. 689. *Mentd.* *Brooke v. Wigg* (1878), 8 Ch. D. 510; *Ruston v. Tobin* (1879), 10 Ch. D. 558.

754. — Action against directors — Some defendants not concurring.]—The right of a deft., under R. S. C., Ord. 36, r. 3, to have the issues of fact tried before a judge & jury is subject to r. 26 of the same ord., which gives the ct. power, if it should appear desirable, to direct a trial without a jury of any question or issue of fact arising in any cause or matter which, previously to the passing of Jud. Act, 1873, could, without any consent of the parties, have been tried without a jury; such power, however, is discretionary, & will only be exercised on sufficient grounds being shown to the ct.

Where there are several defts. & all do not desire to have the case tried before a jury, the ct. will not comply with the request of one unless it is of opinion that the case comes within r. 27, *i.e.*, that it is more convenient that it should be so tried.

In an action, the subject of which would have been a proper subject for a suit in the old Ct. of Ch., the action being one against directors for fraud & misrepresentation in a prospectus, a motion by one deft. to have the case, or so much of it as affected him, tried before a judge & jury was refused because the other deft. did not concur, & because the same question had already been tried before a judge & jury in two similar actions with great difficulty & at great length & with varying results, & to have it tried in the Ch. Div. would occasion a great saving of time & money.—*MIREHOUSE v. BARNETT* (1878), 47 L. J. Ch. 689; 26 W. R. 690.

Annotation:—*Apld.* *Moss v. Bradburn* (1884), 32 W. R. 368.

755. — Question already tried in similar action.]—*MIREHOUSE v. BARNETT*, No. 754, *ante*.

See, now, R. S. C., Ord. 36, rr. 2–9.

Application for rectification of register.]—See No. 593, *ante*, Nos. 1391, 1393, *post*.

(g) *Evidence.*

See, generally, EVIDENCE.

756. Admissibility — Action for rescission — Proof of untruth of representation—Statement of chairman at meeting of shareholders.]—A shareholder in a co. applied to have his name removed from the register of members on the ground that he had been induced to become a shareholder by a material misrepresentation in a prospectus issued by the co. The only evidence of the untruth of the representation was a statement made by the chairman of the co. in a speech addressed by him to a meeting of the shareholders:—*Held*: this

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statement was not admissible evidence against the co., inasmuch as the chairman in making it was not acting as the agent of the co. in a transaction between them & a third party, but was making a confidential report to his own principal.—*Re DEVALA PROVIDENT GOLD MINING CO.* (1883), 22 Ch. D. 593; *sub nom. Re DEVALA PROVIDENT GOLD MINING CO., LTD., Ex p. ABBOTT*, 52 L. J. Ch. 434; 48 L. T. 259; 31 W. R. 425.

Annotation:—*Fold. Re Djambi Sumatra Rubber Estates* (1912), 107 L. T. 631.

757. — Report by deceased agent of company.]—On a motion by a shareholder to rectify the register of members of a co. by removing the name of the appct. therefrom on the ground of misrepresentations in the prospectus of the co., the appct. tendered as evidence of untruths in the prospectus a report which had been made by an agent of the co. who was employed by the directors to inspect & report to them on the estates which had been acquired by the co.

Objection was taken to the admissibility of the report as evidence because the same was made one month after the inspection had taken place, the agent having been lying half that time unconscious in a hospital. He had died shortly before the motion came on for hearing:—*Held*: that a document could not be admitted as evidence after the death of the writer, even though made in the course of his duty, unless it was contemporaneous; & that in the present case the report in question came within that well-established rule.—*Re DJAMBI (SUMATRA) RUBBER ESTATES, LTD.* (1912), 107 L. T. 631; 29 T. L. R. 28; 57 Sol. Jo. 43, C. A.

758. — Matter not raised in pleading—Validity of patent.]—The prospectus of a co. formed to acquire a patent contained statements that the patent was valuable, & that a favourable report as to its validity had been obtained. Certain shareholders brought an action to have their names removed from the register of members, on the ground that these & other statements were misrepresentations. At the trial plffs. desired to adduce evidence to show that the patent was invalid, & had been anticipated. The validity of the patent had not in any way been impugned by any other persons:—*Held*: an inquiry of that kind was not proper in such a case; the only question was, whether the patent was valuable at the date of the prospectus, & the evidence was not admitted.—*STAVERT v. PASSBURG GRAINS SYNDICATE, LTD.* (1891), 8 R. P. C. 400.

759. — Action of deceit—Representations prior to letters of allotment.]—*BALE v. CLELAND*, No. 654, *ante*.

760. — Prospectus received from agent Without proof of agency.]—*BALE v. CLELAND*, No. 654, *ante*.

761. — Statement by agent employed to sell shares.]—*BALE v. CLELAND*, No. 654, *ante*.

762. — Newspaper containing quotation of shares.]—*BALE v. CLELAND*, No. 654, *ante*.

763. — Matter not raised in pleading—Leave to amend refused.]—The statement of claim in an action for fraudulent misrepresentation in a prospectus relating to a co. contained a general allegation that the prospectus comprised many untrue & misleading statements, & then set out certain specific instances of alleged misrepresentations, amongst others the following:—

“That the plastic or surface clay on the F. property was of an average depth of thirteen feet, whereas, in fact, at the deepest part, such clay was only eleven feet or thereabouts in depth, diminishing to two feet.” At the trial plff. proposed to adduce evidence that there was an average depth of six feet of clay, that only four feet of this could be used for making the best bricks, & that, instead of there being 33 acres in the property as stated in the prospectus, there were, in reality, only eighteen acres:—*Held*: evidence of these alleged misrepresentations could not be admitted as they had not been specifically pleaded, & leave to amend would not be granted.—*SYMONDS v. CITY BANK* (1886), 34 W. R. 364; 2 T. L. R. 330.

Onus of proof—On plea of misrepresentation as defence to action for calls.]—*See* No. 570, *ante*.

Action for rescission—That shareholder influenced.]—*See* No. 601, *ante*.

Action for deceit—That shareholder influenced.]—*See* No. 652, *ante*.

That misrepresentation fraudulent.]—*See* No. 641, *ante*.

What shareholder must prove—Action for rescission.]—*See* No. 600, *ante*.

(h) Costs.

See, generally, PRACTICE & PROCEDURE; SOLICITORS.

764. Counsel's fees.]—A., B., & C. brought separate actions against a co. to have the register of the co. rectified by removing their names from the register in respect of certain shares therein. The same solr. & counsel acted for plffs. in all three actions. A.'s action having been tried & decided in favour of A. it was arranged that the evidence taken in that action should be used in the actions of B. & C. Both actions were heard on Jan. 16, 1890, plffs. in each case being represented by the same counsel, each of whom was supplied with two copies of all the documents & evidence. In both actions the ct. ordered the register to be rectified by removing the names of the appcts. B. & C. therefrom, & ordered repayment of the deposits with interest at 4 per cent. & costs, such costs to be taxed by the taxing master. After B.'s costs had been taxed, the taxing master in C.'s case disallowed certain items because the items were similar in every particular to the bill relating to B., such as correspondence, evidence, copies of the memorandum, & arts. of assocn., etc., & he reduced counsel's fees because in his opinion the fees given were excessive & not justified by the circumstances of the case. On summons to vary the taxing master's certificate:—*Held*: the client having retained a solr., was entitled to have his case taken into ct. in the best possible manner without regard to any other case; the cases being cases of fraud, evidence that was conclusive in the one was not necessarily conclusive in the other; the solr. was entitled to charge in both actions, & also counsel were entitled to fees on both briefs.—*Re METROPOLITAN COAL CONSUMERS' ASSOCN., GRIEB'S CASE* (1890), 45 Ch. D. 606; 59 L. J. Ch. 532; 62 L. T. 561; 38 W. R. 462.

765. Action of deceit against directors—Company in liquidation—Costs of application for leave to proceed—Costs in suit.]—*HENDERSON v. LACON*, No. 629, *ante*.

766. — Directors believing truth of statements—Entitled to costs.]—Plff. sued a co. & its

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o. Action against directors—Appearance of unnecessary parties—Against whom no relief claimed—Abide own costs.]—*BENJAMIN v. WYMOND* (1884), 10 V. L. R. 3.—**AUS.**

directors for compensation under 1908 Act, s. 84, alleging that a prospectus issued by defts. contained false statements. The jury found that pltf. applied for shares in the co. on the faith of certain statements in the prospectus issued by the directors, & that the statements were untrue; they also found that B. & K., two of the directors, had reasonable ground to believe & did believe that the statements were true. Judgment was ordered to be entered for B. & K. against pltf., & for pltf. against the co., each party to have the costs of those issues on which they were successful:—*Held*: B. & K. were entitled to costs against pltf., notwithstanding that pltf. had proved the issue of the prospectus by B. & K., that he had applied for shares on the faith of the prospectus, & that the prospectus contained untrue statements. There was only one issue between pltf. & B. & K., namely, their liability under sect. 84, & on that issue B. & K. had succeeded.—*BIRD v. STANDARD OIL CO. OF CANADA* (1915), 85 L. J. K. B. 935; 114 L. T. 316; 60 Sol. Jo. 189, C. A.

Annotation:—*Mentd. Yorke v. Yorkshire Insce.*, [1918] 1 K. B. 662.

767. Action for rescission—Actions by several shareholders—One solicitor employed.—*Re METROPOLITAN COAL CONSUMERS' ASSOCN., GRIEB'S CASE*, No. 764, *ante*.

768. — Costs of interlocutory applications made costs in action by consent—Whether costs of motion.—On July 23, 1889, a motion on behalf of W. to remove his name from the register of the co. in respect of certain shares came on for hearing as an action with witnesses. W. was not present for examination, & the ct., as an indulgence, allowed the motion to stand over on condition that W. paid to the co. "all their costs of such motion incurred up to the present time, including the costs of the hearing of this motion this day." On Dec. 16, 1889, the motion was decided in favour of W., & the taxing master ordered to tax the costs of W. of his motion, except the costs of the said order of July 23, 1889, directed to be paid by him. The solrs. of the co. sent in a bill of costs of the motion up to July 23, 1889, including the costs of the motion on that day. W. objected to pay any costs for items which were utilised at the postponed hearing. He also objected to pay the costs of an interlocutory application to attach the secretary of the co. for non-compliance with an order for discovery, which costs had by consent been made cost in action; also the costs on an interlocutory application to postpone the trial, on which no order was made:—*Held*: the taxing master had acted upon a wrong principle in including these interlocutory applications in the costs of the motion, which W. was ordered to pay; the other items for *subpoenas*, etc., which were utilised at the postponed trial, were in the discretion of the taxing master, & W. must pay them.—*Re METROPOLITAN COAL CONSUMERS' ASSOCN., WAINWRIGHT'S CASE* (1890), 63 L. T. 216.

769. — Writ issued before winding up — Summons for rectification issued after winding up — Costs added to amount of claim.—*Re SNYDER DYNAMITE PROJECTILE CO., LTD.* (1893), 37 Sol. Jo. 304.

770. — Motion adjourned at request of plaintiff—Costs of items utilised at postponed hearing.—*Re METROPOLITAN COAL CONSUMERS' ASSOCN., WAINWRIGHT'S CASE*, No. 768, *ante*.

(i) *Other Cases.*

Leave to defend—Action for calls—Proceedings under R. S. C., Ord. 14.—*See* Nos. 571, 572, *ante*.

See, generally, PRACTICE & PROCEDURE.

Order—Form of—Company admitting right of rescission.—*See* No. 1393, *post*.

771. Appeal—Relief granted on some of alleged grounds only—May be sustained on any grounds originally alleged.—*CENTRAL RY. CO. OF VENEZUELA (DIRECTORS, ETC.) v. KISCH*, No. 405, *ante*.

SUB-SECT. 4.—DEPARTURE FROM OR VARIATION OF OBJECTS STATED IN PROSPECTUS.

A. *As Ground for Relief.*

772. General rule.—*OAKES v. TURQUAND & HARDING, PEEK v. TURQUAND & HARDING, Re OVEREND, GURNEY & CO.*, No. 1, *ante*.

773. By constitution of company—Must be substantial—Rules of mining company not in accordance with cost-book system.—R., on the faith of a prospectus, stating that a company was shortly to be formed, to be conducted on the cost-book system, applied for, received, & paid deposit on shares in the co. He subsequently received scrip certificates in respect of such shares, whereon it was stated that the shares were to be held subject to the rules & regulations of the co. At the date of the receipt by R. of the scrip certificates sent to him there were no rules or regulations of the co. in existence, but soon after such receipt rules & regulations were entered on the cost book of the co. R. neither signed the cost book, nor attended meetings of the co., nor received any notices of such meetings, & he alleged that the rules & regulations above-mentioned were at variance with the prospectus, & not in accordance with the cost-book system. The co. was not abortive or fraudulent, but was unsuccessful, & was in course of being wound up. On the question whether R. ought to be placed on the list of contributories:—*Held*: he ought, no substantial variation between the prospectus & the rules having been proved, but leave reserved to enter into evidence in chambers to prove that the rules were at variance with the cost-book system.—*Re GREAT CAMBRIAN MINING & QUARRYING CO., RICHARDSON'S CASE* (1856), 27 L. T. O. S. 197; 4 W. R. 670.

774. — Substitution of fresh articles.—The prospectus of a co. stated that the capital consisted of 15,000 shares of £10 each; first issue 10,000 shares. A. applied for shares, which were allotted to him:—*Held*: (1) A. could not resist being put on the list of contributories, on the ground that less than 900 shares had ever been taken; (2) alteration of the arts. of assocn. of a co. between an application for shares & their allotment, did not invalidate the allotment, such alteration being made under the authority of 1862 Act, & the objects of the co. not being thereby altered.—*Re ENGLISH, ETC., ROLLING STOCK CO.*,

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p. *By constitution of company—Must be substantial—Objects of company extended—Material variation.*—Where a co.'s prospectus sets forth that the co. is formed "to carry on the business of woollen-manufacturers, whether the manufactured articles are wholly or in part composed of wool," & the

registered memorandum of assocn. specifies as the object of the co. "the manufacture of woollen & other goods," there is such a material variance between the prospectus & the memorandum of assocn. as entitles a member of the co., who has neither paid calls on his shares nor accepted the memorandum of assocn. to be relieved from his contract.—*NORTH NEW ZEALAND*

WOOLLEN MANUFACTURING CO. (LTD.) v. CAIRNS (1888), 6 N. Z. L. R. 12.—N.Z.

q. — *Power to make calls.*—A prospectus stated as one of the terms on which shares were being issued that calls would be made at intervals of not less than a month, but the arts. of assocn. authorised the

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LYON'S CASE (1866), 35 Beav. 646; 14 L. T. 507; 12 Jur. N. S. 738; 14 W. R. 720; 55 E. R. 1048.

775. Objects of company extended.]—The prospectus of a co., provisionally registered, was issued in Oct. 1846, & stated that the capital would be £50,000, of which £38,000 would be expended in the purchase of a certain slate quarry, & the residue left to carry on the business of the co. By letter R. applied for fifty shares, & thereby engaged to execute the deed of settlement. The directors allotted to R. thirty shares, & he thereupon paid a deposit of 1s. per share, or the same was paid on his behalf. In Feb. 1847, the deed of settlement was prepared, but it was never executed by R. The powers of the co. were by the deed extended to the purchase of any slate quarries in Great Britain or Ireland, & the capital was enlarged from £50,000 to £100,000. In winding up the affairs of the co. the master placed R.'s name on the list of contributories for a call of £2 per share:—*Held*: R. was not liable to be called upon to contribute towards the winding up of the co., there being no evidence that he ever engaged to take shares in such undertaking.—*Re MERIONETHSHIRE SLATE & SLATE SLAB CO., Ex p. RYE* (1857), 29 L. T. O. S. 121; 3 Jur. N. S. 460.

776. —.]—(1) Before a co. had been registered, a person applied for shares on the faith of a prospectus stating the objects of the co., & immediately after its registration shares were allotted to him. The objects of the co. as defined by the memorandum of assocn., extended much further than the prospectus:—*Held*: he was entitled to have his name removed from the register.

(2) The co. was registered on Apr. 28, 1865. In the autumn the committee of the Stock Exchange refused to appoint a settling day, on the ground of a variance between the prospectus & memorandum in a point of minor importance. S., who had taken shares on the faith of the prospectus, attended a meeting in Sept., held for the purpose of correcting this variance:—*Held*: his attending this meeting was not a sufficient ground for fixing him with notice of the more important variances between the prospectus & memorandum, so as to affect his rights by acquiescence, he positively swearing that he did not know of those variances, & had never seen the memorandum, or had any acquaintance with its contents, till May, 1866, when he at once repudiated his shares.

(3) The ct. had jurisdiction under 1862 Act, s. 35, to rectify the register.—*Re RUSSIAN (VYKSOUNSKY) IRON WORKS CO., STEWART'S CASE* (1866), 1 Ch. App. 574; 35 L. J. Ch. 738; 14 L. T. 817; 12 Jur. N. S. 755; 14 W. R. 943, L. JJ.

Annotations:—As to (1) *Distd.* *Hallows v. Fernie* (1867), L. R. 3 Eq. 520. *Consd.* *Oakes v. Turquand & Harding, Peek v. Turquand & Harding, Re Overend, Gurney* (1867), L. R. 2 H. L. 325. *Apld.* *Re Metropolitan Coal Consumers' Assocn., Karberg's Case*, [1892] 3 Ch. 1. *Refd.* *Re Pacaya Rubber & Produce Co., Burns' Appln.*, [1914] 1 Ch. 542. As to (2) *Distd.* *Re Cachar Co., Lawrence's Case, Re Russian (Vyksounsky) Iron Works Co., Kincaid's Case* (1867), 2 Ch. App. 412; *Re Russian (Vyksounsky) Ironworks Co., Taite's Case* (1867), L. R. 3 Eq. 795; *Re Russian (Vyksounsky) Ironworks Co., Whitehouse's Case* (1867), L. R. 3 Eq. 790. *Refd.* *Re Imperial Mercantile Credit Assocn., Chapman & Barker's Case* (1866), 15 W. R. 334; *Re Russian (Vyksounsky) Ironworks Co., Webster's Case* (1866), L. R. 2 Eq. 741. As to (3) *Refd.* *Re Overend,*

Gurney, Musgrave & Hart's Case (1867), L. R. 5 Eq. 193; *Re Diamond Rock Boring Co., Ex p. Shaw* (1877), 2 Q. B. D. 463. *Generally, Mentd.* *Stewart v. Austin* (1866), 15 L. T. 407.

777. — Obligations substantially different —Not mere difference of language.]—Where it is clear that the objects of a co., as set out in the memorandum of assocn., go far beyond what was indicated in the prospectus, on the faith of which prospectus a person had applied for & obtained shares, he is, unless barred by laches or acquiescence, entitled on discovering the difference to have his name removed from the co. A mere difference in the language of the prospectus & the memorandum would not relieve him from his liability. The question would be, whether the obligations incurred under the two documents were substantially different. A person who takes shares on the faith of a prospectus, the terms of which are materially varied by the subsequent memorandum of assocn., must claim his exemption from that cause within a reasonable time after the memorandum has been issued; otherwise he will be debarred by his laches from doing so. This especially applies in the case of a contest between the shareholder himself & another shareholder, or between him & the official liquidator. But this rule of reasonable time will not apply in the case of a contest between the shareholder, & a person who prepared the prospectus, & afterwards issued the memorandum of assocn. Where, therefore, in May, 1864, A. published a prospectus of a proposed co. & B. took shares in it, & paid the first deposit, & a memorandum of arts. of assocn. was registered in June, & after an inquiry instituted by B. in Dec. 1864, he paid a further deposit, & an application was afterwards made by a third person to wind up the co., & then, in Jan. 1865, B. applied for & obtained an order to have his name removed from the register of the co. upon the ground that the memorandum varied in many important respects from the prospectus, so as, in fact, to constitute a totally different undertaking, & alleged that till Dec. 1864, he had never known of the difference between the two documents:—*Held*: an application by A. to rescind the order for the removal of B.'s name had been rightly refused by the ct. below, whatever might be B.'s liability as between himself & the official liquidator, or another innocent shareholder, or a creditor of the co.—*DOWNES v. SHIP* (1868), L. R. 3 H. L. 343; 37 L. J. Ch. 642; 17 W. R. 34; *sub nom.* *DOWNES v. SHIP, Re SCOTTISH & UNIVERSAL FINANCE BANK, LTD.*, 19 L. T. 74, H. L.; *affg.* *S. C. sub nom. Re SCOTTISH & UNIVERSAL FINANCE BANK, LTD., SHIP'S CASE* (1865), 2 De G. J. & Sm. 544, L. JJ.

Annotations:—*Apld.* *Re Russian (Vyksounsky) Iron Works, Stewart's Case* (1866), 1 Ch. App. 578, n. *Consd.* *Hallows v. Fernie* (1867), L. R. 3 Eq. 520; *Oakes v. Turquand & Harding, Peek v. Turquand & Harding, Re Overend, Gurney* (1867), L. R. 2 H. L. 325; *Re Russian (Vyksounsky) Iron Works Co., Paige's Case* (1867), 15 W. R. 891; *Ship v. Crosskill* (1870), L. R. 10 Eq. 73. *Apld.* *Re Metropolitan Coal Consumers' Assocn., Karberg's Case*, [1892] 3 Ch. 1. *Refd.* *Re Russian (Vyksounsky) Ironworks Co., Webster's Case* (1866), L. R. 2 Eq. 741; *Bwlch-y-Piwm Lead Mining Co. v. Baynes* (1867), L. R. 2 Exch. 324; *Kennedy v. Panama, etc. Mail Co.* (1867), L. R. 2 Q. B. 580. *Re Pacaya Rubber & Produce Co., Burns' Appln.*, [1914] 1 Ch. 542. *Mentd.* *Re Scottish & Universal Finance Banking Assocn., Buckridge's Case* (1865), 13 W. R. 677; *Re Bank of Hindustan, China & Japan, Levick's Case* (1867), 17 L. T. 237; *Re Imperial Mercantile Credit Assocn., Chapman & Barker's Case* (1867), L. R. 3 Eq. 361; *Re Overend, Gurney* (1867), 15

directors to make calls as they should think fit, & the form of application signed by the deft. was for shares in the co. upon the terms in the memorandum & arts. The memorandum &

articles were before the deft., together with the prospectus, when he made his application:—*Held*: the articles & not the prospectus constituted the contract between the co. & deft., &

the fact that a call had been made less than one month after another was no defence to an action against deft. for the call so made.—*LYELL HYDRAULIC SLUICING CO. (LTD.) v.*

W. R. 528; *Re Oriental Commercial Bank, Alabaster's Case* (1868), L. R. 7 Eq. 273; *Banner v. Johnston* (1871), L. R. 5 H. L. 157; *Re London Metallurgical Co., Ex p. Parker* (1895), 64 L. J. Ch. 442; *Townsend v. Moore*, [1905] P. 66.

See, also, No. 786, *post*.

778. Objects of company varied — Amalgamation of companies—By buying out shares instead of incorporation—No defence to action for calls.]—ACCIDENTAL & MARINE INSURANCE CORPN., LTD. *v. DAVIS*, No. 1187, *post*.

779. Improper allotment of shares — Issue insufficiently subscribed.]—The Z. Co. issued their prospectus stating their proposed capital as £500,000 in 25,000 shares the first issue to be £250,000. Pltf. applied for 200 shares & paid the deposit, but afterwards discovered that not more than 900 shares, including those allotted to him, had been applied for & allotted, with which capital the directors proposed to commence business on a more limited scale. Pltf. applied to the co. to have his name removed from the register, & to have his deposit returned, which was refused:—*Held*: on demurrer to a bill filed by pltf. against the co., the co. was not justified in commencing business, & pltf. was entitled to a return of his deposit, & to have his name removed from the co.'s register.—*ELDER v. NEW ZEALAND LAND IMPROVEMENT CO., LTD.* (1874), 30 L. T. 285.

Annotation:—*Reid. Re Liverpool Household Stores Asscn.* (1890), 59 L. J. Ch. 616.

780. ———.]—ROOPER *v. EAST NORFOLK TRAMWAY CO.* (1875), 10 L. J. N. C. 139, C. A.

Annotation:—*Folld. Sharpley v. Louth & East Coast Ry.* (1876), 2 Ch. D. 663.

781. ———.]—A shareholder in a co. filed a bill to have his contract to take shares declared void on the ground of deception & misrepresentation of the co. by reason of their having commenced their railway when only one-fifth of the share capital was subscribed, & having entered into a contract for the construction of a part only of the proposed line, with insufficient capital:—*Held*: his bill must be dismissed on the ground of his having continued to act as a shareholder for some months after he became aware of the circumstances on which he founded his case.—*SHARPLEY v. LOUTH & EAST COAST RY. CO.* (1876), 2 Ch. D. 663; 46 L. J. Ch. 259; 35 L. T. 71, C. A.

Annotations:—*Reid. Re Metropolitan Coal Consumers' Asscn., Ex p. Edwards* (1891), 64 L. T. 561; *Aaron's Reefs v. Twiss*, [1896] A. C. 273.

782. ———.]—FINANCE & ISSUE, LTD. *v. CANADIAN PRODUCE CORPN., LTD.*, No. 551, *ante*.

See, also, No. 774, *ante*.

Change of name.]—See No. 785, *post*.

See, also, No. 1341, *post*.

783. By change of directors — Before allotment.]—An applt. for shares in a co. received a letter of allotment, & at the same time a letter informing him that two of the four directors named in the prospectus had retired. The appct. on the same day wrote to the co. stating that he had applied for shares entirely in consequence of these two directors being directors, & asking to have the allotment cancelled:—*Held*: under the circumstances the appct. was entitled to have his name

removed from the register of shareholders.—*Re SCOTTISH PETROLEUM CO., ANDERSON'S CASE* (1881), 17 Ch. D. 373; 50 L. J. Ch. 269; 43 L. T. 723; 29 W. R. 372.

Annotations:—*Apprvd. Re Scottish Petroleum Co.* (1883), 23 Ch. D. 413. *Reid. Re Metropolitan Coal Consumers' Asscn., Karberg's Case*, [1892] 3 Ch. 1.

784. ———.]—By the arts. of assocn. of a limited co. it was provided that the number of directors should not be less than four or more than seven, & G., R., S. & Y. were named the first directors. It was provided that two directors should form a quorum, & that the continuing directors might act notwithstanding any vacancy in the board. The directors were empowered to fill up casual vacancies. A prospectus was issued giving the names of the directors & mentioning G. as chairman. W., who was acquainted with G., after communicating with him, applied for shares on the faith of G. & R., being directors. At the first meeting of directors on Nov. 12, 1880, S. & Y. only were present, G. & R. having sent in their resignations on that day; S. & Y. elected a third director who was not present, & proceeded to allot shares. A letter of allotment in the common form was received by W. about Nov. 15, accompanied with a letter stating that G. & R. had resigned. W. on Nov. 27 wrote to withdraw his offer to take shares on the ground of G. & R. not being directors. The co. refused to withdraw his name:—*Held*: (1) as the application to take shares was made on the faith of G. & R. being directors, & they had ceased to be so before allotment, the allotment was voidable; (2) assuming W. to have had a right to rescind, still as he had not before the winding up taken any proceedings to have his name removed from the register, he must be on the list of contributories.—*Re SCOTTISH PETROLEUM CO.* (1883), 23 Ch. D. 413; *sub nom. Re SCOTTISH PETROLEUM CO., WALLACE'S CASE*, 49 L. T. 348; 31 W. R. 846, C. A.

Annotations:—*As to (1) Reid. Re Metropolitan Coal Consumers' Asscn., Wainwright's Case* (1889), 62 L. T. 30. *As to (2) Consd. Re London & Leeds Bank, Ex p. Carling*, [1887] 56 L. J. Ch. 321; *Carling v. London & Leeds Bank* (1887), 56 L. J. Ch. 321; *Re General Railway Syndicate, Whiteley's Case*, [1900] 1 Ch. 365. *As to (2) Reid. Re Lennox Publishing Co., Ex p. Storey* (1890), 62 L. T. 791; *Re Snyder Dynamite Projectile Co., Skelton's Case* (1893), 68 L. T. 210; *Aaron's Reefs v. Twiss*, [1896] A. C. 273; *Re Central Klondyke Gold Mining & Trading Co., Thomson's Case* (1898), 5 Mans. 282; *First National Reinsurance v. Greenfield*, [1921] 2 K. B. 260. *Generally, Mentd. Re Florence Land & Public Works Co., Nicol's Case, Tufnell & Ponsonby's Case* (1885), 29 Ch. D. 421; *Faure Electric Accumulator Co. v. Phillipart* (1888), 58 L. T. 525; *Re British Medical & General Life Asscn.* (1889), 5 T. L. R. 502; *Re Bank of Syria, Owen & Ashworth's Claim, Whitworth's Claim*, [1901] 1 Ch. 115; *Re Sly, Spink*, [1911] 2 Ch. 430.

Compare Nos. 530, 556, *ante*.

Change of objects.]—See No. 809, *post*.

Conditional application for shares.]—See No. 95, *ante*, No. 1526, *post*.

Fraudulent misstatement of intention—As ground for action of deceit.]—See No. 635, *ante*.

B. Notice of Departure.

785. Sufficiency of notice — Form of answer to application for shares—Differing from prospectus.]

HARCOURT (1904), 23 N. Z. L. R. 168.—N.Z.

r. Improper allotment of shares—Issue insufficiently subscribed—Fresh memorandum substituted for that signed.]—Appct. signed a proposed memorandum of assocn. for the formation of a co., & agreed to take 100 shares. This proposed memorandum was attached to the prospectus of the co. At the same time the appct. signed a consent to act as a director of the proposed co. Subsequently appct.

was unable to attend to any business for some months. In the meantime the memorandum of assocn. & the arts. of assocn. of the proposed co. were prepared for the purpose of delivery to & registration with the Registrar of Companies. The memorandum of assocn. did not correspond entirely with the document which the appct. had signed. While the appct. was unable to attend to business, his nephew, without his authority, signed on his behalf the memorandum of

assocn. prepared for registration, & the co. was registered. The directors met, & though the minimum number of shares fixed by the prospectus had not been applied for the allotment of shares was proceeded with, & other irregularities occurred:—*Held*: appct. was entitled to have his name removed from the register of members of the company, & to recover the moneys paid in by him.—*Re FRANK HARRIS GRANITE CO. (LTD.)* (No. 2) (1913), 32 N. Z. L. R. 837.—N.Z.

Sect. 8.—The prospectus: Sub-sect. 4, C.; sub-sect. 5. Sects. 9 & 10: Sub-sects. 1 & 2, A. & B.]

795; 36 L. J. Ch. 475; 16 L. T. 343; 15 W. R. 891, 894.

Annotation:—*Consd.* First National Reinsurance v. Greenfield, [1921] 2 K. B. 260.

Compare Sub-sect. 3, E. (a), *ante*.

808. By company being wound up—Repudiation after failure of company—Constructive notice.]—OAKES v. TURQUAND & HARDING, PEEK v. TURQUAND & HARDING, *Re* OVEREND, GURNEY & Co., No. 1, *ante*.

809. — Repudiation before winding up—& deposit returned.]—A shareholder in a co., being in a position to file a bill against the co. to have his name removed from the register [the total object of the scheme of the co. being changed], wrote to the secretary declining to have anything further to do with the co., & requesting that his deposit might be returned. The deposit was returned, but his name remained on the register of shareholders. Eighteen months afterwards the co. was ordered to be wound up:—*Held*: he was not a contributory.—*Re* CANADIAN NATIVE OIL Co., FOX'S CASE (1868), L. R. 5 Eq. 118; 37 L. J. Ch. 257.

Annotations:—*Distd.* *Re* Anglo-Danubian Steam Navigation & Colliery Co., Walker's Case (1868), L. R. 6 Eq. 30. *Consd.* *Re* Scottish Petroleum Co. (1883), 23 Ch. D. 413; *Re* Lennox Publishing Co., *Ex p.* Storey (1890), 62 L. T. 791.

810. — Proceedings not begun until after winding up.]—*Re* SCOTTISH PETROLEUM Co., No. 784, *ante*.

Compare Sub-sect. 3, E. (c), *ante*.

SUB-SECT. 5.—OTHER CASES.

811. Unauthorised use of name as a trustee—Restrained.]—The provisional directors of a joint-stock co., having, without the authority of plft., published a prospectus, stating him to be a trustee of the co., were restrained by injunction.—ROUTH v. WEBSTER (1847), 10 Beav. 561; 9 L. T. O. S. 491; 11 Jur. 701; 50 E. R. 698.

Annotations:—*Refd.* Dixon v. Holden (1869), L. R. 7 Eq. 488; Walter v. Ashton, [1902] 2 Ch. 282. *Mentd.* Clark v. Freeman (1848), 11 Beav. 112; Austria (Emperor) v. Day (1861), 3 De G. F. & J. 217; Springhead Spinning Co. v. Riley (1868), 37 L. J. Ch. 889; Prudential Assce. v. Knott (1875), 10 Ch. App. 142; Hodges v. London Tram. Co. (1883), 12 Q. B. D. 105; Webster v. Webster, [1916] 1 K. B. 714.

812. Use of name as director—Authority to use given in consideration of indemnity—Contract for services of company influenced by credit of defendants.]—A prospectus of a projected co. for the conveyance of emigrants to British Columbia contained statements calculated to induce intending emigrants to believe that arrangements had been perfected for the object in view, & inviting them to take tickets for their passage & the public to purchase shares. This prospectus was shown by the secretary to defts., & they were asked to allow their names to be inserted therein as directors; to which they consented, on being qualified, *i.e.* presented each with 200 paid-up shares of the nominal value of £10 each, & indemnified. Their names were accordingly inserted, & the prospectus published & advertised in the *Times*:—*Held*: from these facts, the jury were warranted in inferring that one who contracted with the secretary for a passage, & paid his money, upon the faith of the representations contained in the prospectus, did so upon the credit of defts., & consequently he was entitled to sue them for breach of such contract.—COLLINGWOOD v.

BERKELEY (1863), 15 C. B. N. S. 145; 2 New Rep. 491; 8 L. T. 763; 12 W. R. 13; 143 E. R. 739, L. J.

813. “Deposits returned if no allotment made” —No trust for subscribers.]—MOSELEY v. CRESSEY'S Co., No. 444, *ante*.

814. Debentures “redeemable within seventeen years” —Company not bound to redeem.]—The C. Co. in 1889 issued a prospectus inviting subscriptions for 1,200 6 per cent., debenture bonds of £100 each, therein described as “redeemable within seventeen years by half-yearly drawings on Jan. 1, & July 1, in each year, at £110 per bond, by the application of a sinking fund of £5,000 per annum.” The conditions upon the bonds issued provided “A sinking fund for the redemption of bonds of this issue shall be established, & to the credit thereof the co. shall, in each half-year, carry the sum of £2,500, which shall be applied in redeeming at a premium of £10, on Jan. 1, & July 1, in each year, so many of the said debentures as the sum from time to time standing to the credit of such sinking fund shall suffice to pay off.” Until July 1, 1897, the co. in each half-year carried to the sinking fund account £2,500, & also a sum equivalent to a half-year's interest on the bonds already redeemed. Afterwards they refused to carry more than £2,500 to that account per half-year. It was shown that if they pursued this course the debentures would not all be redeemed within seventeen years:—*Held*: (1) even if the prospectus could be looked at in construing the contract between the company & the debentureholders, the words “redeemable within seventeen years” did not mean that all would be redeemed within that time, but that the co. would have an option to redeem them; (2) neither the prospectus nor the bond contained a contract to form an accumulating sinking fund, but the contract was contained in the debenture bond only, & the prospectus could not be looked at to decide its construction.—*Re* CHICAGO & NORTH WEST GRANARIES Co., LTD., MORRISON v. CHICAGO & NORTH WEST GRANARIES Co., LTD., [1898] 1 Ch. 263; 67 L. J. Ch. 109; 77 L. T. 677.

Annotations:—*As to* (1) *Consd.* *Re* Stocks, Willey v. Stocks (1909), [1912] 2 Ch. 134, n. *As to* (2) *Fold.* *Re* Tewkesbury Gas Co., Tysoe v. Tewkesbury Gas Co., [1911] 2 Ch. 279.

815. Statements that negotiations pending for purchase—Opening of rival business not precluded.]—CROSEY v. BANK OF WALES, No. 743, *ante*.

“Available capital” —Whether amounts to be raised by borrowing included.]—*See* No. 405, *ante*.

816. “No further calls are contemplated” —Not pledge that no calls will be made.]—ACCIDENTAL & MARINE INSURANCE CORPN., LTD., v. DAVIS, No. 1187, *post*.

817. “First issue 10,000 shares” —Not statement that company would not allot on smaller subscription.]—*Re* ENGLISH, ETC., ROLLING STOCK Co., LYON'S CASE, No. 774, *ante*.

SECT. 9.—STATEMENT IN LIEU OF PROSPECTUS.

See 1908 Act, s. 82, sched. II.

818. Insufficient particulars —Certificate of registrar that company entitled to commence business—Company may allot shares.]—If a statement in lieu of prospectus has been filed pursuant to 1908 Act, s. 82, & the registrar has given a certificate under sect. 87 (2), the co. can proceed to allotment notwithstanding that the statement contains misstatements & omissions.

the meaning of sect. 82 is that where no prospectus issued an appct. for shares shall be able to inspect some document having a similar object; any appct. who applies for shares on the faith of a statement has the same individual right of rescission in the case of misstatement or omission which he would have had if he had relied on a prospectus. The requirements of sect. 82 about proceeding to an allotment, however, are satisfied by the mere filing of the statement, whether the particulars are or are not sufficiently supplied, & an allotment is not vitiated by their want of accuracy.—*Re BLAIR OPEN HEARTH FURNACE Co., LTD.*, [1914] 1 Ch. 390; 83 L. J. Ch. 312; 109 L. T. 839; 58 Sol. Jo. 172; 21 Mans. 49, C. A.

Annotation.—*Consd. Re Jubilee Cotton Mills*, [1923] 1 Ch. 1.

819. — *Shareholder's right of rescission.*—*Re BLAIR OPEN HEARTH FURNACE Co., LTD.*, No. 18, *ante*.

Issue of shares before statement filed.—*See No. 75, ante*.

SECT. 10.—CAPITAL.

SUB-SECT. 1.—DEFINITIONS.

820. Fixed capital.—1908 Act does not, nor does the general law, prohibit a co. from distributing the clear net profit of its trading in any year unless its paid-up capital is intact or until it has first made good all trading losses incurred in previous years.

There is no rule of law which forbids a co. from setting off an appreciation in the value of its capital assets, as ascertained by a *bond fide* valuation, against losses on revenue account.

A manufacturing co. carrying on a newly established business incurred losses on its trading account for some years after its incorporation & subsequently made profits. The directors set off the losses against an appreciation of the co.'s capital assets as ascertained by a valuation made by two of their number who were not expert valuers & approved by the co. in general meeting, & paid dividends out of the subsequent net profits without any further provision for replacing the losses. Depreciation of buildings, machinery, & plant had been charged in revenue account to an amount exceeding the losses:—*Held*: (1) in considering whether or not the dividends were paid out of capital the sums charged for depreciation could be written back to capital (*PETERSON, J.*); (2) as the valuation was in fact made *bond fide*, & was approved by the co. in general meeting, the appreciation in value could properly be set off against losses (*PETERSON, J.*); (3) there was no objection in law to such a revaluation & such a treatment of the appreciation in value ascertained thereby (*CT. OF APPEAL*); (4) apart from any question as to the depreciation allowed for buildings, etc., & whether or not the revaluation could be justified, the dividends were not in fact paid out of capital but out of current profits (*CT. OF APPEAL*); (5) the fixed capital of a co. is what the co. retains in the shape of assets upon which the subscribed capital has been expended, & which assets either themselves produce income independent of any further action of the co., or, being retained by the co., are made use of to produce income or gain profits. The circulating capital of

a co. is a portion of the subscribed capital intended to be used by being temporarily parted with & circulated in business in the form of using goods or other assets which, or the proceeds of which, are intended to return to the co. with an increment & to be used again & again & always return with accretions. When circulating capital is expended in buying goods which are sold at a profit or in buying raw materials from which goods are manufactured & sold at a profit the amount so expended must be charged against or deducted from receipts before the amount of any profit can be considered (*SWINFEN EADY, L.J.*).—*AMMONIA SODA Co. v. CHAMBERLAIN*, [1918] 1 Ch. 266; 87 L. J. Ch. 193; 118 L. T. 48; 34 T. L. R. 60; 62 Sol. Jo. 85, C. A. *Annotation*.—*As to (4) Apld. Lawrence v. West Somerset Mineral Ry.*, [1918] 2 Ch. 250.

821. Circulating capital.—*AMMONIA SODA Co. v. CHAMBERLAIN*, No. 820, *ante*.

822. — *Leasehold iron ore mines.*—*BOND v. BARROW HÆMATITE STEEL Co.*, No. 1112, *post*.

Registered capital—Under Stamp Act, 1891 (c. 39), s. 112.—*See No. 1125, post*.

See, also, No. 867, post.

Nominal capital.—*See No. 833, post*.

SUB-SECT. 2.—INCREASE.

A. What constitutes Increase.

823. 1856 Act—Borrowing money.—*BRYON v. METROPOLITAN SALOON OMNIBUS Co., LTD.*, No. 335, *ante*.

Customs & Inland Revenue Act, 1889 (c. 7), s. 17.—*See No. 7839, post*.

Stamp Act, 1891 (c. 39), s. 113.—*See Nos. 7840-7842, post*.

B. How Effected.

824. By resolution under articles—Power to acquire other business for shares—Power to increase capital under articles exhausted—Issue invalid.—*The H. Bank & the I. Bank* agreed to amalgamate on the terms that the H. Bank should take over the business of the I. Bank, & that the I. Bank shareholders should have the option of taking new shares to be issued by the H. Bank, to the amount of the shares they previously held in the I. Bank. By its arts. the H. Bank had power to amalgamate with or buy up any other bank, & pay for the same in shares or cash; but previously to the agreement to amalgamate it had issued capital to the full amount allowed by its memorandum of assocn. The amalgamation was set aside in Chancery as *ultra vires*. In an action by the H. Bank for calls on shares allotted to deft. under the above agreement in lieu of the shares he previously held in the I. Bank:—*Held*: (1) deft. was not liable, for, even if the shares had been lawfully created, the transaction between the H. Bank & deft. fell with the amalgamation, & deft. was not estopped from denying that he was a shareholder; (2) the shares were not lawfully created under the arts. of the H. Bank, nor were they an increase of its capital under 1862 Act, s. 12, since there had been only a resolution to increase the capital & no preliminary resolution to alter the arts.—*BANK OF HINDUSTAN, CHINA & JAPAN, LTD. v. ALISON* (1871), L. R. 6 C. P. 222;

PART III. SECT. 10, SUB-SECT. 2.—B.

s. By special resolution—No power to increase capital in articles.—Where *J.*—VOL. IX.

there is no power to increase capital in the arts. a special resolution is required.—*TWIGG v. THUNDER HILL MINING Co.* (1893), 3 B. C. R. 101.—*CAN.*

t. Power to increase not limited to one occasion.—The power of increasing capital stock conferred by 27 & 28 Vict. c. 23, s. 5 (16), (17), (18), is a general power not limited to a

Sect. 10.—Capital: Sub-sect. 2, B., C., D. & E.]

40 L. J. C. P. 117; 23 L. T. 854; 19 W. R. 505, Ex. Ch.

Annotations:—As to (2) Consd. Re Bank of Hindustan, China & Japan, Campbell's Case, Hippisley's Case, Alison's Case (1873), 9 Ch. App. 1; Mosely v. Koffyfontein Mines, [1910] 2 Ch. 382.

825. — Issue valid.]—Directors of the H. Bank had power by the arts. of assocn. to purchase or acquire upon such terms as they might think fit, the business & property of any co. carrying on a similar business, & to pay for such business & property in shares, in such manner as they might think expedient. The H. Bank having issued all the shares which it had power under its memorandum & arts. of assocn. to create, agreed in 1864, by special resolution, passed & confirmed at two extraordinary general meetings, to purchase the business of the I. Bank by the issue of 20,000 new shares to the shareholders of the I. Bank. The II. Bank took over the assets of the I. Bank & C., a shareholder of the I. Bank, accepted shares in the H. Bank under this agreement. C. was put on the list of contributories of the II. Bank on its being wound up in 1866, & paid without objection in 1869 calls made in the winding-up:—*Held*: it was not necessary for the H. Bank under 1862 Act, s. 12, to have altered its arts. of assocn., so as to give power to create additional capital by a previous special resolution, & the additional shares were lawfully created.—*Re BANK OF HINDUSTAN, CHINA & JAPAN, CAMPBELL'S CASE, HIPPISELEY'S CASE, ALISON'S CASE (1873), 9 Ch. App. 1; 43 L. J. Ch. 1; 29 L. T. 519; 22 W. R. 113, L. C. & L. JJ.*

Annotations:—Consd. Taylor v. Pilsen Joel & General Electric Light Co. (1884), 27 Ch. D. 268. Foll'd. Mosely v. Koffyfontein Mines, [1910] 2 Ch. 382. Ref'd. Re County Palatine Loan & Discount Co., Teasdale's Case (1873), 9 Ch. App. 54; Re Ruby Consolidated Mining Co., Askew's Case (1874), 43 L. J. Ch. 633; Hope v. International Financial Soc. (1876), 4 Ch. D. 327; Imperial Hydropathic Hotel Co., Blackpool v. Hampson (1882), 23 Ch. D. 1; Re Briton Medical & General Life Assocn. (1889), 5 T. L. R. 502; Re Wakefield Rolling Stock Co., [1892] 3 Ch. 165; Re North Cheshire Brewery Co. (1920), 64 Sol. Jo. 463. Ment'd. Eichbaum v. City of Chicago Grain Elevators, [1891] 3 Ch. 459; Harriman v. Harriman, [1909] P. 123.

826. — Resolution of directors—Terms of issue to be settled by general meeting—General meeting necessary for issue.]—One of the arts. of assocn. of a co. provided for the increase of its capital in general meeting by the creation of new shares. The art. was afterwards amended by the substitution of the words "by resolution of the directors" for the words "in general meeting." Another art. provided that any new shares from time to time to be created might from time to time be issued with provisions as to preferential or deferred rights, premiums, & voting rights, on such terms as the co. might from time to time by resolution of a general meeting declare:—*Held*: while the directors had power to pass a resolution creating new shares, such shares could not be issued without a resolution of the co. in general meeting.—*KOFFYFONTEIN MINES, LTD. v. MOSELY, [1911] A. C. 409; 80 L. J. Ch. 668; 105 L. T. 115; 27 T. L. R. 501; 55 Sol. Jo. 551; 18 Mans. 365, H. L.; affg. S. C. sub nom. MOSELY v. KOFFYFONTEIN MINES, LTD., [1911] 1 Ch. 73, C. A.*

827. — Notice of meeting—Must state

single occasion.—*Re MASSEY MANUFACTURING CO. (1886), 13 A. R. 446.—CAN.*

PART III. SECT. 10, SUB-SECT. 2.—D.

a. Premature exercise of conditional power to increase—Holder of new shares not liable to company's

creditors.]—A co., incorporated under 27 & 28 Vict. c. 23, with power to increase by bye-law the capital stock of the co. "after the whole capital stock of the co. shall have been allotted & paid in, but not sooner," assumed to pass a bye-law increasing the capital stock from \$130,000 to \$250,000 before the original capital stock had been

specific increase—& that resolution extraordinary.]

—By 1908 Act, s. 69 (1), a resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members entitled to vote as are present in person or by proxy where proxies are allowed, at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given. By 1908 Act, Table A, art. 41, the directors may, with the sanction of an extraordinary resolution of the co., increase the capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe. Notice of an extraordinary general meeting of a co., to which art. 41 applied, was given to each shareholder, the notice stating that the meeting was to be held in order to pass a resolution to increase the capital of the co. The meeting was held & a resolution was passed for the increase of the capital to £3,500 by the creation & issue of 1,500 shares of £1 each:—*Held*: the notice was insufficient, because it did not specify an intention to make the specific increase embodied in the resolution that was actually passed, & because it did not specify an intention to pass the resolution as an extraordinary resolution.—*MACCONNELL v. PRILL (E.) & CO., LTD., [1916] 2 Ch. 57; 85 L. J. Ch. 674; 115 L. T. 71; 32 T. L. R. 509; 60 Sol. Jo. 556.*

828. By provisional order—Under Gas & Waterworks Facilities Act, 1870 (c. 70)—Public utility company incorporated under 1862 Act—Special resolution unnecessary.]—Where the arts. provided that the capital of a certain gas & water co. might be increased by special resolution, & provisional orders were made under Gas & Waterworks Facilities Act, 1870 (c. 70), purporting to effect such increase of capital:—*Held*: the issue of such additional capital was valid & the holders thereof were entitled to be treated as members in the distribution of the surplus assets, although no special resolution had in fact been passed authorising such issue.—*Re NEW TREDEGAR GAS & WATER CO., LTD. (1914), 59 Sol. Jo. 161.*

See, generally, Part IX., post.

Effect of irregular increase.]—See Sub-sect. 2, D., post.

C. Issue of Preference Shares.

See Sect. 15, sub-sect. 1, post.

D. Effect of Irregular Increase.

829. Shareholder's right to object—Loss of right—Acceptance of dividends.]—The capital of a joint stock co. was fixed at £10,000, but with power for a general meeting of the shareholders, duly convened according to certain forms, & by a majority of two-thirds of the then shareholders, to increase that amount to £100,000. No such meeting was held, but a false entry was made by the chairman in the minute-book of the co., stating that at an extraordinary general meeting of the co. it had been resolved to increase the capital from £10,000 to £100,000. The capital having been *de facto* increased, new shares having been issued & taken, profits having been made upon the increased capital, & dividends paid on such

paid in. P., an execution creditor of the co., whose writ had been returned unsatisfied, instituted proceedings by way of *sci. fa.* against A. as holder of shares not fully-paid in the co. The shares alleged to be held by A. were shares of the increased capital & not of that originally authorised:—*Held*: as there was evidence that the original

profits among all the shareholders for four years:—

Held: the shareholders must be taken to have acquiesced, & could not now object to the irregular manner in which the shares had been increased.

—*Re* ATHENÆUM LIFE ASSURANCE SOCIETY, RICHMOND'S CASE, PAINTER'S CASE (1858), 4 K. & J. 305; 32 L. T. O. S. 174; 70 E. R. 127.

Annotations:—*Re* Magdalena Steam Navigation Co. (1860), 8 W. R. 329; *Re* Bank of Hindustan, China & Japan, Campbell's Case, Hippisley's Case, Alison's Case (1873), 9 Ch. App. 1.

830. ——— **Signature of deed of settlement.**—Where a joint stock co. formed under a deed with power to create new shares of £100 each, at a general meeting duly convened creates new half shares of £50 each, & subsequently makes calls on such half shares, & a proprietor has signed the deed of settlement binding himself to take those shares & pay the calls made upon them:—*Held*: he is estopped from saying that, because such shares were not issued in conformity with the original clause of the deed of settlement, he is not bound to pay such calls, & is released from his obligation to concur in the call made by the official liquidator for the purpose of winding up the co.—*HULL FLAX & COTTON MILL CO. v. WELLESLEY* (1860), 6 H. & N. 38; 30 L. J. Ex. 5; 2 L. T. 728; 158 E. R. 16.

Annotations:—*Re* Bank of Hindustan, China & Japan v. Alison (1870), L. R. 6 C. P. 54. *Mentd.* Bank of Hindustan, China & Japan v. Alison (1871), 23 L. T. 854.

831. Shares issued in excess of capital—Subsequent resolutions to increase capital—Operate as confirmation.—The directors of a co. whose capital was £300,000, divided into 3,000 shares of £100 each, made an unauthorised issue of 1,000 additional shares beyond their capital. They afterwards called general meetings, at which resolutions were passed to increase the capital to £600,000, to be divided into 60,000 shares of £10 each:—*Held*: (1) the issue of the 1,000 shares, although originally *ultra vires*, was confirmed by these resolutions; & the allottees of them were bound by the resolutions, & were rightly placed on the list of contributories in the winding up of the co.; (2) although the sub-division of the original

shares was illegal, yet where the original shares could be traced & identified, the shareholders were properly placed on the list of contributories.—

Re NEW ZEALAND BANKING CORPN., SEWELL'S CASE (1868), 3 Ch. App. 131; 18 L. T. 2; 16 W. R. 381, L. J.

Annotation:—*As to* (1) *Re* Bank of Hindustan, China & Japan v. Alison (1871), 19 W. R. 505.

E. Other Cases.

Allotment of new shares—In respect of old shares subject to trust—As part of trust estate.—*See* TRUSTS & TRUSTEES.

—— **Right to as between tenant for life & remainderman.**—*See* SETTLEMENTS.

—— **Liability of executor or trustee.**—*See* No. 1256, *post*.

832. ——— **Death of member between resolution & offer.**—“Member” in 1862 Act, Table A, art. 27, which provides that on the increase of the capital of a co. the new shares shall be offered to the “members” in proportion to their existing shares, includes a deceased member so long as his name is on the register.

Thus, where, in the case of a co. regulated by 1862 Act, Table A., new shares had been created by special resolution in the lifetime of a member, but were not actually offered to the members of the co. until after his death:—*Held*: the legal personal representative of the deceased member, whose name still remained on the register, could require an allotment of the shares which the latter would, if living, have been entitled to have offered him, these shares not yet having been disposed of by the co.

Qu.: as to the title of the legal personal representative to the shares, if, as was not the case, the co. had sent by post a letter containing the offer directed to him at the registered address of the deceased member, or directed to the place of abode or business of the representative or his solr., & not having received an answer applying for the shares within the time limited by the latter, had proceeded to dispose of them otherwise.

Where one of the arts. of assocn. of a limited co.

nominal capital of \$130,000 was never paid in, the directors had no power to increase the stock of the co., & as the stock held by A. consisted wholly of new unauthorised stock, P. was not entitled to recover.—*PAGE v. AUSTIN* (1884), 10 S. C. R. 132.—CAN.

b. *Requirements of articles for resolution to increase not observed—Holders of new shares not liable as contributories.*—A co. was originally incorporated with a capital stock of common shares. This original capital stock was subsequently reorganised into preference & common stock. Later the directors passed a resolution which purported to increase the capital stock by the creation of new shares. The shareholders afterwards passed a resolution in the same terms as that of the directors. Under the arts. of assocn. the directors should have had the sanction of the shareholders before, & not after, they passed the above resolution. The shareholders had the power to pass their resolution to create new shares, but if no directions were given by the said resolution the shares were to be dealt with by the directors “as if they were part of the original capital.” Preference shares were issued under these resolutions. The co. went into liquidation:—*Held*: the holders of the shares issued as preference shares were not liable as contributories since the directors had no power to pass a resolution to create new shares without having first obtained the sanction of the shareholders & since, in the

absence of special directions, no preference shares could legally be issued under the resolution passed by the shareholders.—*Re* BANKERS' TRUST & BARNESLEY (1914), 29 W. L. R. 479; 30 W. L. R. 738; 7 W. W. R. 171; 8 W. W. R. 38; 21 D. L. R. 623.—CAN.

PART III. SECT. 10, SUB-SECT. 2.—E.

c. *Increase for purpose of meeting liabilities—Members of unlimited company not bound to accept new shares—Unless articles so provide.*—A co. registered under Part I. of Companies Statute, 1864 (No. 190), as an unlimited co., which is unable to pay its debts inasmuch as all its authorised capital is fully paid-up, cannot increase its capital by issuing new shares & forcing them on its members in order to meet its liabilities or for the purposes of winding up, unless the authority to do so is expressed in the language in its arts. of assocn. Where such new shares have been issued to existing shareholders *pro rata* in a case in which no such power is given, & they have had express notice thereof, & that their names are on the register therefor, & do not repudiate them until after the commencement of the winding up of the co, but say nothing to intimate that they accept them, they are not estopped from claiming the rectification of the register & the list of contributories, inasmuch as they never contracted to take any new shares.—*Re* VICTORIA SUGAR CO.

TURNBULL'S CASE, SUMNER'S CASE, THORNELY'S CASE, FRANCIS'S CASE (1887), 14 V. L. R. 471.—AUS.

d. *New shares allotted by directors to themselves—Object to control voting power—Invalid.*—The directors of a co. passed a bye-law increasing the capital stock by 2,000 shares, which was sanctioned by a majority of two-thirds in value of the body of shareholders at a meeting. The first batch of 350 shares the directors *ex parte* allotted at par to five of themselves, & also allotted the remaining 1,650 to the same five, but only after issuing a circular to the body of shareholders, whereby the latter were invited to state whether they desired to increase their holdings, & wherein it was set forth that such shares might be allotted as seemed to the directors desirable & necessary. Pltf. & other shareholders acting with him made no response except by way of protest. By the co.'s Act of incorporation, 50 Vict. c. 95, ss. 13 & 46 (c), the capital stock could be increased, only upon approval by two-thirds in value of the shareholders. The directors did not wish or intend to allot the new stock among the shareholders *pro rata*, but so to deal with the last 1,650 shares, as to appropriate for themselves enough shares to give them more than a two-thirds majority in value of shareholders:—*Held*: the minority shareholders were not required to submit to the form of application proposed by the circular; there was no recognition of any right on the part of existing

Sect. 10.—Capital: Sub-sect. 3, B., C. & D.]

amount & denomination of its shares. In 1874 a special resolution was passed for raising £60,000 by the issue of 6,000 shares of £10 each, which were to be paid up in full on allotment, & to be entitled to a fixed preferential dividend of £10 per cent. These shares were all taken & paid up. In 1884 one of the submarine cables of the co. broke down, & was lost, diminishing the assets by about one half. The co. passed a special resolution for reducing the capital to one half by reducing to one half the nominal amount of each share, ordinary or preferential. A preferential shareholder brought an action on behalf of himself & the other preferential shareholders, to restrain the co. from acting on that resolution & from applying to the ct. to sanction it:—*Held*: (1) the preference shareholders took their shares subject to the provisions of the arts., which contained a power to the co. to reduce its capital, & alter the amount & denomination of its shares. There was no bargain with the preference shareholders that they should receive £6,000 a year on the whole of their shares, the resolution being satisfied by their receiving £10 per cent. on the nominal amount of their shares, & what was proposed to be done was no breach of the contract with them.

(2) (COTTON, L.J.). If what it was proposed to do had been a breach of the contract with the preference shareholders, the preference shareholders would have had a right to prevent the co. from exercising, in a manner inconsistent with the contract, the powers for reduction of capital given by 1867 Act, & Companies Act, 1877 (c. 26).

(3) (COTTON, L.J.). *Semble*: on an application to sanction a reduction of capital the judge, though satisfied that the rights of creditors are not interfered with by the reduction, is not bound to sanction it if he sees that it would work unfairly as against any shareholders who do not consent to it.—*BANNATYNE v. DIRECT SPANISH TELEGRAPH Co.* (1886), 34 Ch. D. 287; 56 L. J. Ch. 107; 55 L. T. 716; 35 W. R. 125; 3 T. L. R. 104, C. A.

Annotations:—*Folld. Re Barrow Hæmatite Steel Co.* (1888), 39 Ch. D. 582. *Consd. Re Alabama, New Orleans, Texas & Pacific Junction Ry.*, [1891] 1 Ch. 213; *Re Hyderabad (Deccan) Co.* (1896), 75 L. T. 23. *Reid. Re London & New York Investment Corp.*, [1895] 2 Ch. 860; *Re Crystal Palace District Electric Supply Co.* (1900), 44 Sol. Jo. 644; *Re Credit Assco. & Guarantee Corp.*, [1902] 2 Ch. 178; *Re Mackenzie*, [1916] 2 Ch. 450. *Mentd. Christie v. Northern Counties Permanent Benefit Bldg. Soc.* (1889), 61 L. T. 796.

844. ——— Scheme unjust or inequitable.]
—*Re BARROW HÆMATITE STEEL Co.*, No. 902, *post*.

—— **To approve subject to conditions.]—See**
No. 843, *ante*.

845. ——— Interests of one class of shareholders
—**May be unequally affected.]—BRITISH &**

AMERICAN TRUSTEE & FINANCE CORPN. v. COUPER, No. 840, *ante*.

See, also, No. 902, *post*.

846. ——— Considerations affecting — Object of reduction, distribution of assets among shareholders—Company ceasing to trade.]—The ct. refused to confirm a proposed reduction of capital under the Cos. Acts where it appeared that the co. had for the last five years ceased to carry on trade, & that the real object of the petition was to enable the whole of the available assets to be distributed amongst the shareholders by the machinery of reducing the capital.—*Re WALLASEY BRICK & LAND Co., LTD. & REDUCED* (1894), 63 L. J. Ch. 415; 70 L. T. 870.

847. ——— Objections of dissentient shareholders—Though interest small.]—*Re CRYSTAL PALACE DISTRICT ELECTRIC SUPPLY Co., LTD.* (1900), 44 Sol. Jo. 644.

848. ——— Interests of existing shareholders.]—*POOLE v. NATIONAL BANK OF CHINA, LTD.*, No. 842, *ante*.

849. ——— Interests of future shareholders.]—*POOLE v. NATIONAL BANK OF CHINA, LTD.*, No. 842, *ante*.

C. What constitutes Reduction.

850. Sale of part of capital assets — & distribution of proceeds.]—Pltf. & nine other persons formed themselves into a limited co., under 1862 & 1867 Acts, & executed arts. of assocn. which empowered the directors, on behalf of the co., to buy & also to sell land, but which contained no regulation authorising a reduction of capital. At the time of the registration of the co. the ten shareholders were the co-owners of lands which they had purchased with moneys subscribed by themselves in equal shares, & after the registration they conveyed those lands to themselves on behalf of the co. There was no other paid-up capital of the co. except the lands so conveyed, & certain moneys expended on the improvement thereof which had also been subscribed by the shareholders in equal shares. The directors afterwards sold a portion of these lands which they alleged was not required for the purposes of the co., & divided the proceeds among the shareholders in equal shares, paying to nine of the shareholders the amount of their shares therein. Pltf. refused to receive his share, & filed his bill against the co. & the nine other shareholders:—*Held*: (1) the division of the purchase-money among the shareholders was a reduction of capital & was *ultra vires* & invalid; (2) the nine shareholders must pay back to the co. the amounts which they had respectively received; (3) pltf. was not bound by acquiescence, for though he was aware of the intended sale two years before bill filed, he was

PART III. SECT. 10, SUB-SECT. 3.—
C.

h. Resolution rescinding interdependent issue—Of original & new shares—Where previous resolution to increase invalid—Reduction as to original shares.]—A limited co. was registered under Indian Companies Act (X. of 1866). The original capital of the co. consisted of R.4,00,000 divided into 1,600 shares of R.250 each. In 1882 the capital of the co. was increased by R.1,00,000, divided into 1,600 shares of R.62.8. The resolution to increase the capital was not passed in accordance with the arts. of assocn., that is, not with "the sanction of a special resolution of the co. passed at a general meeting." On Nov. 5, 1884, a resolution was passed at a general meeting of the co. that

the shareholders should take up 459 shares of the original capital & 1,027 shares of the increased capital, which were then in the hands of the co., in the proportion of one share to every two shares already held by them. In pursuance of this resolution, applts. took up several shares of the original capital as well as of the new capital. On Oct. 19, 1885, a general meeting of the co. was held, at which it was resolved that the resolution of Nov. 5, 1884, & all acts done in connection with it, should be set aside, that the shares taken by the shareholders in pursuance of that resolution should be taken back by the co., & such amounts as had been paid by them on those shares should be credited to their names in the co.'s books. This was accordingly done, & the shares were transferred to the

name of the co. In Oct. 1886, the co. was wound up by order of the ct. In settling the list of contributories:—*Held*: with respect to the shares of the original capital, the resolution of Oct. 19, 1885, was illegal & invalid. It operated, not as an investment by the co. of its funds in its own shares, but as an extinguishment of the shares, & such extinguishment was virtually a reduction of the capital which could not be done without complying with Indian Companies Act (VI. of 1882), s. 13. The holders of such shares were therefore properly placed on the list of contributories.—*BHIMBHAI v. ISHWARDAS JUGJIWANDAS* (1893), I. L. R. 18 Bom. 152.—**IND.**

k. Not conversion & re-allocation —Partly-paid converted into fully-paid shares.]—A limited liability co. under its memorandum of assocn. had

not then aware of the intended division of the proceeds, nor of the illegality of such division.—

HOLMES v. NEWCASTLE-UPON-TYNE FREEHOLD ABATTOIR Co. (1875), 1 Ch. D. 682; 45 L. J. Ch. 383; 24 W. R. 505.

Annotation:—As to (1) **Reid**. **Guinness v. Land Corp. of Ireland** (1882), 22 Ch. D. 349.

851. Surrender of part of investment of capital to improve remainder—Not a reduction requiring sanction of court.]—A limited co., having power to invest its capital, & acting within the scope of its business as described in its memorandum of assocn., is at liberty to surrender part of a particular investment with a view to improving the remainder; & such a surrender is not a reduction of capital within 1867 Act, & Companies Act, 1877 (c. 26). Thus, where a limited financial corp., holding shares in a railway co. whose shares had become valueless through inability to complete its line for want of sufficient capital, proposed, as part of a scheme for raising further capital, to surrender some of their shares, & so, by assisting to promote the completion of the line, to give a substantial value to their remaining shares:—*Held*: this was not a reduction of capital requiring the sanction of the ct. under above Acts.—**THOMSON v. TRUSTEES, EXECUTORS & SECURITIES INSURANCE CORPN.**, [1895] 2 Ch. 454; 65 L. J. Ch. 66; 73 L. T. 149; 44 W. R. 237.

See, also, Nos. 867, 931, *post*.

Reduction of paid-up capital—Nominal capital not reduced.]—*See* Nos. 926, 927, *post*.

D. What Companies may Reduce.

852. Pre-existing company registered under 1862 Act—Power of reduction given by deed of settlement—Lost on registration.]—The proviso of 1862 Act, s. 196, has not the effect of preserving to a co. in existence at the date of the Act, & afterwards registered under it as a limited co., a power to reduce the amount of its capital originally given by its deed of settlement. After registration under the Act with limited liability, such power is gone.—

a capital of £50,000, divided into 50,000 shares of £1 each, with power to reduce its capital. All its shares had been issued, 12s. 6d. being paid up on each share. The shareholders unanimously passed & confirmed a special resolution that the capital of the co. should be converted from 50,000 shares of £1 each with 12s. 6d. paid-up into 50,000 shares of £1 each with the full amount paid-up on 31,250, leaving 18,750 to be issued at the discretion of the directors; & that such conversion should be effected by re-allocating the share capital among the shareholders, crediting to each of them one £1 share for each pound sterling at his credit in the share capital account. The co. presented a petition for confirmation of the "reduction of capital resolved on by" the special resolution above-mentioned. All the creditors of the co. consented. The ct. refused to confirm the resolution on the ground that it effected a "conversion" & "re-allocation," & not a reduction of capital.—*Re WALKER STEAM TRAWL FISHING Co., LTD., PETITIONERS*, [1908] S. C. 123.—SCOT.

1. *Option to resell shares to company*—Subscribed for in consideration for appointment as manager.]—Pltf. became salesman to, & manager of, deft. co., now in liquidation, for a period of two years at a salary of £20 per month. In consideration of his appointment, pltf. took & paid for 200 fully paid-up £1 shares in the co., it being agreed that pltf. should not alienate his shares during the period of two years, & at the end of that period, if pltf. desired, the co. should

repurchase the shares at par. The contract was entered into on behalf of the co. by S., the managing director, who represented that he had power to enter into the contract. Table A of the Companies Act in substance regulated the working of the co. No formal delegation of their powers was made to S. by the other directors, but in practice they allowed him to superintend the business of the co. Before the lapse of the period of two years the co. went into liquidation. The liquidators having repudiated the contract, pltf. sued them for damages based on the amount of the purchase price of the shares & salary for the unexpired portion of the period of two years:—*Held*: the undertaking by the co. to repurchase pltf.'s shares was illegal & unenforceable, as it was in effect an unauthorised reduction of the capital of the co.—**WOLFE v. SMYTH & CRAWFORD (LIQUIDATORS)**, [1914] C. P. D. 187.—S. AF.

PART III. SECT. 10, SUB-SECT. 3.—D.

m. *No power in articles*—Necessity for valid alteration—Before resolution to reduce.]—The memorandum of assocn. of a co. provided that the capital of the co. should be £15,000 divided into shares of £1 each, with power to the co. to increase or decrease the capital as provided by the arts. of assocn. The co. was also empowered to modify the arts. There was no provision in the arts. for the reduction of capital. At an extraordinary meeting of the co. on Dec. 19, 1889, a special

DROITWICH PATENT SALT Co., LTD. v. CURZON (1867), L. R. 3 Exch. 35; 37 L. J. Ex. 2; 17 L. T. 180.

Annotations:—*Reid*. **Holmes v. Newcastle-upon-Tyne Freehold Abattoir Co.** (1875), 1 Ch. D. 682; **Guinness v. Land Corp. of Ireland** (1882), 22 Ch. D. 349.

853. Effect of power to reduce in articles—Subsequent issue of preference shares—Liable to reduction.]—**BANNATYNE v. DIRECT SPANISH TELEGRAPH Co.**, No. 843, *ante*.

854. Effect of contract excluding reduction.]—*Re BARROW HÆMATITE STEEL Co.*, No. 902, *post*.

855. Unlimited company—Provision in articles.]—There is nothing in Cos. Acts to prevent an unlimited co. being associated on the terms that its members may withdraw from membership in the mode pointed out by its memorandum & arts. of assocn., so as to be free from liability in the event of a winding up. *Semble*: such a co. may validly provide by its memorandum & arts. for a return of capital to its members.

Qu.: whether, in the absence of express power in its memorandum or arts. of assocn., an unlimited co. can allow its members to withdraw from liability as such.—*Re BOROUGH COMMERCIAL & BUILDING SOCIETY*, [1893] 2 Ch. 242; 62 L. J. Ch. 456; 69 L. T. 96; 41 W. R. 313; 9 T. L. R. 282; 37 Sol. Jo. 269; 3 R. 339.

No power in articles—Alteration of articles necessary.]—*See* No. 937, *post*.

856. Power in memorandum—Alteration of articles necessary.]—The memorandum of assocn. of a co. gave the co. power to reduce its capital but the arts. of assocn. of the co. contained no such power. The co. passed special resolutions purporting to reduce its capital, & petitioned the ct. for confirmation of the reduction:—*Held*: the word "regulations" in 1867 Act, s. 9, meant the arts. & not the memorandum of assocn., & it was necessary to alter the arts. by inserting a power to reduce capital before passing a special resolution for reduction.—*Re DEXINE PATENT PACKING & RUBBER Co.* (1903), 88 L. T. 791.

—Resolution for reduction—Combined with

resolution was passed reducing the capital of the co., which was confirmed at a second meeting. The co. then presented a petition praying the ct. to confirm the reduction of share capital in terms of the resolution, which petition the ct. remitted for an inquiry & report as to regularity of proceedings. It was reported that the co. had no power to reduce under its original regulations. By Companies Act, 1867, s. 9, the regulations should in the first place be modified giving the co. power to reduce, & afterwards the resolution to reduce capital should be passed. Petitioners claimed that a reduction of capital was a proceeding authorised under the above Act, though not specially mentioned in its arts. of assocn. The ct. refused to grant the prayer of petitioners.—**AVERY & Co., LTD.** (1890), 17 R. (Ct. of Sess.) 1101; 27 Sc. L. R. 856.—SCOT.

n. — — —.]—A co. which under its arts. of assocn. had no power to reduce its capital, passed at an extraordinary general meeting two resolutions, one of which adopted new arts. whereby the co. was authorised to reduce its capital, & the other providing for the reduction in a certain way. These resolutions were both only confirmed as special resolutions pursuant to Companies (Consolidation) Act, 1908, s. 46, at a subsequent extraordinary meeting:—*Held*: the procedure was incompetent in that at the time the resolution to reduce was adopted there was no power to reduce, such resolution not being competent until the resolution conferring that power had been duly confirmed.—

Sect. 10.—Capital: Sub-sect. 3, D. & E. (a) i. & ii., (b) & (c) & F. (a) i.]

resolution taking power under articles.]—See No. 939, *post*.

Company formed under 1844 Act—Registered under 1862 Act.]—See No. 892, *post*.

Company ceasing to trade.]—See No. 846, *ante*.

E. Grounds for.

(a) Capital Lost or Unrepresented by Available Assets.

i. What constitutes Loss.

857. General rule.]—I want to add a word as to what Companies Act, 1877 (c. 26), means by “lost capital or any capital unrepresented by available assets.” First, what does “lost” mean? It does not mean temporarily lost; that is to say, the figure at which, owing to a temporary depression—say, by the condition of the Stock Exchange at the moment, or the property market, or whatever it may be—the property may be stagnant. You must show that “lost” for the purposes of the statute is not temporarily, but permanently lost. Then I must qualify the word “permanently.” It does not mean irretrievably lost; it does not mean that the value which you put upon the property never can be appreciated again. But it means that, looking at the state of things, reasonable men are able to say that with a proper valuation of the property, & for which they can sell it in a depreciated market, that the value of it, having regard to its potentialities, does not exceed so much. If that is the meaning of the statute, then for this purpose the capital referred to is lost. But that word “lost” has, I think, a light thrown upon it by the succeeding words of the statute, “or any capital unrepresented by available assets.” That, again, does not mean that the co. may write off capital because it is not liquid at the moment & cannot be turned into money. The succeeding words show that the meaning of the word “lost” is not that the co. must prove that the capital has irretrievably gone, but that the co. must prove that for some reason or other they have no asset to which they can point & say: “For that sum of money for which we have taken credit in our balance-sheet, we have a representation by such & such a property.” In fact, in dealing with this statute you have to deal with all questions of value reasonably to see whether—not temporarily or irretrievably, but permanently, in the sense which I have endeavoured to express—the asset which the co. took at one figure has fallen to another figure, & they have lost the difference (BUCKLEY, J.).—*Re WELSBACH INCANDESCENT GAS LIGHT CO., LTD.*, No. 922, *post*.

858. Amount paid up on forfeited shares—Since distributed as dividends.]—*Re LONDON & CITY LAND & BUILDING CO.*, [1885] W. N. 137.

859. Shares issued at a discount—Not a loss of capital—Shareholders liable for balance.]—The liquidator of a co. in voluntary liquidation entered into an agreement, under 1862 Act, s. 161, for the sale of its property to a new co., part of the consideration being the issue to each shareholder of the old co. of one share of £1 in the new co., with 15s. credited as paid up thereon, in exchange for

each fully paid-up share of £1 in the old co. by such shareholder, & that the remaining 5s. 1 share should be payable by the allottee at the times mentioned in the agreement. The whole the shares in the new co., 500,000 in number, were issued to the shareholders in the old co. in the manner mentioned in the agreement. Prior to their issue a contract providing for their being issued in that way was filed with the registrar of Joint Stock Cos., under 1867 Act, s. 25. The co. afterwards increased its capital by the creation of 500,000 more shares of £1 each, of which 50,000 were issued as fully paid up as the consideration for the purchase of other property by the co., & 240,000 were issued at a discount of 15s. per share, a contract being in each case filed, prior to the issue, with the registrar of Joint Stock Cos. After this had been done the co. passed a special resolution for the reduction of the capital by cancelling paid-up capital to the extent of 15s. per share, as having been lost or being unrepresented by available assets. The co. petitioned for the confirmation of the resolution by the ct. There was no evidence of any loss of capital otherwise than by reason of the issue of the shares at a discount:—*Held*: the issue of the shares at a discount was illegal, & the shareholders were still liable to the extent of 15s. per share. Therefore the proposed reduction of capital could not be confirmed by the ct.—*Re NEW CHILE GOLD MINING CO.* (1888), 38 Ch. D. 475; 57 L. J. Ch. 1042; 59 L. T. 506; 36 W. R. 909; 4 T. L. R. 430.

860. Patents acquired not worth purchase price.]—*Re GATLING GUN, LTD.*, No. 878, *post*.

861. Preliminary expenses.]—Capital properly expended by a co. in preliminary expenses cannot be treated as lost capital or capital unrepresented by available assets, within Companies Act, 1877 (c. 26), s. 3, so as to entitle the co. to reduce its capital by the amount so expended.—*Re ABSTAINERS & GENERAL INSURANCE CO.*, [1891] 2 Ch. 124; 60 L. J. Ch. 510; 64 L. T. 256; 39 W. R. 574.

Annotations:—Refd. Re Barrow Hæmatite Steel Co., [1900] 2 Ch. 846; *Re Crystal Palace District Electric Supply Co.* (1900), 44 Sol. Jo. 644; *Re Hoare* (1904), 73 L. J. Ch. 601.

862. Goodwill must be taken into account.]—*Re CRYSTAL PALACE DISTRICT ELECTRIC SUPPLY CO., LTD.* (1900), 44 Sol. Jo. 644.

863. Where reserve fund created out of profits—Loss apportioned between capital & reserve.]—Under Companies Act, 1877 (c. 26), the capital of a co. may be reduced if any capital has been lost, or is unrepresented by available assets. The directors of a co. were empowered by the arts. of assocn. to create a reserve fund out of the profits of the co. for such purposes as they should think conducive to the interests of the co., & to employ the reserve fund in the business of the co. without being bound to keep the same separate from the other assets. The co. had built up a reserve composed partly of premiums received for leases, partly of premiums received on the issue of preference shares, & partly of ordinary business profits. The reserve was used in the co.’s business, & was not kept separately invested. The co. had incurred a loss arising from the depreciation in the value of its public-houses below the amount stated in the co.’s balance-sheet. The co. accord-

—*Re OREGON MORTGAGE CO., LTD.*, [1910] S. C. 964.—SCOT.

PART III. SECT. 10, SUB-SECT. 3.— **E. (a) i.**

o. Bad debt.]—A co. with a paid-up capital of £50,000 in £1 shares, of which half were preference & the

other half ordinary shares, presented a petition for an order confirming a resolution to reduce the capital to the extent of £12,500, that amount having been lost or not being represented by available assets. The ct. remitted the petition to a reporter, who reported that a sum of £13,500 had been lost

as the result of a bad debt, but that the last balance-sheet of the co., if effect was given to the proposed reduction, showed an apparent surplus of £1,811, which could be immediately used for payment of dividend. He was therefore of opinion that the capital lost or unrepresented by avail-

gly applied for the sanction of the ct. to a scheme for reduction of capital whereby the co., while retaining a small portion of the reserve, attributed to the reserve more than its rateable proportion, & to the capital account less than its rateable proportion, of the loss:—*Held*: the reserve having been properly created out of profits, in ascertaining the amount of capital lost, the loss of assets ought to be treated as ratably apportioned between the reserve & the capital account, & in the absence of special circumstances, the co. in proposing a scheme for reduction of capital was not bound to wipe out the whole of the reserve, or to attribute to it more than its due proportion of the loss though it might do so if it chose; & the ct. sanctioned the scheme.—*Re HOARE & Co., LTD. & REDUCED*, [1904] 2 Ch. 208; 73 L. J. Ch. 601; 11 L. T. 115; 20 T. L. R. 581; 53 W. R. 51; 48 Sol. Jo. 559; 11 Mans. 307, C. A.

Annotation:—*Apld. Re Rowland v. Marwood's S.S. Co.* (1906), 51 Sol. Jo. 131.

864. — *No part of loss attributed to reserve.*—*Re ROWLAND & MARWOOD'S S.S. CO., LTD. & REDUCED* (1906), 51 Sol. Jo. 131.

ii. Proof of Loss.

Whether necessary.—*See Nos. 987–991, post.*
To found jurisdiction.—*See No. 842, ante.*

(b) Capital in Excess of Requirements.

See Sub-sect. 3, F. (e), post.

(c) Reserve in Excess of Requirements.

See Sub-sect. 3, F. (f), post.

F. How Effected.

(a) By Cancellation of Shares.

i. Whole of Particular Class of Shares.

865. *Founders' shares—Consideration in excess of nominal value—Paid out of reserve profits.*—*Re BOWMAN, THOMPSON & Co.* (1889), June 24, cited in Halsbury's Laws of England, Vol. V., p. 106.

866. — *Loss of capital borne primarily by founders' shares.*—An investment co., whose capital was divided into founders', preference & ordinary shares, had by depreciation in the value of its investments suffered a considerable loss of capital, & there appeared to be no reasonable prospect of anything ever coming to the holders of the founders' shares, either in respect of capital or dividend. By the constitution of the co. the founders' shares were, in the event of liquidation, to bear in the first instance losses of capital. The memorandum of assocn. provided that preference shares might be issued on such terms as the co. should by special resolution determine. Shares preferred both as to capital & dividend were issued by the directors without any special resolution having been passed; but at meetings subsequently held & attended by all classes of shareholders resolutions were unanimously passed adopting the terms under which the preference shares were issued. The ct. presented a petition for the confirmation by the ct. of resolutions for reduction which involved the total extinction of the founders' shares & threw the remainder of the loss upon the ordinary shares:—*Held*: (1) issue of the preference shares without the passing of a special resolution was capable of ratification by the ct. & had been ratified; (2) the scheme of reduction was not unfair & ought to be sanctioned.—*Re*

LONDON & NEW YORK INVESTMENT CORPN., [1895] 2 Ch. 860; 64 L. J. Ch. 729; 73 L. T. 280; 44 W. R. 137; 2 Mans. 541; 13 R. 749.

Annotation:—*Refd. Re National Bank of China* (1905), 49 Sol. Jo. 298.

867. — *Not unrepresented by assets—Nor excess capital—Consideration right to ordinary shares.*—A co. limited by shares cannot, under 1867 Act, & Companies Act, 1877 (c. 26), reduce its nominal & its paid-up capital by cancelling, with the consent of the holders, paid-up shares, where the amount has been neither lost, nor is unrepresented by available assets, nor is to be returned as in excess of the wants of the co., unless the reduction is so made as not to affect the equilibrium of the balance-sheet to the prejudice of creditors.

The capital of a co. was £700,300, divided into 350,000 preference, 350,000 ordinary, & 300 founders' shares, all of £1 each & fully paid-up. By a conditional agreement between the holders of the founders' shares, the co. & the directors, it was agreed that the co. should be at liberty to pass resolutions cancelling the founders' shares & increasing the capital by creating 78,000 new ordinary shares, & that on the agreement becoming absolute each holder of founders' shares should in respect of every founder's share be entitled to an allotment of 260 of the new shares. The agreement was to become absolute upon its being ratified by the holders of founders' shares & the co., the resolutions being passed & the sanction of the ct. to the reduction being obtained. The agreement was ratified, & the resolutions passed, & it was intended, on the sanction of the ct. being obtained, to issue the 78,000 new ordinary shares to the holders of the founders' shares. On petition to sanction the reduction:—*Held*: the agreement to take the new shares being conditional on, & not taking effect till after the reduction, the ct. had not power to sanction it; but if the petition were amended so as to show that the 78,000 shares had been allotted, & paid for, & the holders of the founders' shares declared themselves trustees of the latter, for the co., the ct. could sanction it.—*Re ANGLO-FRENCH EXPLORATION CO.*, [1902] 2 Ch. 845; 71 L. J. Ch. 800; 51 W. R. 8; 18 T. L. R. 750; 46 Sol. Jo. 700; 9 Mans. 432.

Annotation:—*Dbtd. Poole v. National Bank of China*, [1907] A. C. 229.

See, also, No. 842, ante.

868. — *Scheme involving increase of capital—& issue of new capital at discount.*—A co. passed a resolution to reduce its capital by cancelling a class of £1 deferred shares in the nature of founders' shares upon the terms of an agreement that the deferred shareholders should consent to the cancellation, & as soon as the reduction was confirmed, the capital should be increased, & each deferred shareholder should receive 100 £1 ordinary shares, part thereof, in exchange for each £1 deferred share. The agreement was conditional on the co. obtaining an order confirming the reduction. The petition for the confirmatory order was supported by all the shareholders. There were practically no creditors, the only debts being a small sum for current expenses:—*Held*: as the reduction scheme in its entirety really involved an increase of capital, & an issue of part thereof at 99 per cent. discount without any consideration to the co. it was wholly illegal, & the reduction could not be confirmed.—*Re DEVELOPMENT CO. OF CENTRAL & WEST*

able assets was £12,500 less £1,811. Petitioners did not impugn the accuracy of these figures. The reporter

also reported that the interests of creditors were not affected. The ct. confirmed the resolution to reduce the

capital by the sum of £12,500.—*MORTON (GEORGE), LTD., PETITIONERS* (1900), 2 F. (Ct. of Sess.) 1032.—SCOT.

Sect. 10.—Capital: Sub-sect. 3, F. (a) i., ii. & iii.]

AFRICA, [1902] 1 Ch. 547; 71 L. J. Ch. 310; 86 L. T. 323; 50 W. R. 456; 18 T. L. R. 337; 9 Mans. 151.

869. Preference shares—Under sinking fund provided by articles.]—The capital of a co. was divided into ordinary & preference shares, which, by the memorandum, were to have the rights specified in the arts. of assocn. The arts. provided for a preferential dividend, & for setting aside out of the net profits, a sum equal to 20 per cent. of the amount of the preference shares for the formation of a sinking fund to pay off the preference shares at the end of five years; subject to this, the rest of the net profits belonged to the holders of ordinary shares. The co. proposed to pay off & cancel all the preference shares pursuant to the arts., & presented a petition for reduction on this basis:—*Held*: (1) the memorandum & arts. of assocn. created a valid contract, binding on both classes of shareholders, that a portion of the profits of the co. should be set apart for the redemption & extinction of the preference shares; (2) the reduction, as proposed, did not involve a "payment to any shareholder of any paid-up capital" within Companies Act, 1877 (c. 26), s. 4, & the order for reduction might be made without referring the petition to chambers for an inquiry & certificate as to creditors.—*Re DICIDO PIER Co.*, [1891] 2 Ch. 354; 64 L. T. 695; 39 W. R. 486.

870. Second preference & ordinary shares—Unrepresented by assets.]—*Re FLOATING DOCK CO. OF ST. THOMAS, LTD.*, No. 834, *ante*.

Shares held in particular country.]—*See* No. 840, *ante*.

Shares issued in respect of amalgamation.]—*See* No. 886, *post*.

ii. Purchase of Company's Own Shares.

871. What amounts to—Surrender of partly-paid shares—Involving release of shareholder's liability—Though for benefit of company.]—A surrender of partly paid-up shares in a limited co. to the co., although voluntarily made for the benefit of the co., will, if it involves a release of the shareholder's liability for the amount remaining unpaid on the shares, constitute in effect a purchase by the co. of those shares, & will be *ultra vires* of the co. & void within the principle of *Trevor v. Whitworth*, No. 411, *ante*.

Since the decisions in *Trevor v. Whitworth*, No. 411, *ante*, *Oregum Gold-Mining Co. of India v. Roper*, No. 1821, *post*, & *British & American Trustee & Finance Corp. v. Couper*, No. 840, *ante*, a surrender of shares in a co. which has the effect of reducing capital can only be supported in circumstances which would justify forfeiture, & make it, in effect, a form of forfeiture.—*BELLERBY v. ROWLAND & MARWOOD'S S.S. CO., LTD.*, [1902] 2 Ch. 14; 71 L. J. Ch. 541; 86 L. T. 671; 50 W. R. 566; 18 T. L. R. 582; 46 Sol. Jo. 484; 9 Mans. 291, C. A.

Annotations:—*Consd.* *Rowell v. Rowell*, [1912] 2 Ch. 609. *Refd.* *Mother Lode Consolidated Gold Mines v. Hill* (1903), 19 T. L. R. 341; *Re Guardian Assce.*, [1917] 1 Ch. 431; *Hopkinson v. Mortimer, Harley*, [1917] 1 Ch. 646. *Mentd.* *Re Anglo-French Exploration Co.*, [1902] 2 Ch. 845.

See, further, Sects. 26 & 27, & Sect. 31, sub-sect. 2, *B.*, *post*.

872. No provision in articles—Directors autho-

risied by special resolution—To effect gradual winding up—Ultra vires.]—The shareholders of a co. passed a special resolution authorising the directors to expend a large portion of the co.'s assets in purchasing the shares of those shareholders who desired to withdraw from the concern, the avowed object of the resolution being to effect a gradual winding up of the co. The arts. of assocn. contained no clause authorising any such diminution of the co.'s assets, but contained a clause empowering the directors, with the sanction of a general meeting, to forfeit the shares of any shareholder who directly or indirectly commences or carried on any action against the director the co. A shareholder having commenced action against the directors & the co. to res. the carrying out of the above resolution, his sh. were forfeited:—*Held*: (1) the resolution *ultra vires*, & it was the duty of the shareholders to prevent the directors from carrying it into effect; (2) the forfeiture of the shares did not deprive the shareholder of his right to prevent the application of the co.'s assets to an illegal purpose.—*HOPE v. INTERNATIONAL FINANCIAL SOCIETY* (1876), 4 Ch. D. 327; 46 L. J. Ch. 200; 35 L. T. 924; 25 W. R. 203, C. A.

Annotations:—*Consd.* *Trevor v. Whitworth* (1887), 12 App. Cas. 409. *Refd.* *Re St. James's Bank, Colville's Case* (1879), 48 L. J. Ch. 633; *Re Dronfield Silkstone Coal Co.* (1880), 17 Ch. D. 76; *Kichbaum v. City of Chicago Grain Elevators*, [1891] 3 Ch. 459.

873. Prohibition in articles—Directors authorised by resolution at general meeting—To repurchase shares at discount—Valid.]—A co. having formed a scheme for reducing their capital by the purchase of fully-paid shares, & this being in violation of their arts. of assocn., passed a resolution at a general meeting: "That notwithstanding anything contained in the arts., the directors be authorised to carry out the following compromise or modification of the agreement with the vendors," which was in effect to cancel 12,000 fully-paid vendors' £5 shares upon payment of £1 3s. 4d. per share:—*Held*: this resolution was valid, notwithstanding that the effect of it was to carry out two distinct objects, viz., to set aside for the purpose of this transaction the art. forbidding the purchase of shares, & to authorise the directors to carry out the proposed scheme.—*TAYLOR v. PILSEN JOEL & GENERAL ELECTRIC LIGHT CO.* (1884), 27 Ch. D. 268; 53 L. J. Ch. 856; 50 L. T. 480; 33 W. R. 134.

874. Provision in memorandum or articles—Invalid.]—*TREVOR v. WHITWORTH*, No. 411, *ante*.

875. Provision in private Act—Insurance company registered under Companies Acts.]—A life assurance co. established under 1844 Act, acting under a power conferred by special Act of Parliament, purchased its own shares, such shares being only partially paid up. The co. being wound up, the liquidator on behalf of the policy holders sought to place the co. on the list of contributories in respect of the shares, & to make a call on the shareholders for the amount unpaid thereon:—*Held*: the shares were extinguished, & the call could not be made.—*Re SOVEREIGN LIFE ASSURANCE CO.*, [1892] 3 Ch. 279; 62 L. J. Ch. 36; 67 L. T. 336; 41 W. R. 1; 8 T. L. R. 801; 36 Sol. Jo. 731; 2 R. 95, C. A.

Annotation:—*Mentd.* *Sovereign Life Assce. v. Wilmot* (1893), 9 T. L. R. 525.

PART III. SECT. 10, SUB-SECT. 3.—F. (a) ii.

p. No provision in private Act—Directors authorised by special resolution—Invalid.]—A co. was incorporated

under a special Act of Parliament, the preamble of which set forth the objects of the co. as they appeared in the trust deed. The Act further provided that all alterations to the trust deed which might be made in conformity with its

provisions should be registered in the Deeds Office:—*Held*: the purchase of its shares by the co. with a view to reducing its capital not being authorised by the terms of the trust deed or Act of incorporation, could

876. When sanctioned by court—Though ultra vires—Capital in excess of company's requirements.]—The directors of a co. had purchased at various times on behalf of the co. 169 of its own shares. The capital of the co. consisted of 1,000 shares of £100 each, all of which were fully paid up. The shares were bought at their market value, & the amount of the purchase-money was £25,305. The reason for acquiring these 169 shares was because the capital of the co. was greater than was necessary for carrying on the business, which was in a very prosperous condition. The purchase-money consisted of accumulated profits available for division as dividend among the shareholders. Although, therefore, the conduct of the directors was *ultra vires*, the same result might have been brought about in a perfectly lawful manner. The co. petitioned the ct. for leave to extinguish the 169 shares of £100 each, & to reduce the capital of the co., on the ground that the capital was in excess of the wants of the co., & that the application came within 1867 Act, s. 9. The proper resolutions had been duly passed unanimously, & all debts were adequately provided for:—*Held*: the capital of the co. might be ordered to be reduced as desired.—*Re YORK GLASS CO., LTD., Ex p. ROBINSON* (1889), 60 L. T. 744; 37 W. R. 471; Meg. 206.

877. — Company formed under 1844 Act—Registered under 1862 Act—Shares redeemed before registration.]—*Re MIDLAND RAILWAY CARRIAGE & WAGON CO., No. 892, post.*

See, also, No. 928, post.

iii. Other Cases.

878. Vendor's shares — Patents purchased not worth purchase price.]—A co. found that the patents bought from the vendor to the co. were not of the value paid for them, & that the shares issued in payment therefore, did not represent assets. Having power under its arts. to reduce capital, the co., as the result of negotiations, passed a special resolution for the reduction of its capital by means of a surrender & cancellation of certain fully paid ordinary & preference vendor's shares. On petition for an order confirming the proposed reduction:—*Held*: there is nothing in the Companies Acts, 1867 & 1877, which requires that the reduction should be spread either equally or ratably over all the shares in the co., & the reduction in the manner proposed was valid.

At the time of passing the special resolution for the reduction, the co. also passed a special resolution changing the name of the co. The petition was advertised in the co.'s old name, but, before the hearing, the Board of Trade had approved of the change of name, the registrar had entered the new name on the register, & had issued a certificate of incorporation to meet the altered circumstances of the case. At the hearing the ct. refused to make the order sanctioning the reduction of capital unless an affidavit were produced showing that the co. had not used the new name, & unless an undertaking were given not to use the new name for a period of one month, during which the old name with the words "& reduced" was to be used. It

being found impossible to comply with these requirements, the ct. subsequently made the order for reduction, subject to the petition being amended by adding therein the new name to the old one, together with the words "& reduced" for one month.—*Re GATLING GUN, LTD.* (1890), 43 Ch. D. 628; 59 L. J. Ch. 279; 62 L. T. 312; 38 W. R. 317; 2 Meg. 114.

Annotation:—Re Denver Hotel Co., [1893] 1 Ch. 495. See, also, No. 886, post.

879. Shares held by director—In consideration of transfer of onerous property to director—& payment in cash.]—By the arts. of an hotel co. its funds were not to be expended in the purchase of its own shares; the directors might accept surrenders of shares & the co. might in general meeting reduce its capital by paying off capital & cancelling capital which had been lost or was unrepresented by available assets. The co. agreed with its managing director that he should take over an hotel, held by them on an onerous lease, & furniture, upon payment by him of £3,000, & that his shares should be surrendered to the co. & extinguished. A resolution confirming this agreement, which was most beneficial to the co., was passed at meetings at which some of the shareholders were not represented. No shareholders dissented, & the debenture holders & other creditors assented. The co. presented a petition for the sanction of the ct. to the proposed reduction of capital:—*Held*: (1) the co. had power, without the sanction of the ct. to sell part of its assets in consideration of a price in cash, & a release from liability, & then to accept a surrender of these shares; (2) the transaction was not a purchase by the co. of its own shares; (3) the result would be that these shares would be "capital in excess of the wants of the co." within Companies Act, 1877 (c. 26), s. 3; & the ct., therefore, had power to sanction the resolution, although there was no power to authorise a co. to prefer one shareholder to another of the same class by buying up his shares.—*Re DENVER HOTEL CO., [1893] 1 Ch. 495*; 62 L. J. Ch. 450; 68 L. T. 8; 9 T. L. R. 169; 41 W. R. 339; 37 Sol. Jo. 191; 2 R. 330, C. A.

Annotations:—Generally, Consd. British & American Trustee & Finance Corp. v. Couper, [1894] A. C. 399. Refd. Bellerby v. Rowland & Marwood's S.S. Co., [1902] 2 Ch. 14. Mentd. Re Oceana Development Co. (1912), 56 Sol. Jo. 537.

880. — In consideration of release of smaller debt.]—*Re HAMLYN BROTHERS, LTD.* (1908), Dec., cited in Halsbury's Laws of England, Vol. V., p. 106.

881. Shares of American shareholders — In consideration of transfer of American property.]—BRITISH & AMERICAN TRUSTEE & FINANCE CORPN. v. COUPER, No. 840, ante.

882. Partly-paid shares — Equivalent to purchase by company—Except in circumstances justifying forfeiture.]—BELLERBY v. ROWLAND & MARWOOD'S S.S. CO., LTD., No. 871, ante.

883. Fully-paid shares — Retained by company as security.]—(1) A co. may reduce its capital by extinguishing paid-up shares issued, but retained as security by the co. (2) In such a case the ct. will not require any publication of the reasons for such

not be validated by resolution of shareholders, but an amending Act of Parliament was necessary.—*WOLFE v. SMYTH & CRAWFORD (LIQUIDATORS)*, [1914] C. P. D. 187.—S. AF.

PART III. SECT. 10, SUB-SECT. 3.—F. (a) iii.

q. Fully-paid shares — Recouping company—Against misappropriation of

funds.]—A co. registered as a co. limited by shares under the Cos. Acts, & which under its arts. of assocn. had power to reduce its capital & to accept a surrender of its shares, passed a special resolution to reduce its capital by permanently cancelling certain fully-paid shares belonging to two shareholders who had agreed to the cancellation in order to recoup the co. against a loss resulting from the mis-

appropriation of the funds of the co. by one of its officials. In a petition for confirmation, after a remit for inquiry & report:—*Held*: the resolution should be confirmed.—*BANKNOCK COAL CO., LTD., PETITIONERS* (1897), 24 R. (Ct. of Sess.) 476.—SCOT.

r. Issue of debentures—Value equal to shares cancelled—Not sanctioned where result would be insolvency.]—

Sect. 10.—Capital: Sub-sect. 3, F. (a) iii., (b), (c) & (d) i.]

reduction, & will dispense altogether with the addition of the words "& reduced" to the co.'s title.

Semble: 1877 Act only dispenses with the addition of those words until the presentation of the petition; an order of the ct. is necessary to dispense with it from that time till the hearing.—*Re LLYNVI, TONDU & OGMORE COAL & IRON CO.* (1877), 37 L. T. 373; 26 W. R. 55.

884. — Not allowed unless equilibrium of balance-sheet unaffected—Shares of greater nominal value taken up.]—*Re ANGLO-FRENCH EXPLORATION CO.*, No. 867, *ante*.

See, also, No. 833, *ante*, & No. 931, *post*.

885. — In circumstances justifying forfeiture.]—*BELLERBY v. ROWLAND & MARWOOD'S S.S. CO., LTD.*, No. 871, *ante*.

886. — Issued on amalgamation—Severance & return of assets.]—*Re KNOWLES, LTD.* (1908), cited in Halsbury's Laws of England, Vol. V., p. 106.

See, also, No. 878, *ante*.

887. — Forfeited for debts due from member generally.]—Art. 22 of the arts. of assocn. of a limited co., as altered by a special resolution, provided that the co. should have a first & paramount lien upon all the shares registered in the name of each member for the debts, liabilities, & engagements of such member. Art. 23 provided that the board might sell the shares for the purpose of enforcing the lien, & might also by a resolution to that effect, forfeit the shares subject to such lien.

The holder of fully-paid shares brought an action against the co. & its directors asking for a declaration, in effect, that his fully-paid shares were not subject to the power of forfeiture for debts on the ground that it was *ultra vires* & illegal:—*Held*: under this power the forfeiture for debts due from a member generally, as distinct from those due from him as a contributory, would amount to an illegal reduction of capital.—*HOPKINSON v. MONTIMER, HARLEY & CO., LTD.*, [1917] 1 Ch. 646; 86 L. J. Ch. 467; 116 L. T. 676; 61 Sol. Jo. 384.

Capital in excess of requirements.]—*See* No. 928, *post*.

888. Forfeited shares—Though partly-paid.]—It was provided by one of the arts. of assocn. of a co. that every share which should be forfeited should thereupon become the property of the co. & the directors might sell, re-allot or otherwise dispose of the same upon such terms & in such manner as they should think fit. On a petition for reduction of capital:—*Held*: the forfeited shares could be treated as unissued & with nothing paid thereon, although the sum of £82 7s. 6d. had in fact been paid in respect of them.—*Re VICTORIA (MALAYA) RUBBER ESTATES, LTD.* (1914), 58 Sol. Jo. 706.

The petitioning co. desired to reduce its capital by cancelling certain shares & issuing debentures to the value of the shares concerned. According to the last balance-sheet the net assets of the co. were large, but the proposed issue of debentures would so largely increase the liabilities of the co. as to make it wholly insolvent:—*Held*: such a proposal was not a proper one for the sanction of the ct.—*Re CLARK*, [1921] N. Z. L. R. 533.—N.Z.

PART III. SECT. 10, SUB-SECT. 3.—F. (c).

s. Shares all issued & fully paid—Resolution to convert into partly-

paid shares—Not proper resolution to reduce.]—A limited co. registered under Cos. Acts, with a capital of £2,000 in 2,000 shares of £1 each all issued & fully-paid, presented a petition for the confirmation of a resolution to reduce its capital. The resolution recited that capital had been lost to the extent of £500, & that it was resolved to reduce the paid-up capital from £2,000 to £1,500, by converting the £1 shares fully-paid into £1 shares with only 15s. paid-up:—*Held*: refusing the petition, the resolution was not a proper resolution to reduce capital.—*MORRISON (W.) & CO., LTD., PETITIONERS* (1892), 19 R. (Ct. of Sess.) 1049.—SCOT.

(b) By Cancellation of Stock.

889. Capital consisting only of stock.]—When the capital of a co. consists only of stock, a reduction of the capital of the co. can be effected by cancelling a part of the stock.—*Re HOUSE PROPERTY & INVESTMENT CO., LTD.* (1912), 106 L. T. 949; 56 Sol. Jo. 505.

(c) By Reduction of Nominal Amount of Sole Class of Shares.

890. Shares all issued & fully-paid—Divided into shares of different amounts—Ratably reduced.]—*Re NEWBERRY-VAUTIN (PATENTS) GOLD EXTRACTION CO., LTD.*, [1892] 3 Ch. 127, n.; 67 L. T. 118, n.; 40 W. R. 698, n.

Annotation:—*Folld. Re Pinkney S.S. Co.*, [1892] 3 Ch. 125.

891. — Reduced in proportion to lost capital.]—*Re SAVOY THEATRE & OPERAS, LTD. & REDUCED* (1903), 47 Sol. Jo. 760.

892. Issued shares not fully-paid—Balance liable to be called up on winding up only—Company prosperous.]—The ct. sanctioned the reduction of capital of a co. originally formed under 1844 Act, & subsequently registered as a limited co. under 1862 Act, in respect of uncalled capital which could not be called up except in the event of & for the purposes of a winding up, the co. being in a prosperous condition; & capital which had before the registration of the co. as a limited co. been repaid to the shareholders.—*Re MIDLAND RAILWAY CARRIAGE & WAGON CO.* (1907), 23 T. L. R. 661.

893. Issued shares equally paid up—Each issued share sub-divided—Partly into unpaid shares, partly into shares partly-paid—Unpaid shares surrendered for re-issue.]—The issued share capital of a co. consisted of 640 shares of £500 each on which £185 per share had been called up & paid. The ct. under 1908 Act, s. 46 (1) (a), sanctioned a special resolution reducing the capital by dividing each issued share of £500 into five shares of £100 each; apportioning the £185 called up on each issued £500 share equally between three of the £100 shares resulting from such sub-division, leaving a liability of £38 6s. 8d. on each of such three £100 shares; & surrendering for re-issue when required the remaining wholly unpaid two shares of £100 each resulting from such sub-division of each issued £500 share.—*Re DOLOSWELLA RUBBER & TEA ESTATES, LTD. & REDUCED*, [1917] 1 Ch. 213; 86 L. J. Ch. 223; 115 L. T. 853.

894. Issued shares not equally paid up—All shares equally reduced—No diminution of liability.]—*Re ST. LUCIA CENTRAL SUGAR FACTORY CO.* (1887), 3 T. L. R. 523.

See, also, No. 904, *post*.

895. — Provision in articles as to winding up—How losses borne—Not applied to reduction.]—*Re CREDIT ASSURANCE & GUARANTEE CORPN., LTD.*, No. 838, *ante*.

t. Reduction affecting partly-paid shares only—Subsequent increase by issue of new shares—Right of holders to demand call instead.]—The nominal capital of a co. consisted of 92,566 £10 shares, which, so far as issued, had been fully-paid, & of 31,100 new shares issued at par to shareholders, on which only £7 had been called up. The co. passed resolutions to reduce the capital of the co., by reducing the liability on each of the 31,100 shares, "after £1 shall have been called up & paid," to the extent of £2 per share, & exchanging four fully-paid shares of £10 for five of the £8 shares & then to increase the capital of the co. by the issue of 8,224 £10 shares to be sold to the public,

906. Issued & unissued shares—Some shares fully issued part-paid—All shares equally reduced.]—A co. was empowered by its arts. of assocn. to increase its capital by the issue of new shares, & also to reduce its capital. Of the co.'s original capital, which was made up of £10 shares, one of the shares taken were fully paid up, & others were issued & taken at the price of £2 per share, per share being credited as paid in pursuance of a contract duly registered under 1867 Act, s. 25. Part of their capital having been lost the co. passed a resolution for the reduction of its nominal amount by writing off £7 from each fully-paid £10 share & from each £10 share on which £8 had been credited as paid, & by reducing all shares remaining issued from £10 to £3 per share. A petition was then presented under 1867 Act, & Companies Act, 1877 (c. 26), to obtain the sanction of the ct. to this resolution, the petition being supported by evidence that all the creditors of the co. had been paid up to a recent date, except one, who appeared & consented to the petition. The ct. made the order as prayed, & dispensed with the usual notices to creditors & advertisement of the petition.—*Re PLASKYNASTON TUBE CO.* (1883), 23 L. D. 542.

*Annotations:—**Reid. Re Addlestone Linoleum Co.* (1887), 37 Ch. D. 191; *Re Almada & Tinto Co.* (1888), 57 L. J. Ch. 106.

907. ——— Unissued shares not reduced.]—*Re LAND MORTGAGE, INVESTMENT, & AGENCY CO. OF AMERICA* (1892), 36 Sol. Jo. 556.

908. ——— Voting power under articles proportionate to original shares—Alteration of articles.]—The ct. has power, under 1867 Act & Companies Act, 1877 (c. 26), to sanction a resolution by a limited co. for a partial reduction of one class of shares, *e.g.*, original shares already issued & fully paid up, leaving the unissued shares unreduced. But if the arts. give a voting power proportionate to the holding of original shares, the ct. will require an alteration in them so as to make the voting power proportionate to the reduced capital. The ct. will not at once dispense with the words “& reduced,” that addition being requisite to give for such period as the ct. thinks reasonable warning to the public of the financial position of the co.—*Re PINKNEY & SONS S.S. CO.*, [1892] 3 Ch. 125; 61 L. J. Ch. 691; 67 L. T. 117; 10 W. R. 698; 8 T. L. R. 667; 36 Sol. Jo. 609.

909. Reduction of part only of class—Whether sanctioned.]—The ct. may sanction a resolution reducing the whole of its original capital shares apart from any reduction of the preference capital.

Qu.: whether the ct. will sanction a reduction of part only of one class of capital.—*Re AGRICULTURAL HOTEL CO.*, [1891] 1 Ch. 396; 60 L. J. 208; 3 L. T. 748; 39 W. R. 218; 7 T. L. R. 181.

*Annotation:—**Reid. Re Pinkney S.S. Co.*, [1892] 3 Ch. 125.

Compare Sub-sect. 3, F. (a) iii., *ante*, & No. 931, *post*.

1) By Reduction of Nominal Amount of Shares of Different Classes.

i. Where Amount of Shares only Affected.

900. Ratable reduction—Preference & ordinary shares equally reduced.]—*BANNATYNE v. DIRECT SPANISH TELEGRAPH CO.*, No. 843, *ante*.

901. ——— Dividends made available for preference shareholders.]—*Re DIRECT SPANISH TELEGRAPH CO.*, No. 836, *ante*.

902. ——— Preference shareholders without power of voting—Alteration of articles after issue of preference shares.]—(1) Upon a reduction of the capital of a co. under 1867 & 1877 Acts, it is not essential that the reduction should be made equally, or ratably, on all the shares, although, *prima facie*, in the absence of any agreement to the contrary, the reduction ought to be made in that way.

(2) But a contract made on the issue of any particular class of shares, such as preference shares, that that class of shares shall not be liable to reduction, will be valid.

Qu.: whether, however, a co. can by contract deprive itself altogether of the power of reducing its capital which is conferred by the Acts.

(3) The fact that, at the time when a class of preference shares was created, the arts. of assocn. of the co. did not authorise any reduction of the capital, will not prevent the reduction of the amount of the preference shares, if a special resolution is previously passed altering the arts. by the insertion of a power of reduction.

(4) Under sect. 11 of 1867 Act, the ct. has a judicial discretion as to confirming resolutions for the reduction of the capital of a co., but the confirmation ought not to be refused unless there is something unjust or inequitable in the proposed reduction.

(5) The minute to be registered on the confirmation by the ct. of resolutions for the reduction of the capital of a co. ought to show, not only the amount of the capital as reduced, but also the amount at which it stood prior to the reduction.

The arts. of assocn. of a co., formed in 1864, under 1862 Act, provided that the directors might, from time to time, with the sanction of a special resolution previously given, increase the capital by the issue of new shares, & that any capital thus raised should be considered as part of the original capital, & should be subject to the same provisions as if it had been part of the original capital, except that it should be lawful for the co. by special resolution to direct that the new shares should have such priority in respect of dividends as it should deem expedient. The arts. did not contain any power to reduce the capital. In 1872 it was resolved to issue certain preference shares, “bearing interest at 8 per cent. per annum in perpetuity.” In 1876 it was resolved to issue certain other preference shares, “entitling the holders to a fixed dividend at 6 per cent. per annum on the amount for the time being paid up in respect of such shares.” In both cases it was provided that the preference shareholders should be entitled to attend the general meetings of the co., but that they should not be entitled in virtue of those shares to vote. Both classes of preference shares were issued & were paid up in full, as were also the ordinary shares. In 1885 a special resolution was passed, adding to the arts. of assocn. a clause authorising the directors from time to time, with the sanction of a special resolution, to reduce the capital by cancelling lost capital, or capital unrepresented by available assets. In April, 1888, special resolutions were passed for the reduction of the whole of the capital, including the preference shares, by one-fourth, on the ground that capital to that extent had been lost. A petition by the co. for the confirmation

the shares then standing at a high premium on the market. Certain of the £7 shareholders brought a reduction of the resolutions on the ground that they were *ultra vires* of the co. & unjust, as pursuers were entitled to have the

unpaid capital of the £7 called up before the co. raised capital otherwise:—*Held*: the resolutions were not incompetent, & they did not prejudice any rights of pursuers, as they had no right to insist that the unpaid capital

on the shares should be called up & as no injury was done to them by restricting their liability.—*HOGGAN v. THARSIS SULPHUR & COPPER CO., LTD.* (1882), 9 R. (Ct. of Sess.) 1191.—*SCOT*.

Sect. 10.—Capital: Sub-sect. 3, F. (d) i. & ii.]

of the resolutions by the ct. was opposed by some of the preference shareholders, who contended that there was no power to reduce the amount of the preference shares, or that at any rate the amount of the dividend payable on those shares could not be reduced:—*Held*: (6) there was nothing in the bargain with the preference shareholders which prevented the reduction of their shares, & there was nothing unfair or inequitable in the proposed reduction. The resolutions were accordingly confirmed.—*Re BARROW HÆMATITE STEEL CO.* (1888), 39 Ch. D. 582; 58 L. J. Ch. 148; 59 L. T. 500; 37 W. R. 249; 4 T. L. R. 775; *subsequent proceedings*, [1900] 2 Ch. 846; [1901] 2 Ch. 746, C. A.

Annotations:—*As to* (1) *N.F. Re Union Plate Glass Co.* (1889), 42 Ch. D. 513. *Reid. Re Gatling Gun* (1890), 43 Ch. D. 628; *British & American Trustees & Finance Corpn. v. Couper*, [1894] A. C. 399. *As to* (4) *Reid. Re Alabama, New Orleans, Texas & Pacific Junction Ry.*, [1891] 1 Ch. 213. *As to* (6) *Reid. Christie v. Northern Counties Permanent Benefit Bldg. Soc.* (1889), 61 L. T. 796.

903. ——— Sanction of preference shareholders.]—Where there is more than one class of shares in a co. a petition for reduction of capital ought to state whether or not there is any priority as to capital.

Where under the memorandum & arts. preference shareholders have no priority as to capital & no voting power but are merely entitled to a fixed cumulative preferential dividend on the nominal amount of the capital from time to time paid up on their shares, & the co. has power to reduce capital, a ratable reduction on all the shares, preference & ordinary, though diminishing the actual preferential dividend, is not an alteration of the rights of the preference shareholders as to require their sanction under an ordinary modification of rights clauses.—*Re MACKENZIE & CO., LTD.*, [1916] 2 Ch. 450; 85 L. J. Ch. 804; 115 L. T. 440; 61 Sol. Jo. 29.

See, also, Nos. 906, 916, *post*.

904. Reduction not ratable — Preference & ordinary shares unequally reduced—Proposal to write off a few unpaid calls on ordinary shares—Proposal confirmed without prejudice to unpaid calls.]—The nominal capital of a co. consisted of £1,000,000 in 20,000 shares of £50 each. Only 6,044 shares had been issued, of which 1,359 were preference shares, & the remaining 4,685 were ordinary shares. All the preference shares & 4,360 of the ordinary shares were fully paid up. On the remaining 325 ordinary shares only £38 per share had been called up, & that sum had been paid on all of these shares except thirty-seven, on which only £30 per share had been paid. The co. having lost part of their capital, passed a resolution for the reduction of its nominal amount by writing off £35 from each preference share & £38 from each ordinary share. It was proposed to state in the minute which was to be registered that on 325 of the ordinary shares nothing was to be deemed to have been paid up, all the other issued shares being deemed to have been fully paid up. A petition was presented under 1867 Act & Companies Act, 1877 (c. 26), to obtain the sanction of the ct. to the resolution, the petition being sup-

ported by evidence that the holders of the thirty-seven shares on which there was an unpaid call of £8 were persons of no means, & that it would be impossible to recover anything from them. The ct. made the order as prayed, but without prejudice to any claim which might be made on the holders of the thirty-seven shares in respect of the £8 call.—*Re GREAT WESTERN S.S. CO., LTD.* (1886), 56 L. J. Ch. 3; 35 W. R. 154.

905. ———.]—Re SHOWELL'S BREWER Co., LTD. & REDUCED (1914), 30 T. L. R. 428. *See, also*, No. 921, *post*.

906. Loss thrown on ordinary shares—No reduction on preference shares.]—Re NEW QUEBRADA RAILWAY, LAND & COPPER CO., [1888] W. N. 233; *subsequent proceedings, sub nom. Re QUEBRADA RAILWAY, LAND & COPPER CO.* (1889), 40 Ch. D. 363.

907. ———.]—A limited co. desiring to effect a reduction of capital under 1867 Act & Companies Act, 1877 (c. 26), has no power to do so by reducing some of its shares but not reducing others. Accordingly, a petition for the sanction of the ct. to a special resolution passed by a co. for reduction of capital by reducing the amount of its ordinary shares while not reducing the amount of certain shares carrying a preferential dividend, was dismissed.—Re UNION PLATE GLASS CO. (1889), 42 Ch. D. 513; 58 L. J. Ch. 767; 61 L. T. 327; 37 W. R. 792; 5 T. L. R. 711; 1 Meg. 360.

Annotations:—*Dbtd. Re Gatling Gun* (1890), 43 Ch. D. 628. *N.F. Re Agricultural Hotel Co.*, [1891] 1 Ch. 396. *Reid. Re Mackenzie*, [1916] 2 Ch. 450.

908. ———.]—Re AMERICAN PASTORAL Co. (1890), 62 L. T. 625; 2 Meg. 80.

Annotation:—*Folld. Re Agricultural Hotel Co.*, [1891] 1 Ch. 396.

909. ———.]—Re AGRICULTURAL HOTEL Co., No. 899, *ante*.

910. ———.]—Re LONDON & NEW YORK INVESTMENT CORPN., No. 866, *ante*.

ii. *Where other Rights Affected.*

911. Reduction affecting voting rights—Confirmation refused.]—Re CONTINENTAL UNION GAS Co., LTD. (1891), 7 T. L. R. 476.

Annotations:—*Consd. Re Pinkney S.S. Co.*, [1892] 3 Ch. 125; *Re Colmer*, [1897] 1 Ch. 524.

912. ——— Sanctioned—In proper case.]—The ct. has power in a proper case to confirm a resolution for reduction of capital notwithstanding that the voting powers may be thereby affected.—*Re COLMER (JAMES), LTD.*, [1897] 1 Ch. 524; 66 L. J. Ch. 326; 76 L. T. 323; 45 W. R. 343; 41 Sol. Jo. 333.

913. ———.]—Re HOARE & Co., LTD. & REDUCED, [1910] W. N. 87.

914. ——— Not necessarily inequitable.]—Re ALLSOPP & SONS, LTD., No. 839, *ante*.

915. Reduction affecting preference dividend—Arrears cancelled—Future dividend reduced—Ordinary shares reduced.]—Re RYLANDS (DAN), LTD. & REDUCED (1897), 41 Sol. Jo. 778.

916. ——— Ordinary & preference shares reduced & consolidated.]—An incorporated society whose arts. of assocn. did not give power to modify rights, or to sub-divide shares, or to reduce capital, having issued both preference & ordinary

PART III. SECT. 10, SUB-SECT. 3.—F. (d) i.

9061. Loss thrown on ordinary shares—No reduction on preference shares.]—A co., whose shares consisted of A. preference shares fully-paid so far as issued, but not all issued, & B. postponed shares all issued & fully-paid

capital with the consent of the sole holder of the B. shares by the cancellation as being unrepresented by available assets of two-fifths of the nominal value of the B. shares & by paying off, as being in excess of the wants of the co., the remaining three-fifths of the nominal value of the B. shares. The co. proposed to pay off the three-

fifths by borrowing on the security of its heritable property. The only creditors of the co. were heritable creditors & trade creditors, whose debts were paid monthly. In a petition for confirmation:—*Held*: the reduction should be confirmed.—*WEST END CAFE CO., LTD. & REDUCED* (1904), 81 T. L. R. 258; 73 W. R. 258; 41 Sol. Jo. 258.

shares of £5 each, finding that, owing partly to the defalcations & mismanagement of a former manager & partly to depreciation of property, its capital had been lost or was unrepresented by available assets to the extent of a large amount, & also that the arrears of dividends on the preference shares amounted to a considerable sum, added to its arts. of assocn. arts. for the above-mentioned purposes, & then prepared a scheme which was approved by a majority of each class of shareholders, under which some ordinary shares which had been transferred to the society were cancelled, the preference shares were reduced to £2 shares & then divided into £1 shares, the ordinary shares were reduced to shares of 10s. each & then consolidated into £1 shares, the arrears of dividends on the preference shares were cancelled, & the preference shares were made to rank *pari passu* with & to have the only rights & privileges of ordinary shares. The society then petitioned the ct. to confirm the reduction of its capital & to approve minutes for registration. The petition was unopposed. The ct. confirmed the reduction & approved the minutes.—NATIONAL DWELLINGS SOCIETY, LTD. (1898), 78 L. T. 144.

917. — — —.]—*Re HOARE & Co., LTD. & REDUCED*, [1910] W. N. 87.

918. — — — Reserve fund applied in discharge of arrears—Consent of majority of shareholders.]—*Re NEW PREMIER CYCLE Co. (No. 2)* (1902), 47 Sol. Jo. 50, C. A.

See, also, No. 903, *ante*.

919. Reduction altering class rights—Deferred shares—Partly cancelled—Partly to rank with ordinary shares.]—In 1885 a co. with a capital of not less than £1,000,000 was formed to take over & work a concession which had been granted by N. Disputes having arisen between the co. & N., an agreement was come to in 1890 whereby in settlement the co. raised an addition capital of 15,000 deferred shares of £10 each. Clause 5 of the memorandum of assocn. provided that “the shares of which the co. shall from time to time consist may be divided into different classes, with such preference, priorities, restrictions, or special incidents as may from time to time be provided by the arts. & special resolutions of the co.” The arts. contained no power to reduce capital, but they provided that shares might be issued or re-issued of different classes, & that any special priority might be attached to or taken away from them, & that special resolutions affecting one class of shareholders were to be valid if passed in the presence & with the votes of such a number of such shareholders as were sufficient to make the resolution valid as a special resolution independently of shareholders of other classes. Power

to reduce was inserted by an additional art., & at the same time a special resolution was duly passed & confirmed that the capital be reduced by £30,000 which had been lost, & that the loss should fall on the deferred shareholders by surrender of 3,000 such shares, the remaining 12,500 to be raised to the position of ordinary shares. On a petition being presented praying for confirmation of the reduction:—*Held*: (1) having regard to the clauses above-mentioned of the memorandum & arts., the resolution was therefore not *ultra vires*; (2) as there was nothing in the agreement of 1890 that future capital was not to have any priority, it was not violated by the resolution; (3) having regard to the facts that the deferred shareholders had agreed to take the whole loss, N. had full notice of all the proceedings, & his position as a creditor under the original concession was not affected, it was not unfair nor inequitable & the proposed reduction ought to be confirmed.—*Re HYDERABAD (DECCAN) Co., LTD.* (1896), 75 L. T. 23; 12 T. L. R. 532; 40 Sol. Jo. 668; 3 Mans. 242.

920. — — — Ordinary & preference shares consolidated—After reduction.]—NATIONAL DWELLINGS SOCIETY, LTD., No. 916, *ante*.

921. — — — After unequal reduction.]—By the memorandum of a limited co. formed in 1894 under the Cos. Acts the capital of the co. was £1,000,000 divided into 100,000 ordinary shares of £10 each, & the capital was afterwards increased by special resolution in the statutory mode. The co.’s arts. of assocn. authorised the co. to issue its share capital with such preferences or special rights as they thought fit, & provided that all shares should be held on the terms that any rights or preference or special privilege of the holders of any class of shares should not be interfered with except by special resolution passed & confirmed by shareholders of that class, & every resolution so passed should be a valid resolution binding all shareholders of such class; & that the co. might by special resolution reduce its capital.

In 1903 the co. divided its existing share capital into preference shares & stocks & ordinary stocks by special resolution, which resolution became part of the memorandum. In 1909 the co., having lost capital to a large amount, passed in general meeting, held under sect. 69 of 1908 Act, a special resolution reducing its capital by writing off the loss in certain proportions from the nominal amount of its then issued preference shares & stock & ordinary stock, the preference stock being reduced by 40 per cent. & the ordinary stock by 85 per cent., the preference shares being reduced from £6 shares £2 15s. paid to £3 12s. shares 7s. paid. At the same time the co. passed a second

PART III. SECT. 10, SUB-SECT. 3.—
F. (d) ii.

917 i. Reduction affecting preference dividend—Arrears cancelled.]—The preference shareholders in a co. limited by shares were under the memorandum of assocn. of the co. entitled to receive out of the profits a fixed cumulative preferential dividend of 5 per cent. *per annum*. By art. 46 of arts. of assocn. it was provided that all or any of the rights & privileges attached to any class of shares might be modified by an extraordinary resolution passed at a general meeting of the holders of that class. By a resolution duly passed in terms of art. 46 on Feb. 9, 1903, at which date the dividends due on the preference shares were two years in arrear, a meeting of the preference shareholders agreed to a scheme for reduction of capital proposed by the directors under which these arrears

were cancelled & the future profits distributable as dividend were appropriated in order of priority to payment (a) of a cumulative dividend of 5 per cent. on the preference shares; (b) of 5 per cent. on the ordinary shares, & (c) of any surplus *pari passu* to holders of both classes of shares. In a petition by the co. the ct. confirmed the scheme holding that it was not *ultra vires* to cancel arrears of preference dividend in the manner proposed.—*Re OBAN & AULTMORE, GLENLIVET DISTILLERIES, LTD.* (1903), 5 F. (Ct. of Sess.) 1140.—SCOT.

a. Unequal reduction—Voting power remaining the same—Sanctioned.]—The memorandum of assocn. of a co. incorporated under the Cos. Acts provided that the capital should consist of 6,000 preference shares of £10 each, & 6,000 ordinary shares of £10 each, the preference shares to be

entitled to a cumulative preferential 5 per cent. *per annum* dividend & to priority of repayment of capital in the event of a winding up. By the arts. of assocn. it was provided that the voting power should be one vote for each share, whether preference or ordinary. The whole of the ordinary shares were held by the vendors or the representatives of the vendors, who were also the managers of the co. The co.’s business having greatly depreciated, a resolution was passed by large majorities of both classes of shareholders approving of a scheme for reduction of capital, whereby the preference shares were to be reduced from £10 to £5 10s. & the ordinary shares from £10 to £1. The voting power remained one vote for each share, whether preference or ordinary. A petition for the confirmation of this resolution was opposed by certain

Sect. 10.—Capital: Sub-sect. 3, F. (d) ii., (e) & (f) & G. (a).]

special resolution that upon the reduction of capital being sanctioned by the ct. the preference rights attaching to the preference shares & stock should be extinguished, & that the preference stock & ordinary stock resulting from the reduction of capital should forthwith thereafter be consolidated into one consolidated ordinary stock ranking *pari passu* for all purposes. Those two resolutions were at the same time also passed at separate meetings of each class of preference share & stockholders & ordinary stockholders. The co. then presented a petition for the sanction of the ct. to the resolution reducing its capital. Dissident shareholders opposed on the ground that the second resolution came within sect. 45 of the Act & was *ultra vires* as it had not been passed in conformity with that sect.

The ct. sanctioned the reduction, holding that the resolutions had been validly passed under the arts. & that sect. 45 did not apply.

The words "& reduced" were dispensed with as they would be injurious to the co. in Australia.—*Re AUSTRALIAN ESTATES & MORTGAGE CO., LTD.*, [1910] 1 Ch. 414; 79 L. J. Ch. 202; 102 L. T. 458; 17 Mans. 63.

Annotation.—*Mentd. Re Schwepges*, [1914] 1 Ch. 322.

922. — In favour of ordinary shares—May be sanctioned.]—(1) The memorandum of assocn. of a limited co., besides stating the objects of the co. & the amount of its capital, stated that the capital was to be divided into specified numbers of preference, ordinary, & deferred shares which were to have specified rights *inter se*. The memorandum further provided that the rights for the time attached to the several classes of shares respectively might be modified or dealt with in the manner mentioned in the accompanying arts. of assocn.:—*Held*: (by C. A.): inasmuch as 1862 Act, s. 8, does not require that the rights of the shareholders *inter se* shall be stated in the memorandum of a limited co., this power of modification of those rights was valid.

(2) The co. having passed a special resolution for the reduction of its capital, also resolved in accordance with the provisions of the arts. that, after the special resolution had been confirmed by the ct., the rights of the shareholders *inter se* should be altered in favour of the ordinary shareholders at the expense of the preference shareholders. Some of the preference shareholders opposed the co.'s petition for the confirmation of the reduction because of this alteration of their rights:—*Held* (by C. A.): the scheme for reduction, including the alteration of the rights of the shareholders, was fair & equitable, & the reduction ought to be confirmed.

(3) Meaning of the words in Companies Act, 1877 (c. 26), s. 3, "lost capital or any capital unrepresented by available assets" discussed (*see* No. 857, *ante*).—*Re WELSBACH INCANDESCENT GAS LIGHT*

Co., LTD., [1904] 1 Ch. 87; 73 L. J. Ch. 104; L. T. 645; 52 W. R. 327; 20 T. L. R. 122; Mans. 47, C. A.

Annotation.—*As to* (1) & (2) *Consd. Re Mackenzie*, [1916] Ch. 450.

923. — Priorities.]—Re HOARE & Co., LTD & REDUCED, [1910] W. N. 87.

924. — Cumulative preferential dividend reduced.]—Re MACKENZIE & Co., LTD., No. 90; *ante*.

925. Reduction affecting rights of fully-paid shareholders—Right to require calls for repayment of proportion of amount paid up.]—Re PHOEBI GOLD MINING Co. (1900), 44 Sol. Jo. 675.

(e) By Return of Excess Capital.

926. Nominal capital not reduced—Amount returned liable to be called up again.]—NORTH-MOOR SPINNING Co. (1883), *Palmer's Company Precedents*, 4th ed., 465.

Annotation.—*Folld. Re Fore-street Warehouse Co.* (1888), 1 Meg. 67.

927. — —.]—A co. was incorporated with a nominal capital of £600,000 divided into 30,000 shares of £20 each. The whole of the 30,000 shares were issued, & the sum of £14 per share was paid up thereon. By special resolution, duly passed & confirmed, the co. resolved that in respect of each of the shares in the capital of the co., upon all of which the sum of £14 per share had been paid up, capital be paid off or returned to the extent of £3 per share, so as to reduce the capital paid upon all such shares to the sum of £11 per share, upon the footing that the amount paid off or returned in each share, or any part of it, might be called up again in the same manner as if it had never been paid. The nominal capital of the co. was not altered by the proposed reduction. On petition that the resolution be might confirmed by the ct.:—*Held*: the ct. had power to make the order.—*Re FORE-STREET WAREHOUSE Co., LTD.* (1888), 59 L. T. 214; 1 Meg. 67.

Annotation.—*Folld. Re Watson, Walker & Quickfall*, [1898] W. N. 69.

928. Nominal capital reduced—Capital returned borrowed on debentures—Shares purchased by company cancelled—Unissued shares cancelled.]—Re LAMSON STORE SERVICE Co., [1897] 1 Ch. 875, n.

929. — —.]—Re WATSON, WALKER & QUICKFALL, LTD., [1898] W. N. 69.

930. — —.]—The ct., upon the requirements of 1867 Act, ss. 13, 14 being satisfied, confirmed a scheme of reduction under which a portion of the capital of a co. was to be returned to the shareholders, although a part of the portion so returned was to be immediately borrowed from them by the co. on debentures.—*Re NIXON'S NAVIGATION Co.*, [1897] 1 Ch. 872; 66 L. J. Ch. 406.

Annotation.—*Folld. Re De la Rue*, [1911] 2 Ch. 361.

931. — —.]—A scheme for the reduction of the share capital of a co. comes within 1908 Act,

preference shareholders, who contended that it was *ultra vires* of the ct. to confirm a scheme which violated the provisions of the memorandum of assocn. as to the shareholders' rights *inter se*, & further, that the scheme proposed was not just & equitable. The ct. confirmed the resolution, holding that it had power to do so, & that the scheme was just & equitable.—*BALMENACH-GLENLIVET DISTILLERY, LTD. v. CROALL* (1906), 8 F. (Ct. of Sess.) 1135.—SCOT.

PART III. SECT. 10, SUB-SECT. 3.—F. (e).

929 i. Nominal capital reduced—

*Capital returned borrowed on debentures.]—*A co. whose shares consisted of A., preference shares fully-paid so far as issued, but not all issued, & B., postponed shares all issued & fully-paid, passed a special resolution to reduce capital with the consent of the sole holders of the B. shares by cancellation as being unrepresented by available assets of two-fifths of the nominal value of the B. shares & by paying off as being in excess of the wants of the co., the remaining three-fifths of the nominal value of the shares. The co. proposed to pay off three-fifths by borrowing on security of its heritable property.

The only creditors of the co. were heritable creditors & trade creditors, whose debts were paid monthly. The ct. confirmed the reduction.—*WEST END CAFE Co., LTD. & REDUCED* (1894), 21 R. (Ct. of Sess.), 381; 31 Sc. L. R. 268.—SCOT.

b. — Amount returned liable to be called up again.]—A limited co., incorporated under the Cos. Acts, passed a special resolution under Companies Act, 1867, ss. 9, 15, by which 10 per cent. of the capital was to be returned to shareholders on the footing that the amount returned or any part thereof might be called up

s. 46, although it differentiates between the holders of the same class of shares to the extent of paying off some & not others, & imposes upon the shareholders whose shares are to be extinguished the obligation to obtain debenture stock in lieu of cash, & also involves the advance to the co. of the moneys to be utilised in redemption of the share capital by the very persons whose shares are to be redeemed.

In confirming the scheme as on the whole fair & equitable the ct. made it a term of its confirmation that the costs of a dissentient shareholder, who had assisted the ct. by his criticism of the scheme, should be provided by the petitioning co.—*Re DE LA RUE (THOMAS) & CO., LTD. & REDUCED*, [1911] 2 Ch. 361; 81 L. J. Ch. 59; 105 L. T. 542; 55 Sol. Jo. 715; 19 Mans. 71.

932. —.] — *Re ANGLO-ITALIAN BANK, LTD. & REDUCED* (1906), 51 Sol. Jo. 48.

Annotation :—*Mentd.* General Industrials Development Syndicate, [1907] W. N. 23.

933. Loss of right to return — By lapse of time — How calculated.—The holder of shares, the certificate of which is under the seal of the co. & refers, as is usual, to the memorandum & arts. of assocn. of the co., is not barred by Stat. Limitations until the expiration of twenty years, in respect of capital to be returned on the shares, from the date of notice of the order of the ct. confirming the reduction.—*Re ARTISANS' LAND & MORTGAGE CORPN.*, [1904] 1 Ch. 796; 73 L. J. Ch. 581; 52 W. R. 330; 48 Sol. Jo. 222; 12 Mans. 98.

See, generally, LIMITATION OF ACTIONS.

934. Confirmation subject to conditions — Payment of costs — Of dissentient shareholder.—*Re DE LA RUE (THOMAS) & CO. LTD. & REDUCED*, No. 931, *ante*.

Liability of directors & shareholders — For capital returned.—*See* No. 3106, *post*.

(f) *By Return of Accumulated Profits.*

935. Validity of resolution — Cannot extend to past or future distributions.—A co. purported to make payments from time to time out of profits to shareholders under Companies Act, 1880 (c. 19), in reduction of paid-up capital. For many years no special resolution was passed authorising this, as required by sect. 3 of the above Act, but in 1905 a special resolution was passed which, besides authorising an immediate distribution thereunder, purported to authorise, as returns of capital, the past payments & any future payments which the directors might make :—*Held* : upon the construction of sects. 3 & 5 of the above Act the resolution was void so far as it purported to authorise payments in reduction of paid-up capital retrospectively or prospectively.—*Re PIERCY, WHITWHAM v. PIERCY*, [1907] 1 Ch. 289; 76 L. J. Ch. 116; 95 L. T. 868; 51 Sol. Jo. 113; 14 Mans. 23.

936. — Shares unequally paid up — Return

again :—*Held* : the resolution was competent & fell to be confirmed.—*SCOTTISH VULCANITE CO., LTD.* (1894), 21 R. (Ct. of Sess.) 752; 32 Sc. L. R. 593.—*SCOT.*

c. *Reduction with view to ultimate liquidation — Capital returned partly in cash & debentures — Repayment of sums paid in advance of calls.*—*SCOTTISH QUEENSLAND MORTGAGE CO., LTD., PETITIONERS* (1908), 46 Sc. L. R. 22.—*SCOT.*

d. *Main object of company's formation satisfied — Capital exceeding requirements — For subsidiary business — Returned to members.*—The shareholders of a co., whose capital was fully-

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paid, having exhausted the line of business to carry out which was the principal object for which it was formed, desired to carry on a fresh business authorised by the memorandum of assocn., but for which only half the existing capital was necessary. Accordingly, the directors issued notice of a meeting to consider a special resolution to the effect that the capital of the co. was twice as much as was required, & that it was desirable to reduce it to half, & that the other half should be repaid to the shareholders. At the meeting the resolution was carried with an amendment providing for the mode in which the reduction & repayment should be

of profits to equalise—*Intra vires.*—Deft. co. had an issued capital of 40,000 preference shares of £5 each fully paid & 60,000 ordinary shares of £5 each, of which 6,047 were fully paid & the residue were only paid to the extent of £1 a share. By the arts. of assocn. dividends were paid in proportion to the amount paid up on the shares. The co. had paid dividends of 10 per cent. on the amounts paid up on the ordinary shares & had accumulated a very large reserve fund consisting of undivided profits. A special resolution was duly passed & confirmed that out of the accumulated profits of the co. the sum of £4 per share be paid to the holders of 6,047 fully-paid ordinary shares of the co. by way of reduction of capital pursuant to 1908 Act, s. 40 :—*Held* : that sect. could not be construed as only authorising the return of capital to the whole class of shareholders among whom the accumulated profits were divisible, & therefore the resolution was not *ultra vires.*—*NEALE v. CITY OF BIRMINGHAM TRAMWAYS CO.*, [1910] 2 Ch. 464; 79 L. J. Ch. 683; 103 L. T. 59; 26 T. L. R. 588; 54 Sol. Jo. 651; 18 Mans. 100.

See, also, No. 876, *ante*.

Whether capital or income — As between tenant for life & remainderman.—*See* SETTLEMENTS.

G. Procedure.

(a) *The Resolution.*

937. Where no power in articles — Invalid — Without alteration of articles.—*Re WEST INDIA & PACIFIC S.S. CO.* (1868), 9 Ch. App. 11, n.

Annotations :—*Distd.* *Re Bank of Hindustan, China & Japan, Campbell's Case, Hippisley's Case, Alison's Case* (1873), 9 Ch. App. 1. *Reid.* *Ladies' Dress Assocn. v. Pulbrook* (1899), 68 L. J. Q. B. 871.

— **Power in memorandum.**—*See* No. 856, *ante*.

938. — Resolution taking power under articles must precede.]—*Re WEST INDIA & PACIFIC S.S. CO.* (1868), 9 Ch. App. 11, n.

Annotations :—*Distd.* *Re Bank of Hindustan, China & Japan, Campbell's Case, Hippisley's Case, Alison's Case* (1873), 9 Ch. App. 1. *Reid.* *Ladies' Dress Assocn. v. Pulbrook* (1899), 68 L. J. Q. B. 871.

939. — —.]—A co. cannot by one & the same special resolution alter its arts. so as to allow of a reduction of capital & also reduce the capital, & the ct. has no jurisdiction to confirm a reduction so effected.

Where a co. has no power to reduce its capital under the memorandum or arts., there must be, first, a special resolution altering the regulations of the co. so as to authorise such reduction, & at a subsequent meeting, by another special resolution, the reduction must be effected.—*Re PATENT INVERT SUGAR CO.* (1885), 31 Ch. D. 166; 55 L. J. Ch. 924; 53 L. T. 737; 34 W. R. 169; 2 T. L. R. 196, C. A.

940. — Combined with resolution taking

effect :—*Held* : (1) the amendment of the resolution did not affect its validity; (2) the circumstances of the co. showed a proper case for a reduction & return of capital.—*Re PICTURESQUE ATLAS & PUBLISHING CO.* (1892), 13 N. S. W. Eq. 44.—*AUS.*

PART III. SECT. 10, SUB-SECT. 3.—
G. (a).

940 i. Where no power in articles — Combined with resolution taking power under articles — Invalid.—At an extraordinary general meeting of shareholders of a registered limited co. on Nov. 19, 1908, new arts. of assocn. were by resolution adopted empowering

Sect. 10.—Capital: Sub-sect. 3, G. (a), (b) & (c) i. & ii.]

power under articles—Invalid.]—Re PATENT INVERT SUGAR CO., No. 939, ante.

941. — Passed at meeting confirming alteration of articles—Valid.]—Re CROSSLEY (JOHN) & SONS, [1892] W. N. 55.

942. Passed at same meeting as resolution for change of name.]—Re GATLING GUN, LTD., No. 878, ante.

Alteration of articles generally.]—See Sect. 30, sub-sect. 2, C., post.

943. Notice of meeting—Sufficiency—Shares of different classes—Resolution affecting incidence of loss.]—The capital of a co. consisted of 100,000 ordinary shares of £10 each, of which 80,659 had been issued & paid up in full, & 100,000 preference shares of £1 each, of which 37,518 had been issued & paid up in full. The preference shares were entitled to a preferential dividend of 10 per cent. *per annum*, but were not entitled to any preference in respect of capital. The co. having lost paid-up capital to the extent of £80,659, a special resolution was passed that this loss should be written off by reducing the ordinary shares by the sum of £1 each. No reduction was to be made in the preference shares. The special resolution was carried by the unanimous vote of the shareholders who were present in person or by proxy at the first & second meetings respectively. At the first meeting about one-third in value of the shareholders were present in person or by proxy, & at the second meeting about one-fourth. The notices convening the meetings had stated exactly the resolution which it was intended to propose, but they did not call the attention of the shareholders to the fact that the result would be to throw the loss of capital exclusively on the ordinary shareholders. No ordinary shareholder had expressed any dissent from the resolution:—*Held*: as by the existing constitution of the co. the loss ought to be borne by all the shareholders ratably, & the effect of the resolution would be to alter the constitution of the co. in this respect, & to throw the loss exclusively on the ordinary shareholders, the notices of the meetings were insufficient, & therefore, it would not be fair, as between the ordinary & preference shareholders that the resolution should be confirmed by the ct.

After this decision a circular was sent to every shareholder fully explaining the matter, & stating the effect of the judgment. In reply to this circular 514 ordinary shareholders, the whole number being 621, whose capital amounted to £769,590, assented in writing to the resolution; 103 sent no reply; & the remaining four, who together held 188 shares, expressed their dissent. One of the four, who held 62 shares, afterwards

withdrew his opposition. Notice that the petition would be brought on again for hearing was served on the dissentients, but none of them appeared: *Held*: the resolution ought to be confirmed. *Re QUEBRADA RAILWAY, LAND & COPPER CO. (1889)*, 40 Ch. D. 363; 58 L. J. Ch. 332; 60 L. 482; 5 T. L. R. 150; 1 Meg. 122, 361, n.

Annotations:—Dtd. Re Union Plate Glass Co. (1881) 42 Ch. D. 513. Consd. Re Denver Hotel Co., [1893] Ch. 495.

944. — — — “Seven clear days” — Construction of articles.]—Re PAVILION, NEWCASTLE UPON-TYNE, LTD. & REDUCED, [1911] W. N. 235.

945. Constitution of meeting—Quorum.]—Re KELANTAN COCONUT ESTATES, LTD. & REDUCE (1920), 64 Sol. Jo. 700.

946. Consent of shareholders — Notice of effect of resolution sent to all shareholders—Notice of hearing sent to dissentients—Non-appearance.]—Re QUEBRADA RAILWAY, LAND & COPPER CO. No. 943, ante.

Proof of resolution.]—See Nos. 993, 994, post.

Effect of registrar's certificate—On invalid resolution.]—See No. 1029, post.

Authorising return of accumulated profits.]—See Sub-sect. 3, F. (f), ante.

(b) Application to Court.

See R. S. C., Ord. 53 B., rr. 1, 2.

To confirm—Whether necessary.]—See No. 851, ante.

947. To what court—Chancery Division—Not affected by assignment of winding-up business to particular judge of King's Bench Division.]—Re ISLINGTON & GENERAL ELECTRIC SUPPLY CO., LTD. (1892), 36 Sol. Jo. 487.

Annotation:—Consd. Re Mining Shares Investment Co., [1893] 2 Ch. 660.

948. Jurisdiction—Judge of King's Bench Division appointed to take winding-up business.]—The judge of the High Ct. for the time being appointed to exercise the jurisdiction of the High Ct. under 1890 (Winding up) Act, has jurisdiction to confirm a reduction of the capital of a co. which the High Ct. has jurisdiction to wind up.—*Re OCEAN QUEEN S.S. CO., [1893] 2 Ch. 666; 63 L. J. Ch. 193; 68 L. T. 828; 41 W. R. 570; 37 Sol. Jo. 496; 3 R. 625.*

Annotation:—Refd. Re Aluminium Co., [1894] W. N. 6.

—.]—See, generally, Sub-sect. 3, A., ante.

949. — — — When county court has jurisdiction.]—Re PORTSMOUTH & DISTRICT VACUUM CLEANER CO., [1908] W. N. 203.

(c) The Petition.

i. Form.

See R. S. C., Ord. 53 B., r. 3.

950. How entitled—Under 1867 Act & Companies Act, 1877 (c. 26).]—The proper mode of

the co. to reduce its capital which by its original arts. it had no power to do. At the same meeting a resolution was passed authorising the directors to procure by the necessary procedure the cancellation of £2 10s. per share of the capital. Both resolutions were confirmed as special resolutions at a subsequent general meeting held on Dec. 10, 1908. In a petition to the ct. for confirmation of the reduction of capital:—*Held*: the procedure had been irregular in that at the time when the resolution for reducing share capital was passed, the co. had no power to reduce capital, & no procedure could be taken on the resolution altering the arts. & conferring power to reduce capital until that resolution had been confirmed at a subsequent general meeting.—*Re OREGON MORTGAGE CO., LTD., [1910] S. C. 964.—SCOT.*

e. Statutory requirements—Necessity for compliance.]—Re CLARK (1911), 48 Sc. L. R. 154.—SCOT.

PART III. SECT. 10, SUB-SECT. 3.—G. (b).

i. Whether granted as matter of course—On passing of special resolution.]—An application for reduction of the capital of a limited co. will not be granted as a matter of course on the passing of a special resolution by the co. The ct. has a much more onerous duty, & will insist upon the fullest disclosure, on proper material, of all facts necessary for their consideration in exercising the wide statutory powers conferred upon them. These considerations include the public interest, the rights of creditors, the rights of shareholders, service & advertisement,

standing of co., etc. Affidavits on “belief” are insufficient in such an onerous case.—*Re COMPANIES ACT & BUNN MUNRO CO., [1923] 3 D. L. R. 912; 3 W. W. R. 314.—CAN.*

g. How effected—Where no creditors.]—Upon an application for confirmation by the ct. of resolution by a limited co. for the reduction of its capital, it is unnecessary to proceed under Companies Act, 1915, s. 56 (2), where it appears that there are no creditors.—*Re CHAMBERS, [1920] V. L. R. 330.—AUS.*

PART III. SECT. 10, SUB-SECT. 3.—G. (c) i.

h. Contents of—Where creditors object.]—The prayer of a petition for confirmation of a resolution for the reduction of the capital of a co. must

entitling a petition for the reduction of the capital of a co. is "In the matter of the Companies Act, 1867 & 1877."—*Re SOCIÉTÉ FRANCAISE DES ASPHALTES* (1883), 48 L. T. 410.

951. — Name of company to be placed first.]—*Re WOOLLEY COAL CO.*, [1891] W. N. 19.

952. — Whether under 1890 (Winding-up) Act.]—It is not necessary that petitions for the confirmation of the reduction of the capital of a co. should be entitled in the matter of the Companies (Winding-up) Act, 1890.—*Re ALUMINIUM CO., LTD.* (1894), 38 Sol. Jo. 185.

953. — Under Acts dealing specially with reduction.]—A reduction of capital involved by a scheme of arrangement must be carried out in accordance with the statutes specially dealing with reduction of capital.

Where a petition presented under Joint Stock Companies Arrangement Act, 1870 (c. 104), for obtaining the sanction of the ct. to a scheme of arrangement was entitled in the matter of the Joint Stock Companies Arrangement Act, 1870, & in the matter of the Companies Acts, 1862 to 1900, the ct. directed the petition to stand over with liberty to amend by entitling it also in the matter of the Companies Acts, 1867 & 1877.—*Re COOPER, COOPER & JOHNSON, LTD.* (1902), 51 W. R. 314.

Annotation :—*Re Id. Re Guardian Assce.*, [1917] 1 Ch. 431.

954. Contents of—Reduction by paying off excess capital—That amount to be paid off excess.]—*Re BARKER (R. H.) & CO., LTD.* (1893), 37 Sol. Jo. 325.

955. — — — — —.]—A petition for the reduction of the capital of a co. must state that the capital proposed to be paid off is in excess of the wants of the co.—*Re TARAPACA & TOCOPILLA NITRATE CO., LTD.* (1917), 62 Sol. Jo. 122.

956. — More than one class of shares—Whether priority as to capital.]—*Re MACKENZIE & CO., LTD.*, No. 903, *ante*.

ii. Advertisement.

See R. S. C., Ord. 53 B., rr. 4, 9.

957. Necessity for—Discretion of court to dispense with.]—*Re LONDON & CITY LAND & BUILDING CO.*, No. 858, *ante*.

958. — — — — — In special circumstances only.]—The advertisement of a petition for an order confirming the reduction of the capital of a limited co. under Companies Act, 1877 (c. 26), will not, except under special circumstances, be dispensed with.—*Re CONSOLIDATED TELEPHONE CO., LTD.* (1885), 54 L. J. Ch. 795; 52 L. T. 575; 33 W. R. 408.

Annotation :—*Re Id. Re Tambracherry Estates Co.* (1885), 29 Ch. D. 683.

959. — — — — — Creditors not affected.]—A co. whose shares were all fully paid up, having lost part of its capital, presented a petition to reduce the nominal capital by the amount of the loss, reducing the nominal amount of each share from £1 to 12s. 6d. The judge refused to hear the petition until its presentation had been advertised as prescribed by rule 5 of the General Order of 1868, made under 1867 Act:—*Held*: on appeal, a petition for reduction of capital authorised by 1877 Act, ought *prima facie* to be advertised as directed by the General Order of 1868, though the judge has a discretion to dispense with advertisements if he is satisfied that the interests of creditors cannot be affected by what is proposed; & as in

the present case the judge in his discretion thought that the petition ought to be advertised, the ct. would not interfere.—*Re TAMBRACHERRY ESTATES CO.* (1885), 29 Ch. D. 683; 54 L. J. Ch. 792; 52 L. T. 712; 1 T. L. R. 379, C. A.

960. — Scheme of arrangement involving reduction of capital.]—Where a scheme of arrangement involves a reduction of capital, all the requirements of 1908 Act, with regard to reduction of capital must be complied with, & it is therefore necessary to advertise the petition for sanctioning the scheme until the ct. has dispensed with advertisements (YOUNGER, J.).—*Re WHITE PASS & YUKON RY. CO., LTD.* (1918), 63 Sol. Jo. 55.

961. When dispensed with—Sole creditor consenting.]—*Re PLASKYNASTON TUBE CO.*, No. 896, *ante*.

962. — No diminution of liability for unpaid capital—Or repayment of paid-up capital.]—On petition to confirm a resolution for reduction of capital of a co., where capital had been lost, & it had been resolved that the lost capital should be wiped off, a resolution which did not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital:—*Held*: the preliminary advertisement of the petition might be dispensed with.—*Re BRITISH LAND & MORTGAGE CO. OF AMERICA, LTD.* (1885), 53 L. T. 753.

963. — — — — — Creditor's debts small.]—In cases of petitions for the reduction of the capital of a co. by writing off capital which has been lost, the ct. does not uniformly & as a matter of course dispense with advertisement of the presentation of the petition, even although it be stated that there are no creditors. But where there was evidence that a proposed reduction of capital would not involve the diminution of an liability of the shareholders in respect of unpaid capital, & that there were no creditors of the co. except for small current accounts, the ct., in its discretion, dispensed with the advertisement of the petition to confirm resolutions for a reduction of the capital.—*Re E. C. POWDER CO., LTD.* (1887), 56 L. J. Ch. 783; 56 L. T. 610.

964. — Notice to all shareholders—Company's solicitor sole creditor.]—*Re MUNICIPAL TRUSTS CORPN., LTD.*, No. 1056, *post*.

965. Time for advertising—Where creditors not affected—Before list of creditors settled.]—A petition to reduce the capital of a co., where the rights of creditors are not affected, may be advertised at once, without waiting until a list of creditors has been settled by the chief clerk.—*Re PEOPLE'S CAFÉ CO.* (1885), 55 L. J. Ch. 312; 34 W. R. 229.

966. Where advertised—Company with numerous agencies—In local newspapers where agencies situated.]—In the case of a petition for reduction of capital presented by a fire insurance co. having numerous agencies in Ireland, the provinces, & abroad, the ct. directed that notice of the presentation of the petition & the day fixed for hearing should be advertised, not only in the London & Dublin Gazettes, but also in newspapers circulated in each of ten other places at which the co. had agencies.—*Re LONDON & PROVINCIAL FIRE INSURANCE CO., LTD.* (1886), 55 L. J. Ch. 630; 55 L. T. 55.

Compare No. 894, *ante*.

Notice of hearing—To dissentient shareholders.]—*See* No. 943, *ante*.

provide *seriatim* for the steps in procedure required by Companies (Consolidation) Act, 1908, s. 49, for dealing with creditors & their objections:—

Held: the form of prayer was proper.—*ADDIE & SONS' COLLIERIES, LTD., & REDUCED, PETITIONERS*, [1916] S. C. 936.—SCOT.

k. — Where creditors' rights not affected.]—*CRANSTON'S TEA ROOMS LTD., & REDUCED, PETITIONERS* (1919), 56 Sc. L. R. 208.—SCOT.

Sect. 10.—Capital: Sub-sect. 3, G. (d) i., ii. & iii.]

(d) Consent of Creditors.

i. List of Creditors.

967. Who are creditors—Contingent creditors—Company's lessors.]—The lessors of a co., which is about to reduce its capital, are contingent creditors within 1867 Act.—*Re TELEGRAPH CONSTRUCTION Co. (1870)*, L. R. 10 Eq. 384; 22 L. T. 649; *sub nom. TELEGRAPH CONSTRUCTION & MAINTENANCE Co., LTD. & REDUCED*, *Ex p. ENDERBY'S TRUSTEES*, 39 L. J. Ch. 723; 18 W. R. 729.

Annotations:—*Reid. Oppenheimer v. British & Foreign Exchange & Investment Bank (1877)*, 6 Ch. D. 744; *Re Midland Coal, Coke & Iron Co., Craig's Claim*, [1895] 1 Ch. 267. **Mentd.** *Re Gartness Iron Co., Ex p. Elphinstone (1870)*, L. R. 10 Eq. 412; *Re Westbourne Grove Drapery & Furnishing Co. (1877)*, 25 W. R. 509; *Gooch v. London Banking Assn. (1886)*, 32 Ch. D. 41.

968. — “Entitled to object”—No diminution of liability on unpaid capital—Or return of paid-up capital.]—*Re MEUX'S BREWERY Co., No. 970*, *post*.

See, also, No. 1009, *post*.

969. — — — Whether debenture-holders included.]—A petition having been presented by a co. for confirmation of resolutions for reduction of its capital & shares, an order was made for an inquiry as to debts, & the presentation of the petition was directed to be advertised, & a list of creditors to be left at the judge's chambers. This having been done, the chief clerk certified that a list of creditors had been settled, but that the names of some of the creditors who were holders of the co.'s debentures, being unknown to the co., did not appear on the list. None of them had claimed under sect. 13 of 1867 Act to be entered on the list. Upon the petition coming to be heard, & being unopposed:—*Held*: (1) the debenture-holders were in the position of creditors, who were now excluded, under sect. 13 from the right of objecting to the proposed reduction.

Other creditors named on the list, whose debts were not yet due, & were secured, had neither assented to, nor dissented from, the proposed reduction:—*Held*: (2) they were not to be considered creditors “who do not assent,” within sect. 14 of the Act.

(3) Where a co., at the date of an order confirming reduction of capital, had used the words, “& reduced,” as part of its title, for more than three months, it was ordered to use those words for a fortnight longer. In the absence of special circumstances, the order for confirmation was ordered to be advertised once in the *London Gazette*, & twice in each of three London daily papers.—*Re CRÉDIT FONCIER OF ENGLAND (1871)*, L. R. 11 Eq. 356; 40 L. J. Ch. 187; 23 L. T. 801; 19 W. R. 405.

Annotations:—*As to (2) N.F. Re Patent Ventilating Granary Co. (1879)*, 41 L. T. 82. *As to (3) Reid. Re Kirkstall Brewery Co. (1877)*, 5 Ch. D. 535; *Bannatyne v. Direct Spanish Telegraph Co. (1886)*, 34 Ch. D. 287.

970. — — — No diminution of liability on unpaid capital—Or return of paid-up capital.]—*Prima facie* creditors are not concerned in any question of the reduction of capital where it does not involve the diminution of any liability on respect of any unpaid capital or the payment to any shareholder of any paid-up capital; & though by 1908 Act, s. 49 (1), the ct. may in any other case allow a creditor to object to a reduction, where no such diminution is about to take place it is incumbent on the creditor to make out a strong case before any such direction should be given.

The co. was incorporated with a fully-paid share

capital of £1,000,000, in addition to which it had issued £1,000,000 perpetual debenture stock secured by certain trust deeds constituting a floating security. In 1904 the co. had incurred losses amounting to upwards of £800,000, since which year no dividend had been declared, the profits in each year being applied in reduction of the deficiency, which now amounted to £640,000 or upwards. In 1917, by special resolution, the co. resolved to reduce its capital to £360,000 by writing off the lost capital. The reduction did not involve the diminution of any liability in respect of any unpaid capital or the payment to any shareholder of any paid-up capital. This petition by the co. to confirm the special resolution was opposed by certain holders of debenture stock on the ground that the proposed reduction would be prejudicial to their security by enabling the co. to pay dividends out of profits instead of such profits being applied in making good the lost capital. The assets according to the latest balance-sheet exceeded the amount of the debenture debt by £500,000 & upwards. No evidence was adduced to show what part of the lost capital was attributable to circulating capital:—*Held*: the holders of the debenture stock were not entitled to object to the reduction.—*Re MEUX'S BREWERY Co., [1919]* 1 Ch. 28; 88 L. J. Ch. 14; 119 L. T. 759; 35 T. L. R. 13; 63 Sol. Jo. 40.

971. Whether creditors entitled to object—Under Companies Act, 1877 (c. 26), s. 4—Reduction of preference shares by sinking fund—Under articles.]—*Re DICIDO PIER Co., No. 869*, *ante*.

972. When dispensed with—Capital lost or unrepresented by available assets.]—On a petition for reduction of capital by cancelling capital which was lost, or was unrepresented by available assets, the ct. dispensed with the list or chief clerk's certificate of creditors, but ordered the petition to be advertised according to Gen. Ord., Mar. 1868, Sched., Form No. 8.—*Re LONDON & COUNTY PLATE GLASS INSURANCE Co., LTD. (1885)*, 53 L. T. 486.

973. — — — Reduction involving diminution of liability on unpaid capital—Or return of paid-up capital—All debts satisfied.]—On a petition for confirmation of special resolutions to reduce capital involving the diminution of liability on unpaid capital & the return of paid-up capital to the shareholders, the ct. has no power to dispense with the settling of the list of creditors required by 1867 Act, s. 13, even though there may be evidence before the ct. that the co. has no debts unsatisfied.—*Re LAMSON STORE SERVICE Co., LTD., Re NATIONAL REVERSIONARY INVESTMENT Co., LTD., [1895]* 2 Ch. 726; 64 L. J. Ch. 777; 73 L. T. 311; 44 W. R. 42; 2 Mans. 537; 13 R. 703.

See, also, No. 984, *post*.

974. Advertisement for creditors—Whether dispensed with—Company's solicitor sole creditor.]—*Re MUNICIPAL TRUSTS CORPN., LTD., No. 1056*, *post*.

975. — — — Possible prejudice to creditors.]—*Re UNION FINANCE Co., [1887]* W. N. 253.

976. — — — Diminution of liability on unpaid capital.]—The E. Co. was a steamship co., incorporated on Aug. 16, 1880, with a nominal capital of £200,000, divided into 20,000 shares of £10 each. Of these, 5,000 shares of £10 each were issued all fully paid up. The arts. of assocn. provided that the directors should from time to time set aside part of the profits for a reserve fund. The directors had a discretionary power to expend the moneys so set apart in the purchase of additional vessels or otherwise in extending the co.'s

trade. By the beginning of 1883 they had accumulated a reserve fund of £50,000. In May, 1883, the directors issued a circular to the shareholders, stating that they intended building two or three new steamers, & for that purpose to complete the issue of the shares of the co. by dividing the reserve fund on June 30 amongst existing shareholders, allotting to each, one share of £10 fully paid for every share held, & by issuing 10,000 additional shares of £10 each. The directors, anticipating that this proposal would be accepted, had in fact, before the resolution hereinafter stated, applied the reserve fund in improving the fleet. On May 16, 1883, the co. duly passed a resolution, that out of the reserve fund as it stood on June 30, there should be allotted to each shareholder £10, in the form of one fully paid-up share for every share held by him in the co. The shares so created were issued & credited as fully paid, & a part of the proposed 10,000 new shares were taken up & fully paid for in cash. In Oct. & Nov. 1892, a special resolution was passed by the co. for reducing its capital by cancelling capital which had been lost to the extent of £5 a share, & reducing the nominal amount of each share from £10 to £5. This was a petition for the confirmation of this reduction. The petition stated that the reduction did not involve the diminution of any liability in respect of unpaid capital, & therefore no list of creditors had been settled:—*Held*: it did not appear that the directors had power to distribute the reserve fund as dividend without altering the arts. Even if they had such a power, it did not appear that they had exercised it, for under the resolution the shareholders had no option to take their shares of the reserve fund in cash. Therefore these shares might be held to be not fully paid up, & the proposed reduction would or might involve a diminution of liability in respect of unpaid capital, & the petition must stand over till a list of creditors was settled.—*Re EASTERN & AUSTRALIAN S.S. CO., LTD. & REDUCED* (1893), 68 L. T. 321; 41 W. R. 373; 37 Sol. Jo. 304; 3 R. 370.

977. — Amount of reduction small.]—*Re NEW QUEBRADA RAILWAY, LAND, & COPPER CO., [1888] W. N. 233; subsequent proceedings, sub nom. Re QUEBRADA RAILWAY, LAND, & COPPER CO. (1889), 40 Ch. D. 363.*

ii. Notice to Creditors.

See R. S. C., Ord. 53 B., r. 8.

978. When dispensed with—Creditors residing abroad—Amount of debts brought into court.]—Where a co. who are desirous of reducing their capital, & have passed a resolution to that effect, have creditors residing abroad comprised in the list required by 1867 Act, s. 9, to be registered, service of the formal notices on the creditors preparatory to obtaining the necessary order of the ct., to confirm such resolution, will be dispensed with on the co. bringing into ct. the amounts of such creditors' demands so appearing on the list, & on giving notice to the creditors that such has

been done.—*Re WEST INDIAN & PACIFIC STEAM PACKET CO. (1868), 19 L. T. 310.*

Annotation:—Refd. Re Consolidated Telephone Co. (1885), 33 W. R. 408.

979. — Unpaid creditor consenting.]—*Re PLASKYNASTON TUBE CO., No. 896, ante.*

980. How given—By advertisement—Creditors unknown.]—Notice to creditors under Gen. Ords., Mar. 21, 1868, may, if the creditors are unknown, be given by advertisement.—*Re GENERAL BANK FOR PROMOTION OF AGRICULTURE & PUBLIC WORKS, LTD., & REDUCED* (1869), 38 L. J. Ch. 168; 17 W. R. 304.

When advertisement dispensed with.]—*See Sub-sect. 3, G. (d) i., ante.*

iii. Proof of Consent.

See R. S. C., Ord. 53 B., r. 14.

981. When presumed—Creditor not actively dissenting.]—*Re CRÉDIT FONCIER OF ENGLAND, No. 969, ante.*

982. — Consent brief necessary.]—On the hearing of a petition by a co. for the confirmation of a special resolution for the reduction of its capital, three debenture holders for sums amounting together to £4,000, who had not consented in writing to the proposed reduction & had not attended in chambers to object, in pursuance of the ordinary notices & advertisements, did not appear:—*Held*: (1) they could not be taken to have consented to the reduction, but a consent brief on their behalf must be produced, or the amount of their debentures must be deposited in ct.; (2) the co. must continue to use the words “& reduced,” as part of their name, for fourteen days.—*Re PATENT VENTILATING GRANARY CO. (1879), 12 Ch. D. 254; 48 L. J. Ch. 728; 41 L. T. 82; 27 W. R. 836.*

983. — —.]—*Re BULL HOTEL CO., LTD. (1883), 27 Sol. Jo. 431.*

984. Sufficiency of proof—Majority of resolution of debenture-holders—Under provisions of trust deed.]—The consent of the holders of bearer debentures to a proposed reduction of a co.'s capital was evidenced by an extraordinary resolution in that behalf duly passed under a majority clause in the trust deed & binding on all the debenture-holders. About 87 per cent. in value of the total amount of the debenture debt was represented at the meeting, which was duly convened, & the resolution was passed unanimously. It was not possible to ascertain the names of all the debenture-holders:—*Held*: in the circumstances the extraordinary resolution was sufficient evidence of the consent of all the debenture-holders within 1908 Act, s. 50, & Gen. Ord. (Reduction of Capital), 1909, r. 17, & it was not necessary to have a list of the debenture-holders under sect. 49.—*Re HYDRAULIC POWER & SMELTING CO., [1914] 2 Ch. 187; 83 L. J. Ch. 753; 111 L. T. 451; 21 Mans. 288.*

Right of creditors to dissent.]—*See Nos. 969, 970, ante.*

PART III. SECT. 10, SUB-SECT. 3.— G. (d) ii.

1. When dispensed with—Creditors' rights not affected.]—*CRANSTON'S TEA ROOMS, LTD. & REDUCED, PETITIONERS (1919), 56 Sc. L. R. 208.—SCOT.*

PART III. SECT. 10, SUB-SECT. 3.— G. (d) iii.

m. Not presumed—From mere silence.]—A co. having presented a petition to the ct. for an order confirming a resolution to reduce capital,

the ct. was of opinion that the mere silence of a creditor to whom a proposed reduction of capital of the co. had been intimated would not be held as proof of his consent to the reduction.—*THARSIS SULPHUR & COPPER CO., LTD. (1882), 20 Sc. L. R. 70.—SCOT.*

n. Sufficiency of proof—Trustees & agents consenting—Though no special authority.]—In a petition presented to the ct. by a joint-stock co., for the reduction of its capital, there were produced consents, signed by one of

a body of trustees, creditors of the co., “for himself & his co-trustees,” & by agents of creditors through whom the loans by the creditors to the co. were originally negotiated, & who were in the habit of acting in such matters for the creditors, though no special authority to consent was produced:—*Held*: these consents were sufficient, under Companies Act, 1867, s. 11.—*THARSIS SULPHUR & COPPER CO., LTD. (1882), 10 R. (Ct. of Sess.) 103.—SCOT.*

Sect. 10.—Capital: Sub-sect. 3, G. (e), (f) & (g) i., ii. & iii.]

(e) The Hearing.

See R. S. C., Ord. 53 B., rr. 15–19.

Who may be heard—Creditors entitled to object.]

—See Nos. 969, 970, *ante*.

985. Evidence required—Verifying statements in petition—Formal affidavit sufficient.]—Re MAINS MANUFACTURING CO., [1884] W. N. 171.

986. ——— If petition full enough.]—Re SAFETY OIL CO., LTD. (1892), 38 Sol. Jo. 699.

987. ——— Loss of capital—Details of loss.]—Re PILSEN JOEL & GENERAL ELECTRIC LIGHT CO., [1886] W. N. 203.

988. ———.]—Re OURO PRETI GOLD MINES OF BRAZIL (1892), 37 Sol. Jo. 10.

989. ——— To extent alleged.]—Decision dismissing a petition for the confirmation by the ct. of special resolutions for the reduction of the capital of a co., affirmed, on the ground that the evidence did not prove a loss of capital to the extent alleged in the resolutions.—*Re BARROW HÆMATITE STEEL CO.*, [1901] 2 Ch. 746; 71 L. J. Ch. 15; 85 L. T. 493; 50 W. R. 71; 18 T. L. R. 9; 46 Sol. Jo. 28; 9 Mans. 35, C. A.

Annotations:—Reid. Re Hoare, [1904] 2 Ch. 208; *Poole v. National Bank of China*, [1907] A. C. 229; *Re Mackenzie*, [1916] 2 Ch. 450. *Mentd. Bond v. Barrow Hæmatite Steel Co.* (1902), 71 L. J. Ch. 246; *Ammonia Soda Co. v. Chamberlain*, [1918] 1 Ch. 266.

990. ——— Not necessary under 1908 Act, s. 46.]—On a petition under the above sect. for confirmation of a reduction of capital by cancelling paid-up capital which is lost or unrepresented by available assets evidence that the capital is lost or so unrepresented is not necessary.—*Re LOUISIANA & SOUTHERN STATES REAL ESTATE & MORTGAGE CO.*, [1909] 2 Ch. 552; 79 L. J. Ch. 17; 101 L. T. 495.

991. ——— But advisable.]—The practice of the High Ct. in England has not been uniform. My own practice has been to insist on *prima facie* evidence of the existence of the state of facts referred to in the resolution. If no such *prima facie* evidence were forthcoming it might well be that the special resolution had been passed under the influence of some mistake or misrepresentation as to the true facts, & it would be unfair to the minority if not also to the majority of the shareholders to confirm a reduction voted under such circumstances. Further, inability to produce some such evidence might well suggest want of *bona fides* in the matter. If capital not really lost or unrepresented by available assets were cancelled, it might be possible thereafter, by some adjustment of the figures in the co.'s balance-sheet, to carry the amount so cancelled to profit & loss account, & so indirectly return paid-up capital to shareholders, thus affecting the rights of creditors. I think, therefore, that where the reduction of capital is based on the ground that capital has been lost or is unrepresented by available assets, it is, though not necessary, at any rate wise & prudent to insist on some evidence of the fact (*LORD PARKER*).—*CALDWELL v. CALDWELL & CO., LTD.*, [1916] W. N. 70, H. L.

992. ——— & continuance of position shown in petition.]—Re SAFETY OIL CO., LTD. (1892), 38 Sol. Jo. 699.

993. ——— Of resolution—Affidavit of chairman

—& minute of meeting.]—Re LEICESTER MORTGAGE CO., LTD. (1894), 38 Sol. Jo. 531, 564.

Annotation:—Reid. Re Omnium Investment Co., [1895] 2 Ch. 127.

See, also, No. 996, *post*.

994. ——— Detailed affidavit.]—Re TYNE DOCK LAND CO., LTD. (1894), 38 Sol. Jo. 602.

995. ——— Of due service of notice on shareholders.]—Re TYNE DOCK LAND CO., LTD., No. 994, *ante*.

996. ——— Copy of memorandum & articles — & original minute book.]—Where a petition is presented for the confirmation by the ct. of resolutions for reducing the co.'s capital or altering its memorandum of assocn., a copy of the memorandum & arts., & the original minute book of the proceedings of general meetings, should be made exhibits to the affidavit in support of the petition.

Where the reduction is to be effected by cancelling paid-up capital which has not been paid up in cash, it must be proved that the shares were issued pursuant to a contract filed under 1867 Act, s. 25.—*Re OMNIUM INVESTMENT CO.*, [1895] 2 Ch. 127; 64 L. J. Ch. 651; 2 Mans. 313.

997. ——— On cancellation of paid capital not paid up in cash—That contract filed under 1867 Act, s. 25.]—Re OMNIUM INVESTMENT CO., No. 996, *ante*.

See, generally, Sect. 20, sub-sect. 3, *post*.

998. ——— On return of paid-up capital—Cash returned reborrowed on debentures—That creditors paid—Consent of shareholders—Issue of debentures.]—Re LAMSON STORE SERVICE CO., [1897] 1 Ch. 875, n.

999. ——— That creditors paid.]—Re WATSON, WALKER & QUICKFALL, LTD., [1898] W. N. 69.

1000. Notice of—Dispensed with—Creditors not entitled to object.]—Re WEST CUMBERLAND IRON & STEEL CO., LTD., No. 1009, *post*.

Jurisdiction of court.]—See Nos. 833, 842, *ante*.

Discretion of court.]—See Nos. 842, 843, *ante*.

Costs of dissenting shareholder—Confirmation subject to payment.]—See No. 931, *ante*.

(f) The Order.

See R. S. C., Ord. 53 B., r. 20.

1001. Confirms reduction—Not special resolution.]—Re CITY OF ST. PETERSBURGH NEW WATERWORKS CO., LTD. (1895), 39 Sol. Jo. 441.

Annotation:—Reid. Re Dixon, Horseburgh (1895), 39 Sol. Jo. 583.

1002. ———.]—Re DIXON, HORSEBURGH & CO. (1895), 39 Sol. Jo. 583.

1003. Where register of colonial shareholders abroad—Difficulty of ascertaining amounts paid on calls.]—Re COLUMBIA (CHARTERS TOWERS) GOLD MINE, LTD., & REDUCED (1904), 48 Sol. Jo. 716.

Whether combined with order approving minute.]—See Nos. 1004–1008, *post*.

Advertisement of.]—See Sub-sect. 3, G. (h), *post*.

(g) The Approved Minute.

i. Approval by Court.

See 1908 Act, s. 51.

1004. On return of excess capital—Not combined with order confirming reduction—Postponed till capital returned.]—Re CHELMSFORD LAND CO., LTD., [1904] W. N. 106.

1005. ——— Order post-dated.]—A co. passed a resolution to reduce its capital, which

**PART III. SECT. 10, SUB-SECT. 3.—
G. (e).**

o. Who may be heard—Shareholders & creditors—Whose rights ille-

gally affected.]—Shareholders alleging illegality & injury to their rights, have, as well as creditors a good title to appear & object to granting by the ct. of a confirmation order sanctioning

a reduction of capital.—*THARSIS SULPHUR & COPPER CO. v. HOGGAN* (1882), 9 R. (Ct. of Sess.) 507; 19 Sc. L. R. 349.—SCOT.

was in excess of its wants, from £241,510 in shares of £1 each to £211,321 5s. in shares of 17s. 6d. each, the reduction to be effected by returning 2s. 6d. per share to each of the shareholders. Upon a petition to confirm the reduction, the ct. gave leave to return 2s. 6d. per share, & subject to the production of evidence that the 2s. 6d. had, in fact, been repaid, ordered, the order to be post-dated, that the reduction be confirmed, & approved a minute to be registered under sect. 15 of 1867 Act, as follows: "The capital of the C. & E. Land Co., Ltd., is henceforth £211,321 5s. divided into 241,510 shares of 17s. 6d. each, instead of the original capital of £241,510 divided into 241,510 shares of £1 each. At the time of the registration of this minute the sum of 17s. 6d. has been & is to be deemed paid up upon each of the said shares."—*Re CALGARY & EDMONTON LAND CO.*, [1906] 1 Ch. 141; 75 L. J. Ch. 138; 94 L. T. 132; 50 Sol. Jo. 126; 13 Mans. 55.

Annotations:—*N.F. Re Lees Brook Spinning Co.*, [1906] 2 Ch. 394; *General Industrials Development Syndicate*, [1907] W. N. 23.

1006. — Combined with order confirming reduction—Before capital returned.]—*Re LEES BROOK SPINNING CO.*, No. 1028, *post*.

1007. — — — — —.]—*Re ANGLO-ITALIAN BANK, LTD. & REDUCED* (1906), 51 Sol. Jo. 48.

Annotation:—*Folld. General Industrials Development Syndicate*, [1907] W. N. 23.

1008. — — — — —.]—*GENERAL INDUSTRIALS DEVELOPMENT SYNDICATE, LTD.*, [1907] W. N. 23.

ii. Form generally.

1009. Amount of capital—Before & after reduction.—On Feb. 20, 1888, a petition was presented by a co. asking the ct. to confirm a special resolution passed on Nov. 25, 1887, & confirmed on Dec. 16, for the reduction of capital. On Feb. 21, 1888, on motion, the judge, being satisfied that the reduction of capital proposed did not involve any diminution of liability in respect of unpaid capital, or the payment to any shareholders of any paid-up capital, & the creditors, therefore, not being entitled to object, made this order: "Let the petition be in the paper for hearing on Saturday week, without any advertisement of the notice, & without any certificate as to creditors." On the hearing of the petition:—*Held*: the minute proposed to be registered should have on the face of it the amount of the original, as well as of the reduced capital.

Form of order:—The ct., not requiring notice of the day appointed for hearing, confirm the special resolution. Liberty to discontinue the words "& reduced" forthwith, & approve of the minute in the copy petition. Advertise as required by the Act, in the *London Gazette*, the *Times*, & principal Whitehaven paper.—*Re WEST CUMBERLAND IRON & STEEL CO., LTD.* (1888), 58 L. T. 152.

Annotation:—*Folld. Re Britannia Mills Co.*, Huddersfield, [1888] W. N. 103.

1010. — — — — —.]—*Re BRITANNIA MILLS CO., HUDDERSFIELD*, [1888] W. N. 103.

1011. — — — — —.]—*Re BARROW HÆMATITE STEEL CO.*, No. 902, *ante*.

1012. — — — — — Only where order otherwise unintelligible.]—(1) An appln. for an order dispensing with the use of the words "& Reduced"

by a co. after its name, until the hearing of a petition presented for the confirmation by the ct. of resolutions duly passed for the reduction of the capital, should be made in chambers.

(2) The minutes of an order confirming resolutions for the reduction of the capital of a co. need not, except under special circumstances which might otherwise render the order unintelligible or misleading, state the original capital in addition to the amount to which it has been reduced.

(3) The serial numbers of shares not fully paid up, with the amount due on each, must be stated in the minutes of an order authorising the reduction of the capital of a co.—*Re SOLWAY S.S. CO., LTD.* (1889), 61 L. T. 659.

Annotation:—*As to (2) Folld. Re Oceana Development Co.* (1912), 56 Sol. Jo. 537.

1013. Serial numbers of shares—Not fully paid —& amount due on each.—*Re SOLWAY S.S. CO., LTD.*, No. 1012, *ante*.

1014. — — — — — Forfeited for non-payment of calls.]—*Re WOLF (THOMAS) & SON* (1907), LTD., & REDUCED (1912), 57 Sol. Jo. 146.

1015. — — — — — Referred to in minute.]—*Re OCEANA DEVELOPMENT CO., LTD.* (1912), 56 Sol. Jo. 537.

Annotation:—*Refd. Re Victoria (Malaya) Rubber Estates* (1914), 58 Sol. Jo. 706.

1016. — — — — — On reduction & subdivision of shares—Original numbers not necessary.]—On a petition to confirm the reduction of the capital of a co., where it is proposed to subdivide the capital as from the moment of reduction, the minute should state the facts as to the subdivision, but need not contain the original numbers of the shares, nor the fact that nothing has been paid up on the unissued shares.—*Re LONDON & RHODESIAN MINING & LAND CO., LTD. & REDUCED* (1919), 36 T. L. R. 87.

1017. — — — — —.]—*Re SALINAS OF MEXICO*, [1919] W. N. 311.

1018. Unissued shares—Statement that nothing paid up unnecessary.—*Re SALINAS OF MEXICO*, [1919] W. N. 311.

1019. — — — — —.]—*Re LONDON & RHODESIAN MINING & LAND CO., LTD. & REDUCED*, No. 1016, *ante*.

Form of minute—For advertisement.—*See* No. 1036, *post*.

iii. Form in Particular Instances.

1020. On reduction of nominal amounts of shares—Shares of several classes—Some shares partly paid.—*Re INTERNATIONAL CONVERSION TRUST, LTD.*, [1892] W. N. 100.

1021. — — — — —.]—*Re RYLANDS (DAN), LTD. & REDUCED* (1897), 41 Sol. Jo. 778.

1022. — — — — — Shares all of one class—Divided into several classes.]—*Re NEWBURY VAUTIN (PATENTS) GOLD EXTRACTION CO., LTD.*, [1892] 3 Ch. 127, n.; 67 L. T. 118, n.; 40 W. R. 698, n.

1023. — — — — —.]—*Re SAVOY THEATRE & OPERAS, LTD. & REDUCED* (1903), 47 Sol. Jo. 760.

1024. On return of excess capital—Shares all of one class.—*Re LAMSON STORE SERVICE CO.*, [1897] 1 Ch. 875, n.

1025. — — — — —.]—*Re CHELMSFORD LAND CO., LTD.*, [1904] W. N. 106.

1026. — — — — —.]—*Re CALGARY & EDMONTON LAND CO.*, No. 1005, *ante*.

PART III. SECT. 10, SUB-SECT. 3.—G. (g) ii.

p. Amount of capital—After reduction—Number & amount of shares.—A co. which had petitioned for leave to reduce its capital lodged in ct. a minute, showing, with respect to the

capital of the co., as altered, the amount of capital, the number of shares into which it was to be divided, & the amount of each share. The ct. thereupon confirmed the reduction of capital set forth in the petition, & authorised the registration of the order & of the

minute.—*THARSIS SULPHUR & COPPER CO., LTD.* (1882), 10 R. (Ct. of Ses.) 103; 20 Sc. L. R. 70.—SCOT.

q. Form of order.—*Re GENERAL MINING CO., LTD. & REDUCED* (1872), 6 I. R. Eq. 213.—IR.

Sect. 10.—Capital: Sub-sect. 3, G. (g) iii. & iv., (h), (i) & (j), H. (a) & (b) i.]

1027. — — — — —.]—*Re* ANGLO-ITALIAN BANK, LTD., & REDUCED (1906), 51 Sol. Jo. 48.

1028. — — — — — **Capital returned subject to recall.**—A co. limited by shares duly passed a special resolution in accordance with sect. 51 of 1862 Act, reducing its capital from £80,000 in 16,000 shares of £5 each, £2 10s. paid up to £32,000 in 16,000 shares of £2 each, of which £1 was to be deemed paid up—the reduction to be effected by returning to the shareholders £1 10s. per share, of which £1 might be called up again:—*Held*: on petition (1) an order confirming the reduction could be made, although the £1 10s. per share had not yet been returned, & (2) the proper minute to approve for registration was one which, after stating the reduced capital, contained the words “At the time of the registration of this minute the sum of £1 & no more is proposed to be deemed to have been paid up on each of the said shares.”

(3) The provisions of the Cos. Acts as to reduction of capital by paying off capital in excess of the wants of the co. contemplate that the order of the ct. & the registration of the minute stating the reduced capital are to precede any repayment of capital; they do not contemplate two orders being made on a petition for such reduction, one a preliminary order sanctioning the reduction, & the other an order approving the minute after the reduction has been carried into effect. The minute is intended to show what the capital will be after the reduction has been carried into effect. There should only be one order sanctioning the reduction & approving the minute.—*Re* LEES BROOK SPINNING CO., [1906] 2 Ch. 394; 75 L. J. Ch. 565; 95 L. T. 54; 54 W. R. 563; 22 T. L. R. 629; 13 Mans. 262.

Annotations:—*As to* (3) *Folld. Re* Anglo-Italian Bank, Ltd., & Reduced, [1906] W. N. 202; General Industrials Development Syndicate, [1907] W. N. 23.

iv. Registration.

See 1908 Act, s. 51 (4).

1029. Effect of registrar's certificate—Conclusive—As to validity of resolutions.—Where the resolution confirming a resolution by a co. to reduce its capital, did not comply with the terms of sect. 51 of 1862 Act, because there was not an interval of fourteen days between the passing of the two resolutions, but an order of the ct. had been made in accordance with the resolutions under sect. 11 of 1867 Act, & the registrar had certified the registration of the order, together with a minute approved by the ct. in conformity with sect. 15 of that Act:—*Held*: the certificate of the registrar was conclusive evidence that a special resolution to reduce the capital of the co. had been duly passed in accordance with sect. 51 of 1862 Act, & sect. 9 of 1867 Act.—*LADIES' DRESS ASSOCN., LTD. v. PULBROOK*, [1900] 2 Q. B. 376; 69 L. J. Q. B. 705; 49 W. R. 6; 7 Mans. 465, C. A.

Annotation:—*Folld. Re* Walker & Smith (1903), 72 L. J. Ch. 572.

1030. — — — — — **As to reduction—Though no power under articles.**—Where a co. has passed a special resolution for reducing its capital, & an order has been made confirming the reduction under sect. 11 of 1867 Act, & the registrar has certified the registration of the order & of a

minute approved by the ct. under sect. 15, the certificate is conclusive of the reduction, notwithstanding that the co. had not in its arts. as originally framed, or by amendment, power to reduce capital.—*Re* WALKER & SMITH, LTD. (1903), 72 L. J. Ch. 572; 88 L. T. 792; 51 W. R. 491; 19 T. L. R. 429; 10 Mans. 333.

Compare Nos. 299–312, *ante*.

(h) Advertisement of Order and Minute.

See R. S. C., Ord. 53 B., r. 20.

1031. Discretion of court to dispense with—No discretion.—Where an order is made confirming the reduction of the capital of a co., the advertisement of the registration of the order & of such minute relating thereto as is mentioned in 1867 Act, s. 15, & in the General Order, March, 1868, r. 20, cannot be dispensed with, having regard to the provisions for notice of such registration contained in the above Act & rule.—*Re* LONDON STEAMBOAT CO., LTD. (1883), 31 W. R. 781.

1032. — — — — — **In special circumstances only.**—*Re* CANADA NORTH-WESTERN LAND CO., [1885] W. N. 61.

1033. — — — — —.]—*Re* LONDON & CITY LAND & BUILDING CO., No. 858, *ante*.

1034. In what papers—Company operating in colony—London Gazette, Times & Colonial Gazette.—*Re* ST. LUCIA CENTRAL SUGAR FACTORY CO. (1887), 3 T. L. R. 523.

1035. — — — — — **Company operating in foreign country—Advertisement in local papers dispensed with.**—*Re* ANGLO-ARGENTINE BANK, LTD. (1892), 36 Sol. Jo. 788.

1036. Form of minute advertised—Shortened form directed by court—Serial numbers of shares omitted.—*Re* OCEANA DEVELOPMENT CO., LTD. (1912), 56 Sol. Jo. 537.

Annotation:—*Apld. Re* Victoria (Malaya) Rubber Estates (1914), 58 Sol. Jo. 706.

(i) Publication of Reasons for Reduction.

1037. Dispensed with—Of interest to company only.—*Re* LLYNVI, TONDU & OGMORE COAL & IRON CO., No. 883, *ante*.

1038. Ordered—Fall in value of assets.—Owing to a recent fall in the value of licensed properties, a brewery co. that had always had a credit balance to profit & loss & paid dividends found itself compelled to reduce its capital by a very large amount.

In sanctioning the reduction the ct. ordered the co. to publish a short memorandum of the reasons for the reduction & the causes which led to it for the information of the public under s. 55 of 1908 Act.—*Re* TRUMAN, HANBURY, BUXTON & CO., LTD., [1910] 2 Ch. 498; 79 L. J. Ch. 740; 103 L. T. 553.

(j) Appeals.

1039. From order dispensing with advertisement of petition—Exercise of discretion by judge.—*Re* TAMBRACHERRY ESTATES CO., No. 959, *ante*.

1040. From order refusing confirmation—Treated as interlocutory.—*Re* ALLSOPP & SONS, LTD. (1903), 47 Sol. Jo. 671, C. A.; *subsequent proceedings*, 47 Sol. Jo. 709, C. A.

Annotations:—*Mentd. Re* Welsbach Incandescent Gas Light Co., [1904] 1 Ch. 87; *Re* House Property & Investment Co. (1912), 106 L. T. 949.

PART III. SECT. 10, SUB-SECT. 3.—G. (h).

r. In what papers—Edinburgh Gazette & local papers.—*DON FISHING CO., LTD. & REDUCED, PETITIONERS* (1916), 53 Sc. L. R. 399.—SCOT.

H. Use of Words "and Reduced."

(a) For what Period.

See R. S. C., Ord. 53 B., r. 20.

1041. Three months—From final order.]—Three months from the date of the final order is a proper period at the end of which the addition of the words "& Reduced" to the name of a co. petitioning for an order confirming resolutions for the reduction of their capital under 1867 Act, may, under sect. 10 of the Act, be discontinued.—*Re SHARP, STEWART & Co. (1867), L. R. 5 Eq. 155; 17 L. T. 197; 16 W. R. 305.*

Annotations:—Folld. Re Estate Co., Ltd., & Reduced (1870), 5 Ch. App. 407; Re Llynvi Tondy & Ogmore Coal & Iron Co. (1877), 37 L. T. 373.

1042. ———.]—The expiration of three months from the date of the final order is a proper period for discontinuing the addition of the words "& Reduced" to the title of a co. whose capital is reduced under 1867 Act.—*Re ESTATE CO., LTD., & REDUCED (1870), 5 Ch. App. 407; 22 L. T. 426; 18 W. R. 532, L. J.*

1043. ——— Period before final order included.]—Where a co. reduces its capital under 1867 Act, it is sufficient that the term "reduced" should be used as part of the title of the co. for a total period of three months, although the whole or part of such period may have expired before the order confirming the reduction of capital is made.—*Re MUNTZ' METAL CO., LTD., & REDUCED (1870), 39 L. J. Ch. 704; 18 W. R. 1064.*

Annotation:—Refd. Bannatyne v Direct Spanish Telegraph Co. (1886), 34 Ch. D. 287.

Compare Nos. 969, ante, 1053, post.

1044. One month—General rule.]—*Re RYLANDS (DAN), LTD., & REDUCED (1897), 41 Sol. Jo. 778.*

1045. ——— Petition not advertised.]—*Re WALKER & LOMAX, LTD., [1888] W. N. 26.*

1046. ——— Reduction combined with change of name—Old & new names used together.]—*Re GATLING GUN, LTD., No. 878, ante.*

1047. ——— Company's foreign credit injured.]—*Re MONMOUTHSHIRE STEEL & TINPLATE CO., LTD., [1906] W. N. 128.*

See, also, Nos. 1051, 1073, post.

1048. Three weeks—Company carrying on business abroad.]—*Re LINDNER & Co., [1911] W. N. 66.*

See, also, No. 1047, ante, & No. 1051, post.

1049. Fourteen days—Period before final order exceeding three months.]—*Re CRÉDIT FONCIER OF ENGLAND, No. 969, ante.*

Compare Nos. 1041–1043, ante; No. 1053, post.

1050. ———.]—*Re PATENT VENTILATING GRANARY CO., No. 982, ante.*

1051. ——— Company's foreign credit injured.]—On a petition for confirmation by the ct. of a special resolution for reduction of capital, it was proved that the co. dealt largely with foreign countries & that inquiries had been made by foreign customers as to what the words "& reduced" meant, they not understanding English law, & thinking that it meant that the co. might be unable to meet its obligations:—*Held*: the words "& reduced" need only be used as part of

the title of the co. for fourteen days further.—*Re SANDERS, REHDEES & Co. (1919), 63 Sol. Jo. 447.*

See, also, No. 1047, ante, No. 1073, post.

1052. One week—Special circumstances.]—*Re RYLANDS (DAN), LTD., & REDUCED (1897), 41 Sol. Jo. 778.*

1053. Application to discontinue—Three months after petition answered—Use for further month ordered.]—On a petition by a co. under 1867 Act, for discontinuing the words "& reduced" in connection with its title, it was ordered that the words should be discontinued at the end of one month from the date of the order.—*Re DUNABURG & WITEPSK RY. CO., LTD., & REDUCED (1869), 20 L. T. 103.*

Compare Nos. 969, 1041, ante.

(b) When Dispensed with.

i. Before Final Order.

1054. Power to dispense with.]—In proceedings for a reduction of capital under 1867 Act & Companies Act, 1877 (c. 26), the use of the words "& reduced" may be dispensed with as well during the interval between the presentation & the hearing of the petition to reduce, as from & after the order upon the petition.—*Re LANGDALE CHEMICAL MANURE CO., LTD. (1878), 26 W. R. 434.*

1055. When power exercised—Cancellation of paid-up shares retained by company as security.]—*Re LLYNVI, TONDU & OGMORE COAL & IRON CO., No. 883, ante.*

1056. ——— Cancellation of lost capital—All shareholders notified—Company's solicitors sole creditors—Refused.]—Where a petition had been presented by a co. for the reduction of its capital by cancelling lost capital, & notice of the presentation of the petition had been sent to the shareholders of the co. individually & the only creditors of the co. were its solrs., the ct. nevertheless declined to dispense with the usual advertisements between the date of the presentation of the petition & the hearing thereof or to dispense with the use of the words "& reduced."—*Re MUNICIPAL TRUSTS CORPN., LTD. (1886), 55 L. T. 632; 35 W. R. 120.*

1057. ——— Ratable reduction of issued & unissued shares—Refused.]—*Re UNION FINANCE CO., [1887] W. N. 253.*

1058. ——— Amount of reduction small.]—*Re NEW QUEBRADA RAILWAY, LAND & COPPER CO., [1888] W. N. 233; subsequent proceedings, sub nom. Re QUEBRADA RAILWAY, LAND & COPPER CO. (1889), 40 Ch. D. 363.*

1059. ——— Petition ordered to stand over—Refused.]—*Re UNION FINANCE CO., [1887] W. N. 253.*

1060. ———.]—*Re PAVILION, NEWCASTLE-UPON-TYNE, LTD., & REDUCED, [1911] W. N. 235.*

1061. Application to court—Necessary.]—*Re LLYNVI, TONDU & OGMORE COAL & IRON CO., No. 883, ante.*

1062. ——— Scheme withdrawn.]—Where after the passing of special resolutions & the presentation of a petition for the reduction of

PART III. SECT. 10, SUB-SECT. 3.—*H. (a).*

1041 i. Three months—From final order.]—The expiration of three months from the date of the final order is a proper period for discontinuing the addition of the words "& reduced" to the title of a co. whose capital is reduced.—*Re FLAX SPINNING CO. (1869), 17 W. R. 816.—IR.*

s. One month—From date of order.]

—The period after which a co. was permitted to discontinue the use of the words "& reduced" as part of its title was fixed at one month from the making of the order.—*Re CHAMBERS, [1920] V. L. R. 330.—AUS.*

PART III. SECT. 10, SUB-SECT. 3.—*H. (b) i.*

t. When power exercised—Under special circumstances.]—A limited co.

presented a petition to the ct. for an order confirming a reduction of its capital resolved on by special resolution duly passed & confirmed by the co. In single bills, petitioners on moving for intimation & advertisement also moved for an order to dispense in the meantime with the addition of the words "& reduced." The ct., observing that no special reason had been adduced for making the latter order at this stage, & that it might be

Sect. 10.—Capital: Sub-sect. 3, H. (b) i. & ii.; sub-sect. 4.]

capital, & the words “& reduced” have been added to the title of a co., the co. abandons the scheme, the ct. will give leave to discontinue forthwith the use of the words “& reduced” as part of the co.’s name.—*Re MORDEY, CARNEY & Co.* (1885), 53 L. T. 736; 2 T. L. R. 197, C. A.

1063. — How made—By motion ex parte.]—In proceedings for a reduction of capital under 1867 Act & Companies Act, 1877 (c. 26), on motion *ex parte* to dispense with the words “& reduced” as well during the interval between the presentation & the hearing of the petition to reduce, as from & after the order made upon the petition, the ct. made the order.—*Re RIVER PLATE FRESH MEAT Co.* (1885), 52 L. T. 39; 33 W. R. 319.

See, also, No. 1065, post.

1064. — In chambers.]—Re SOLWAY S.S. Co., LTD., No. 1012, ante.

1065. — Evidence required—Affidavit verifying petition—Produced to judge.]—A motion was made *ex parte* for leave to dispense with the words “& reduced” until the hearing of a petition presented by a co., & that the petition might be placed in the paper by a short day without advertisement & without a certificate of creditors. No affidavit was produced in support of the motion:—*Held*: such an order could not be made without evidence, & an affidavit verifying the petition must be filed, & the matter mentioned to the ct. again. It would not be sufficient to produce the affidavit to the registrar.—*Re MAXIM WESTON ELECTRIC Co., LTD.* (1888), 59 L. T. 722.

1066. — Consent or non-opposition of creditors.]—Re PEISALL COAL & IRON Co., LTD., [1890] W. N. 222.

ii. After Final Order.

1067. Power to dispense with.]—Re LANGDALE CHEMICAL MANURE Co., LTD., No. 1054, ante.

1068. When power exercised—Liability on partly-paid shares not diminished.]—Re LONDON & CITY LAND & BUILDING Co., No. 858, ante.

1069. —.]—Re WEST CUMBERLAND IRON & STEEL Co., LTD., No. 1009, ante.

inconvenient to have done so in the event of the petition being ultimately refused, ordered intimation & advertisement.—*HOLLAND HOUSE ELECTRICAL MANUFACTURING Co.* (1898), 25 R. (Ct. of Sess.) 1039; 35 Sc. L. R. 815; 6 S. L. T. 72.—*SCOT.*

a. Application to court—How made.]—After presenting a petition for the sanction of a scheme of arrangement with creditors a co. presented a note narrating that it had passed & confirmed a special resolution to reduce capital, & that it was about to present a further petition for confirmation thereof, & for dispensation from adding the words “& reduced” to the co.’s name. The prayer of the note craved *interim dispensation* from the use of those words. The ct. granted the prayer.—*Re SCOTTISH POWER Co.*, [1917] S. C. 123.—*SCOT.*

PART III. SECT. 10, SUB-SECT. 3.—H. (b) ii.

b. Power to dispense with—Where liability diminished—Or capital returned on paid-up shares.]—Where a reduction of capital involves the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the ct. is debarred by the terms of sect. 46 of the Companies Act from dispensing altogether with the addition

of the words “& reduced” as the last words in the co. name.—*Ex p. RUSTENBERG*, [1920] W. L. D. 18.—*S. AF.*

c. — Where no creditors.]—Where a co. applies for confirmation of a resolution reducing its capital by repayment to shareholders of paid-up capital & there are no creditors, the ct. has power to dispense with the use of the words “& reduced” forthwith.—*Re TRANSVAAL CONSOLIDATED LAND & EXPLORATION Co.*, [1922] W. L. D. 121.—*S. AF.*

d. When power exercised—Shares cancelled by agreement with holders—To recoup company against loss.]—A co. registered as a co. limited by shares under the Cos. Acts & which under its arts. of assocn. had power to reduce its capital & to accept a surrender of its shares, passed a special resolution to reduce its capital by permanently cancelling certain fully-paid shares belonging to two shareholders who had agreed to the cancellation in order to recoup the co. against a loss resulting from the misappropriation of the funds of the co. by one of its officials. In a petition for confirmation, after a remit for inquiry & report:—*Held*: the resolution should be confirmed & the addition of the words “& reduced” to the co.’s name might be dispensed with.—*BANKNOCK COAL Co., LTD., PETITIONERS* (1897), 24 R. (Ct. of Sess.) 476.—*SCOT.*

1070. — No prospectus issued.]—A limited co. which had issued only a small portion of its shares, on which nothing had been paid, presented a petition for the confirmation by the ct. of a special resolution passed by the co. reducing its capital from £1,000,000 to £400,000, & for liberty to dispense with the words “& reduced” as part of the name of the co. No prospectus had been issued. There was only one creditor of the co. & he consented to the application. The presentation of the petition had been advertised:—*Held*: the order confirming the reduction might be made at once without any inquiry in chambers, & without any further advertisement; & the use of the words “& reduced” might be dispensed with on the production of an affidavit that no prospectus had been issued.—*Re WEST AFRICAN TELEGRAPH Co., LTD.* (1886), 55 L. J. Ch. 436; 34 W. R. 411; *sub nom. Re WEST AFRICAN Co., LTD., Re VIVIAN (H. H.) & Co., LTD., & REDUCED*, 54 L. T. 384; 2 T. L. R. 334.

1071. — Company carrying on business abroad.]—Re SUMATRA TOBACCO PLANTATIONS Co., [1898] W. N. 80.

1072. — Injury to credit.]—Re AUSTRALIAN ESTATES & MORTGAGE Co., LTD., No. 921, ante.

1073. — After three weeks.]—Re LINDNER & Co., [1911] W. N. 66.

— Petition not advertised.]—See No. 1045, ante.

1074. Limited use—Dispensed with as to name—On notice to all creditors—Use on all documents within 1882 Act, s. 41, for one month.]—Re LAWRENCE & BULLEN, LTD., [1901] W. N. 158.

1075. — Dispensed with as to common seal.]—On a petition to confirm a reduction of the capital of a co., the ct. dispensed with the use of the words “& reduced” on the common seal of the co.—*Re KNOWLES (ANDREW) & SONS, LTD., & REDUCED* (1912), 57 Sol. Jo. 212.

SUB-SECT. 4.—REORGANISATION.

1076. Application of 1908 Act, s. 45—General rule.]—Sect. 45 of the above Act is confined

e. — Unpaid liability on shares extinguished.]—A co. presented a petition craving for an alteration in its memorandum of assocn., whereby the capital was reduced by extinguishing the unpaid liability of its shares; & also craving the ct. to dispense altogether with the words “& reduced” as an addition to the co.’s name. The reporter to whom the petition was remitted called the attention of the ct. to the question whether, under Companies Act, 1908, s. 48, it was competent for the ct., where the reduction involved a diminution of liability in respect of unpaid capital to dispense altogether with the words “& reduced.” The ct. in granting the prayer of the petition, dispensed altogether with the use of the words “& reduced” as part of the co.’s name.—*DON FISHING Co., LTD. & REDUCED, PETITIONERS*, [1916] S. C. 543.—*SCOT.*

PART III. SECT. 10, SUB-SECT. 4.

1. What reorganisation authorised—Conversion of deferred into ordinary shares.]—The memorandum of assocn. of a co bore that the share capital of the co. was £5,000 divided into ordinary & deferred shares. The co. being desirous of re-organising its share capital, the holders of the deferred shares surrendered these shares to the co. & the co. passed a special resolution

two modes of reorganising share capital, namely, by the consolidation of shares of different classes, & by the division of shares into shares of different classes.

Qu.: whether compliance with sect. 120 alone of that Act would be sufficient in the case of a scheme of arrangement involving a reorganisation within sect. 45.—*Re PALACE HOTEL, LTD.*, [1912] 1 Ch. 438; 81 L. J. Ch. 695; 107 L. T. 521; 6 Sol. Jo. 649; 19 Mans. 295.

Annotations:—*N.F. Re Doechem Gloves*, [1913] 1 Ch. 226. *Apprvd. Re Schweppes*, [1914] 1 Ch. 322. *Folld. Re Nordberg*, [1915] 2 Ch. 439.

1077. ———.]—The memorandum of a co. provided that its capital should consist of £950,000, divided into 300,000 preferred shares, 300,000 ordinary shares, & 350,000 deferred shares, all of £1 each, with such respective rights as were defined by the arts. The arts. gave a cumulative preferential dividend of 7 per cent. to each of three classes of shareholders in succession & divided the surplus profits between the ordinary & deferred shareholders. The co. proposed a scheme of arrangement between the co. & its ordinary shareholders, under sect. 120 of the above Act, whereby the co. should be authorised to issue 100,000 new ordinary £1 shares to rank equally with the existing ordinary shares, & that, as a consideration, a proportion of the new shares should be issued to the existing ordinary shareholders at par. A meeting of the ordinary shareholders was held under an order of the ct., made on the co.'s application under sect. 120, & a resolution approving the scheme was passed by a majority sufficient to satisfy that sect., but not sufficient to satisfy sect. 45, of the Act. This petition was presented by the co. for the confirmation of the scheme:—*Held*: (1) the proposed arrangement did not modify the conditions contained in the memorandum & would not be an interference with any preferential rights; (2) it was, therefore, not within sect. 45, & might be sanctioned under sect. 120, of the above Act.

(3) Sect. 45 is confined to two modes of reorganising the share capital, namely, by the consolidation of shares of different classes, & by the division of shares into shares of different classes (*per CUR.*).—*Re SCHWEPPEs, LTD.*, [1914] 1 Ch. 322; 83 L. J. Ch. 296; 110 L. T. 246; 30 T. L. R. 201; 58 Sol. Jo. 185; 21 Mans. 82, C. A.

Annotations:—*As to (1) & (2) Reid. Re Nordberg*, [1915] 2 Ch. 439. *Generally, Reid. Re Anglo-Continental Supply Co.*, [1922] 2 Ch. 723.

— Arrangements varying rights of shareholders under 1908 Act, s. 120.]—*See* Nos. 1081–1087, *post*.

1078. ——— Reorganisation combined with reduc-

tion.]—*Re AUSTRALIAN ESTATES & MORTGAGE Co., LTD.*, No. 921, *ante*.

See, also, Nos. 916, 919, *ante*.

1079. What reorganisations authorised—Division of partly-paid shares—Into fully-paid & partly-paid shares.]—The ct. confirmed, under sect. 45 of 1908 Act, special resolutions which modified the memorandum of assocn. of a co. by dividing each partly-paid share into two, so that the entire liability for future calls should be thrown on one only of the two new shares so resulting.—*Re VINE & GENERAL RUBBER TRUST, LTD.* (1913), 108 L. T. 709; 57 Sol. Jo. 610.

1080. ——— Limitations on dividends—Division of capital into two classes of shares—One class free of restriction.]—Clause 5 of the memorandum of assocn. of a co. provided as follows: "The capital of the co. is £200,000 divided into 20,000 shares of £10 each. The co. has power from time to time to increase or reduce its capital, & to issue any shares in the original or increased capital as ordinary, preferred, or deferred shares, & to attach to any class or classes of such shares any preferences, rights, privileges, or conditions, or to subject the same to any restrictions or limitations. Provided always that no dividend shall be paid on the ordinary shares exceeding £3 per cent. *per annum*, non-cumulative." The co., which was incorporated in 1907, issued 15,064 ordinary shares of £10 each. In Sept. & Oct., 1922, a special resolution was passed that each of the shares of the co. should be sub-divided into ten shares of £1 each & that the conditions of the co.'s memorandum of assocn. should be modified so that the share capital be reorganised by dividing the same into two classes of shares consisting of 40,000 ordinary shares of £1 each & 160,000 deferred shares of £1 each, of which each existing holder of a share of £10 should receive two ordinary & eight deferred shares, the holders of the ordinary shares to be entitled to receive out of the profits a fixed non-cumulative preferential dividend for each year of 3 per cent., & the surplus profits in each year to be applicable for the payment of dividend to the holders of deferred shares. On a petition to the ct. under sect. 45 of 1908 Act, for confirmation of the special resolution:—*Held*: the ct. had power under that sect. to confirm the special resolution, & as the only persons interested in any profits in excess of the fixed dividend payable on the ordinary shares were the shareholders themselves, the ct. ought in the exercise of its discretion to confirm the resolution.—*Re GARDEN VILLAGE (HULL), LTD.*, [1923] 1 Ch. 230; 92 L. J. Ch. 289; 129 L. T. 452; 39 T. L. R. 214; 67 Sol. Jo. 365.

1081. Procedure—Petition—Need not be advertised.]—It is not necessary to advertise a petition

providing that the clause in the memorandum relating to share capital should be deleted & that in lieu thereof there should be substituted the following clause: "The share capital of the co. is £5,000 divided into 5,000 ordinary shares of £1 each." Thereafter the co. presented a petition praying the ct. "to confirm the alteration of the provisions of the co.'s memorandum of assocn." The Reporter to whom the petition was remitted suggested in his report: (1) that the prayer of the petition should have been for confirmation of the special resolution altering the memorandum & not for confirmation of the alteration; & (2) that the co. had not yet passed a resolution consolidating the ordinary & deferred shares into one class, & that such resolution ought to have been

passed before the resolution to alter the memorandum was adopted. The ct. granted the prayer of the petition after it had been amended in terms of the first suggestion of the Reporter.—*SCOTTISH INDIA RUBBER Co., LTD.*, PETITIONERS, [1920] S. C. 1.—SCOT.

g. ——— Reorganisation affecting preference shares—Necessity for compliance with statutory provisions—As to requisite majority of votes.]—Sect. 45 of Companies Act, 1908, provides that no preference attached to any class of shares shall be interfered with "Except by a resolution passed by a majority in number of shareholders of that class holding three-fourths of the share capital of that class, & confirmed at a meeting of shareholders of that class in the same manner as a

special resolution of the co. is required to be confirmed":—*Held*: a resolution passed by half of the preference shareholders who represented three-fourths of the share capital of their class did not comply with the provisions of the Act.—*Re ARDEN COAL Co. LTD.*, [1922] S. C. 500.—SCOT.

1081 i. Procedure—Petition—Need not be advertised.]—In a petition under Companies Act, 1908, s. 45, for confirmation by the ct. of a special resolution passed by a limited co. for reorganisation of its share capital, the ct. ordered intimation of the petition without advertisement.—*MUNRO (R. A.) & Co., LTD.*, [1913] S. C. 456.—SCOT.

1081 ii. ———.]—BRITISH

Sect. 10.—Capital: Sub-sects. 4 & 5.]

for reorganisation of share capital.—*Re ASHANTI DEVELOPMENT, LTD.* (1911), 27 T. L. R. 498.

1082. ——— **Scheme of arrangement involving reorganisation—Requirements of 1908 Act, s. 120 —& other relevant sections.]—***Re PANAMA HAT CO., LTD.* (1912), cited in [1912] 2 Ch. 442.

Annotation:—Reid. Re Palace Hotel, [1912] 2 Ch. 438.

1083. ——— ———.]—*Re MELLINS FOOD* (1912), cited in [1912] 2 Ch. 442.

Annotations:—Reid. Re Palace Hotel, [1912] 2 Ch. 438; *Re Schweppes*, [1914] 1 Ch. 322.

1084. ——— **Whether governed by 1908 Act, s. 45, or s. 120.]—***Re PANAMA HAT CO., LTD.*, No. 1082, *ante*.

1085. ——— ———.]—Sect. 45 of the above Act gives power inferentially to modify preferential rights created by the memorandum of assocn., so that a preference given to any class of shareholders by the memorandum cannot be interfered with except upon the conditions laid down in that sect. Sect. 120 of that Act does not give express authority to alter capital or interfere with preferential rights, & compliance with its conditions in such cases is insufficient.—*Re DOECHAM GLOVES, LTD.*, [1913] 1 Ch. 226; 82 L. J. Ch. 165; 107 L. T. 817; 20 Mans. 79.

Annotation:—Overd. Re Schweppes, [1914] 1 Ch. 322.

1086. ——— ———.]—*Re SCHWEPES, LTD.*, No. 1077, *ante*.

1087. ——— ———.]—Sect. 45 of the above Act is not an enabling sect., but a sect. limiting the general power to make arrangements under sect. 120 of that Act. Its application is confined to the two cases mentioned in the sect., namely, where it is proposed to alter the memorandum of assocn., either by the consolidation of shares of different classes, or by the division of shares into shares of different classes. In other cases where a scheme of arrangement interferes with rights conferred by the memorandum compliance with sect. 120 of the Act is sufficient.—*Re NORDBERG (J. A.), LTD.*, [1915] 2 Ch. 439; 84 L. J. Ch. 830; 113 L. T. 988; 59 Sol. Jo. 717.

See, generally, Sect. 31, sub-sect. 10, *post*.

1088. ——— **Resolution.]—**Sect. 41 of 1908 Act permits a consolidation of shares, followed by a sub-division of the shares resulting from such consolidation, to be carried out by a single resolution.—*Re NORTH CHESHIRE BREWERY CO., LTD.* (1920), 64 Sol. Jo. 463.

1089. ——— **Must be passed at meeting.]—***Re FOUCAR & Co., LTD., & REDUCED*, No. 1091, *post*.

1090. ——— **Meetings of separate classes of shareholders.]—**A co. whose capital was divided by its memorandum into ordinary & preference shares, proposed to convert certain unissued preference shares into ordinary shares & to attach to the preference shares a right to participate *pari passu* with the ordinary shareholders in the surplus profits. A resolution to that effect was passed & confirmed at a general meeting, & also at meetings of the preference shareholders, but there were no separate meetings of the ordinary shareholders. The ct. confirmed the special resolution, holding that it was unnecessary that

there should have been separate meetings of the ordinary shareholders.—*Re STEWART PRECISION CARBURETTOR CO.* (1912), 28 T. L. R. 335; 56 Sol. Jo. 413.

1091. ——— **Three fourths in value present or represented.]—**(1) To comply with the proviso in 1908 Act, s. 45 (1), a majority of three-fourths in value of the shareholders of the particular class must be present or represented when the resolution is passed; (2) the resolution must be passed at a meeting; & (3) voting by proxy is allowable when voting by proxy at general meetings is allowed by the arts. of assocn.—*Re FOUCAR & Co., LTD., & REDUCED* (1913), 29 T. L. R. 350.

1092. ——— **Voting by proxy.]—***Re FOUCAR & Co., LTD., & REDUCED*, No. 1091, *ante*.

SUB-SECT. 5.—APPLICATION.

1093. **In recouping revenue—For sums properly chargeable to capital.]—**(1) A simple contract creditor of a co. cannot sustain a bill to restrain the co. from dealing with their assets as they please on the ground that they are diminishing the fund for payment of his debt. (2) A shareholder in a co. who seeks to restrain the co. from doing an *ultra vires* act must show, by distinct & definitive averments, the illegality of the act. (3) *Qu.*: whether persons having an equitable interest in shares, but not being registered shareholders, can file a bill to restrain a co. from doing an *ultra vires* act.

(4) Where a co. have paid for things, properly chargeable to capital, out of revenue, they are justified in recouping the revenue account at a subsequent time out of capital; & may, if necessary, raise fresh capital under their borrowing powers for that purpose.—*MILLS v. NORTHERN RAILWAY OF BUENOS AYRES CO.* (1870), 5 Ch. App. 621; 23 L. T. 719; 19 W. R. 171, L. C.

Annotations:—As to (1) Reid. Cutbill v. Shropshire Rys. (1891), 7 T. L. R. 381. *Generally, Mendt. Coxon v. Gorst*, [1891] 2 Ch. 73.

1094. ——— **For sums applied to make good depreciation of investment.]—**An investment made by a limited co. on capital account having fallen in value, the amount of depreciation was, in the half-yearly accounts, debited to revenue. When the co. afterwards went into liquidation, the investment had risen again in value & the liquidator, in his accounts, credited to revenue as appreciation, the amount which had previously been debited as depreciation:—*Held*: (1) the amount credited to revenue as appreciation must be treated as income, & not as capital, it being merely a restitution to profits of what had been previously taken from profits; (2) earnings by a limited co. since the commencement of its liquidation are capital & not income.—*BISHOP v. SMYRNA & CASSABA RY. CO.* (No. 2), [1895] 2 Ch. 596; 64 L. J. Ch. 806; 73 L. T. 337; 2 Mans. 575; 13 R. 803; *previous proceedings*, [1895] 2 Ch. 265.

1095. ——— **Losses—Appreciation of capital assets —Ascertained by bonâ fide valuation.]—***AMMONIA SODA CO. v. CHAMBERLAIN*, No. 820, *ante*.

1096. **In payment of interest—On money paid up**

ASSETS TRUST, LTD., PETITIONERS, [1913] S. C. 661.—**SCOT.**

h. ——— **Resolution—Confirmed though involving reduction.]—**A limited co. presented a petition for confirmation of a special resolution under Companies Act, 1908, s. 45, which regulates the procedure for reorganisation of share capital: the nominal capital of

the co. was £55,000, which was fully-paid. The effect of the special resolution was to rearrange the shares, so as to leave the nominal capital at £55,000, but to reduce the paid-up capital to £40,000. The reporter to whom the petition was remitted having reported that, in his opinion, this was in effect a proposal to reduce

the capital of the co., & that, as the procedure relative to reduction of capital had not been complied with, the petition as it stood should not be granted. The ct. granted the prayer of the petition & confirmed the resolution.—*PEEBLES HOTEL HYDROPATHIC, LTD., PETITIONERS*, [1920] S. C. 303.—**SCOT.**

advance of calls—Power given by articles.]—*LOCK v. QUEENSLAND INVESTMENT & LAND MORTGAGE Co.*, No. 414, *ante*.

1097. — On money raised for works—Pending completion.]—A tramway co., for the purpose of converting its undertaking to a system of electric traction, issued conversion debenture stock. The directors passed resolutions that the interest on this stock should be treated as part of the costs of construction, & chargeable to capital account during the construction of the works. The memorandum & arts. of assocn. of the co. contained no provisions relating to this subject:—*Held*: (1) there was no general rule of law which compelled cos. to charge to revenue account interest on money borrowed for the purpose of constructing works, or prohibited them from charging it, during construction, to capital account; (2) in the absence of any provision to the contrary cos. were entitled to act in the same way as commercial men dealing honestly in their own business; (3) therefore the co. were at liberty to charge the interest in question to capital account.—*HINDS v. BUENOS AYRES GRAND NATIONAL TRAMWAYS Co., LTD.*, [1906] 2 Ch. 654; 76 L. J. Ch. 17; 95 L. T. 780; 23 T. L. R. 6; 51 Sol. Jo. 13; 13 Mans. 411.

Annotation:—*As to (2) & (3) Reid. Ammonia Soda Co. v. Chamberlain*, [1918] 1 Ch. 266.

See, also, No. 8199, *post*.

1098. In payment of dividends—Under article—Article invalid under memorandum.]—*GUINNESS v. LAND CORPN. OF IRELAND*, No. 330, *ante*.

1099. — Accretions to capital—Original capital intact.]—A banking co., with a paid-up capital of £500,000, sold part of its undertaking for £875,000; after deducting the paid-up capital & other incidental expenses, there remained a net balance of £205,000. The directors proposed to treat this balance as profit:—*Held*: the £205,000 was profit on capital & not part of the capital itself, & the directors would be justified in carrying this sum to the profit & loss account, & after appropriating to the reserve fund so much as they thought proper, might distribute the remainder as dividends.—*LUBBOCK v. BRITISH BANK OF SOUTH AMERICA*, [1892] 2 Ch. 198; 61 L. J. Ch. 498; 67 L. T. 74; 41 W. R. 103; 8 T. L. R. 472.

Annotations:—*Consd. Foster v. New Trinidad Lake Asphalt Co.*, [1901] 1 Ch. 208; *Cross v. Imperial Continental Gas Assocn.*, [1923] 2 Ch. 553. *Reid. Verner v. General & Commercial Investment Trust*, [1894] 2 Ch. 239; *Re National Bank of Wales*, [1899] 2 Ch. 629; *Re Tedlie, Holt v. Croker* (1922), 91 L. J. Ch. 346.

Contrary to articles—Liability of directors & shareholders.]—*See* No. 3282, *post*, & *generally*, Sect. 28, sub-sect. 6, E. (f), Sect. 29, sub-sect. 1, D., sub-sect. 2, D., sub-sect. 3, D., sub-sect. 5, C., *post*.

What is.]—*See* No. 3282, *post*.

Calculation of profits & net profits, see Sect. 30, sub-sect. 8, A., *post*.

1100. In purchase of its own shares—Through power given by articles—Invalid.]—*TREVOR v. WHITWORTH*, No. 411, *ante*.

See, further, Nos. 871–877, *ante*, & Sect. 31, sub-sect. 2, B., *post*.

1101. In remuneration of directors & officials—Under power given—No profits.]—The arts. of assocn. of a limited co. provided that the directors might yearly distribute among themselves, as remuneration for their services, such sum as should be equal to one-tenth part of the profits of the co. for the last preceding year, provided always that there should be yearly distributed among the directors, as such remuneration, a sum which should not be less than £100 yearly for each

director, & such remuneration should be divisible among the directors as they might think proper. No profits were ever made by the co., but the directors distributed among themselves, out of the capital, sums amounting to £100 a year for each director.

On an application by the official liquidator that one of the directors might be ordered to refund the amount thus received by him:—*Held*: the remuneration of the directors was not payable out of profits; profits were mentioned in the arts. only as the measure of the amount of remuneration to be received by the directors, & the directors were entitled to a minimum salary of £100 a year, whether any profits were made or not.

There is no general presumption that the fees of directors of cos. are to be paid out of profits only.—*Re LUNDY GRANITE Co., LTD.*, *LEWIS'S CASE* (1872), 26 L. T. 673; 20 W. R. 519, L. JJ.

Annotation:—*Reid. Re Liverpool & London Guarantee & Accident Insco.*, *Gallagher's Case* (1882), 46 L. T. 54.

1102. — Presents to directors—Resolution of shareholders.]—Directors cannot pay themselves for their services, or make presents to themselves out of the co.'s assets, unless authorised so to do by the instrument which regulates the co., or by the shareholders as a properly convened meeting.

N., the chairman of a co. in which substantially all the shares were held by himself & his family, purchased on behalf of the co. the right to a building agreement to be obtained from certain comrs. The comrs. objected to the co. as tenant, & proposed to substitute N., who thereupon sold the benefit of the agreement to the co. at an advance of £10,000, of which £7,000 was spent upon commissions & otherwise in order to obtain the agreement from the comrs., & £3,000 was applied by N. to his own use. A further sum of £3,500 was spent by N. out of the assets of the co. upon his private house. These payments were made out of money borrowed by the co. for the purpose of its business; they were sanctioned by resolutions of the directors, & were approved of by all the shareholders. The arts. contained no power to make presents to directors. Upon a summons taken out by the liquidator in the winding up of the co. against N. under sect. 10 of 1890 (Winding up) Act:—*Held*: N. was not liable for the £7,000, but was liable for the £3,000 & the £3,500, because the shareholders for the time being had no power to authorise the making of presents to directors out of money borrowed by the co., & because if there had been such power it could be exercised only at a general meeting.—*Re NEWMAN (G.) & Co.*, [1895] 1 Ch. 674; 64 L. J. Ch. 407; 72 L. T. 697; 43 W. R. 483; 11 T. L. R. 292; 39 Sol. Jo. 346; 2 Mans. 267; 12 R. 228, C. A.

Annotations:—*Reid. Re Innes*, [1903] 2 Ch. 254; *Re Bodega Co.*, [1904] 1 Ch. 276; *Young v. Naval, Military & Civil Service Co-op. Soc. of South Africa*, [1905] 1 K. B. 687; *Re Express Engineering Works*, [1920] 1 Ch. 466. *Mentd. Seligman v. Prince*, [1895] 2 Ch. 617; *Salomon v. Salomon*, *Salomon v. Salomon* (1896), 66 L. J. Ch. 35; *Hammond v. Prentice*, [1920] 1 Ch. 201.

1103. — Resolution of directors.]—*Re NEWMAN (G.) & Co.*, No. 1102, *ante*.

1104. — Company in voluntary liquidation.]—A co. having sold its undertaking & property, the directors sent out to the shareholders notices of an extraordinary general meeting to consider a resolution for the voluntary winding up of the co. with the directors as liquidators, & another resolution determining what sum should be distributed among the officers & servants of the co. The directors also

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issued circulars inviting shareholders to send their proxies.

At the meeting the resolution for voluntary winding up was duly carried & the chairman & managing director then proposed a resolution that a sum equal to five years' salary should be paid to himself & the secretary & accountant & a further sum be distributed among the servants. This was lost on a show of hands, but carried on a poll.

The directors then sent out notices of a second meeting to confirm these resolutions, & again issued circulars inviting proxies.

At the second meeting the resolution for the payments to the officers & servants was again lost on a show of hands, but carried at a poll.

A dissentient shareholder then brought an action to restrain the directors from giving effect to the resolution on the grounds that its carrying & confirmation were improperly obtained, & that it was *ultra vires* of the co. & invalid:—*Held*: the case fell within the principle of *Hutton v. West Cork Railway Co.*, No. 4080, *post*, & the resolution was therefore *ultra vires*, & invalid.—*STROUD v. ROYAL AQUARIUM & SUMMER & WINTER GARDEN SOCIETY, LTD.* (1903), 89 L. T. 243.

Annotation:—*Reid. Moriarty v. Regent's Garage & Engineering Co.*, [1921] 1 K. B. 423.

—*See, further*, Sect. 28, sub-sects. 3, 6; Sect. 29, sub-sects. 1 C., 2 B., 3 B., *post*.

Application of co.'s funds generally, *see* Sect. 31, sub-sect. 2, K., *post*.

Liability of directors—For misapplication of funds.]—See Sect. 28, sub-sect. 6, E. (h), *post*.

SUB-SECT. 6.—DEPRECIATION OF CAPITAL ASSETS.

A. Capital Lost or Unrepresented by Available Assets.

(a) As Ground for Reduction.

See Sub-sect. 3, E. (a) i., *ante*.

(b) Proof of.

See Sub-sect. 3, E. (a), ii. *ante*.

B. Duty to Make Good.

1105. General rule.]—(1) A co. is not prohibited either by statute or general law from paying dividends because its available property at the time of declaring the dividend is of less value than its nominal or share capital.

(2) Where the capital, in the sense of assets, of a co. is in its nature of a wasting character, depreciated by effluxion of time or exhaustion of material—*e.g.*, mines, patent, leasehold—if for the purpose of carrying on the business of the co. & getting a profit the annual consumption of that capital is necessary, then, apart from any regulation in the arts., there is no obligation by law or statute to create a reserve fund out of revenue to recoup the wasting nature of the capital; & the division among the shareholders of the surplus produce of such wasting property, after retaining enough to pay the co.'s creditors, is not a return of capital, & as such prohibited.

(3) There is nothing in the Cos. Acts which requires that the capital shall be made up if lost,

& the mode in which dividends are to be paid & profits calculated is left to be regulated by the commercial world.

(4) Therefore, in considering whether a proposed declaration of dividend is to be treated as a fair division of profits, or as a division of capital under the guise of declaring a dividend, the ct. will have regard to the declaration contained in the arts. of assocn., provided the arts. do not transgress the general law.

(5) A co. is not debtor to capital, although, for the purpose of ascertaining the financial position of a co. it may be properly so put down in its accounts.—*LEE v. NEUCHATEL ASPHALTE CO.* (1889), 41 Ch. D. 1; 58 L. J. Ch. 408; 61 L. T. 11; 37 W. R. 321; 5 T. L. R. 260; 1 Meg. 140, C. A.; *previous proceedings* (1886), 3 T. L. R. 103.

Annotations:—*As to* (1) *Foll.* *Bolton v. Natal Land & Colonization Co.*, [1892] 2 Ch. 124. *Appl.* *Re Kingston Cotton Mill Co. (No. 2)*, [1896] 1 Ch. 331. *Consd.* *Ammonia Soda Co. v. Chamberlain*, [1918] 1 Ch. 266. *As to* (2) *Consd.* *Verner v. General & Commercial Investment Trust*, [1894] 2 Ch. 239. *Reid.* *Lubbock v. British Bank of South America*, [1892] 2 Ch. 198; *Wilmer v. McNamara*, [1895] 2 Ch. 245; *Re Kingston Cotton Mill Co. (No. 2)*, [1896] 1 Ch. 331; *Re National Bank of Wales*, [1899] 2 Ch. 629; *Bond v. Barrow Hæmatite Steel Co.*, [1902] 1 Ch. 353; *Ammonia Soda Co. v. Chamberlain*, [1918] 1 Ch. 266. *As to* (3) *Consd.* *Verner v. General & Commercial Investment Trust*, [1894] 2 Ch. 239; *Ammonia Soda Co. v. Chamberlain*, [1918] 1 Ch. 266. *Reid.* *Wilmer v. McNamara*, [1895] 2 Ch. 245; *Re National Bank of Wales*, [1899] 2 Ch. 629; *Re Barrow Hæmatite Steel Co. (No. 2)* (1901), 9 Mans. 35; *Bond v. Barrow Hæmatite Steel Co.*, [1902] 1 Ch. 353; *Re Spanish Prospecting Co.*, [1911] 1 Ch. 92. *As to* (4) *Consd.* *Ammonia Soda Co. v. Chamberlain*, [1918] 1 Ch. 266. *Reid.* *Wood v. Odessa Waterworks Co.* (1889), 42 Ch. D. 636; *Re London & General Bank* (1894), 72 L. T. 227; *Re Welsbach Incandescent Gas Light Co.*, [1904] 1 Ch. 87; *Alianza Co. v. Bell*, [1905] 1 K. B. 184. *As to* (5) *Reid.* *Verner v. General & Commercial Investment Trust*, [1894] 2 Ch. 239. *Generally, Mentd.* *Re Mersina, Tarsus & Adana Ry. Construction Co.* (1889), 1 Meg. 341; *Re Wragg*, [1897] 1 Ch. 796.

1106. —.]—A co. is not bound to devote profits earned to the restoration of a portion of its capital written off, or treated as having been lost, in the accounts of a previous year.

In the accounts of a land co. for the year 1882, the capital value of its assets was written up as being £69,233 10s. 4d. above cost price, & that increase in value was brought into the profit & loss account & balanced *pro tanto* against a bad debt of £72,326. In the accounts for the year 1885 a profit was earned upon income account, & the directors proposed to divide it in the shape of dividends:—*Held*: (1) such disposition of the profit was not *ultra vires*, & (2) even assuming that upon valuation there should be found a loss of the capital of the co., the co. was not bound to devote the profit to the restoring of the loss.—*BOLTON v. NATAL LAND & COLONIZATION CO.*, [1892] 2 Ch. 124; 61 L. J. Ch. 281; 65 L. T. 786; 8 T. L. R. 148.

Annotations:—*As to* (2) *Reid.* *Verner v. General & Commercial Investment Trust*, [1894] 2 Ch. 239; *Wilmer v. McNamara*, [1895] 2 Ch. 245; *Re Barrow Hæmatite Steel Co.*, [1900] 2 Ch. 846; *Wall v. London & Provincial Trust*, [1920] 1 Ch. 45.

1107. —.]—An ordinary trading co. (as well as an investment co., & a co. formed to work a necessarily wasting property) may lawfully pay a dividend to shareholders out of current profits, without setting aside a sum sufficient to cover depreciation in the value of the fixed capital.—*Re KINGSTON COTTON MILL CO. (No. 2)*, [1896] 1 Ch. 331; 65 L. J. Ch. 290; 73 L. T. 745; 44 W. R. 363; 12 T. L. R. 123; 40 Sol. Jo. 144; 3 Mans. 75; *affd.*, [1896] 2 Ch. 279, C. A.

Annotations:—*Mentd.* *Dixon v. Kennaway*, [1900] 1 Ch. 833; *Squire Cash Chemist v. Ball, Baker, Mead v. Ball, Baker* (1911), 106 L. T. 197; *Re Republic of Bolivia*

1108. —.]—A director of a joint stock banking co. in assenting to the payment of dividends out of capital & to advances on improper security, honestly relied on the judgment, information, & advice of the chairman & general manager of the bank, by whose statements he was misled & whose integrity, skill, & competence he had no reason for suspecting:—*Held*: upon the true view of the facts he was not negligent of his duties as director & was not liable in the winding up.

Semble: a co. is not at liberty to write off to capital losses incurred in previous years, or in any subsequent year, & if the receipts for that year exceed the outgoings, to pay dividends out of such excess without making up the capital account, such a procedure being inconsistent with the provisions of Companies Act, 1877 (c. 26).—*DOVEY v. CORY*, [1901] A. C. 477; 70 L. J. Ch. 753; 85 L. T. 257; 17 T. L. R. 732; 50 W. R. 65; 8 Mans. 346, H. L.; *affg.* S. C. *sub nom.* *Re NATIONAL BANK OF WALES, LTD.*, [1899] 2 Ch. 629, C. A.

Annotations:—*Reid. Merchants' Fire Office v. Armstrong* (1901), 17 T. L. R. 709; *Bond v. Barrow Hematite Steel Co.*, [1902] 1 Ch. 353; *Re Crichton's Oil Co.*, [1902] 2 Ch. 86; *Lucas v. Fitzgerald* (1903), 20 T. L. R. 16; *Re Welsbach Incandescent Gas Light Co.*, [1904] 1 Ch. 87; *Exploring Land & Minerals Co. v. Kolckmann* (1905), 94 L. T. 234; *Prefontaine v. Grenier*, [1907] A. C. 101; *Ammonia Soda Co. v. Chamberlain*, [1918] 1 Ch. 266.

1109. Wasting assets—Whether duty to create depreciation fund.—The co. was incorporated with a capital of £1,150,000, divided into 35,000 preference shares & 80,000 ordinary shares of £10 each. By art. 97 the “net profits” of the co. were to be divided in payment of a dividend at seven per cent. on the preferred shares, & subject thereto a like dividend on the ordinary shares, & the surplus of the net profits was to be divided ratably amongst all the shareholders. By art. 98 no such distribution of profits was to be made without the consent of a general meeting, & by art. 99 in the case of any dispute as to the amount of net profits the decision of the co. in general meeting was to be final. Art. 100 empowered the directors, before recommending a dividend on any of the shares, to set aside out of the net profits such funds as they might think proper as a reserve fund, but provided that they should not be bound so to do. The co. worked under a concession terminable in 1907, in the purchase of which & the business of other cos. interested therein, £1,058,303 had been expended. An ordinary shareholder brought this action to prevent the payment of dividends on the preference shares without a sum being set apart to replace the capital expended on the purchase of the concession:—*Held*: the ct. had no authority to interfere, since, on the arts., the meaning of “net profits” was left to the co. in general meeting, & the question of a reserve fund, to the directors.—*LAMBERT v. NEUCHATEL ASPHALTE Co., LTD.* (1882), 51 L. J. Ch. 882; 47 L. T. 73; 30 W. R. 913.

Annotation:—*Consd. Lee v. Neuchatel Asphalte Co.* (1886), 3 T. L. R. 103.

1110. — — —.]—*LEE v. NEUCHATEL ASPHALTE Co.*, No. 1105, *ante*.

1111. — — —.]—*Re KINGSTON COTTON MILL Co.* (No. 2), No. 1107, *ante*.

1112. — — — **No general rule.**—(1) The question whether a co. has profits available for distribution must be answered according to the circumstances of each particular case, the nature of the co., & the evidence of competent witnesses.

(2) Although in some cases fixed capital may

be sunk & lost, without precluding the payment of a dividend, circulating capital must be kept up. *Semble*: there is no distinction in this respect between a realised loss & an estimated loss.

(3) The common art. requiring dividends to be declared by the directors applies to fixed cumulative dividends on preference shares, & the ct. will not readily override the directors' discretion in relation thereto.

(4) Leasehold iron ore mines held by a smelting co. for the purpose of supplying themselves with ore are circulating capital.

(5) There is no general rule of law as to whether a co. owning wasting assets ought or ought not to create a depreciation fund. The question in every case is for the decision of the ct. on evidence.

(6) The necessity for the declaration of a dividend as a condition precedent to an action for the recovery of such dividend applies as well to shares on which a fixed preferential dividend is payable as to ordinary shares.

(7) “Interest” is not an apt word to describe the return to which a shareholder is entitled in respect of shares—preference or ordinary—paid up in due course, & not by way of advance. “Interest” is compensation for delay in payment, & is not accurately applied to a share of profits of trading, although it may be used as an inaccurate mode of expressing the measure of the share of such profits.—*BOND v. BARROW HEMATITE STEEL Co.*, [1902] 1 Ch. 353; 71 L. J. Ch. 246; 86 L. T. 10; 50 W. R. 295; 18 T. L. R. 249; 46 Sol. Jo. 280; 9 Mans. 69.

Annotations:—*As to* (2) *Consd. Ammonia Soda Co. v. Chamberlain*, [1918] 1 Ch. 266. *Reid. Re Spanish Prospecting Co.*, [1911] 1 Ch. 92. *As to* (3) *Apld. Re Accrington Corp'n. Steam Tram. Co.*, [1909] 2 Ch. 40. *Reid. Ammonia Soda Co. v. Chamberlain*, [1918] 1 Ch. 266. *As to* (6) *Reid. Evling v. Israel & Oppenheimer*, [1918] 1 Ch. 101.

1113. Fixed capital lost—No general duty to replace—Before payment of dividends out of profits.—*BOLTON v. NATAL LAND & COLONIZATION Co.*, No. 1106, *ante*.

1114. — — —.]—A limited co. was formed, the objects of which were to invest its capital in stocks, funds, shares, & securities of various descriptions, & the receipts of the co. from the incomes of these investments were made applicable to paying a dividend. The market price of some of the investments of the co. fell, & others of them proved worthless, so that the value of the co.'s assets was materially diminished; but the income received from the investments for the year considerably exceeded the expenses of the year. One of the trustees of the co. brought an action on behalf of himself & all the other stockholders in the co., except defts., against the co. & the other trustees to restrain the co. from declaring a dividend, on the ground that until the loss of capital was made up a payment of dividend would be a payment out of capital:—*Held*: it was within the power of the co. to declare a dividend, for there is no law to prevent a co. from sinking its capital in the purchase of a property producing income & dividing that income without making provision for keeping up the value of the capital; & fixed capital may be sunk & lost, & yet the excess of current receipts over current expenses may be applied in payment of a dividend, though where the income of a co. arises from the turning over of circulating capital no dividend can be paid unless the circulating capital is kept up to its original value, as otherwise there would be a payment of dividend out of capital.—*VERNER v.*

Sect. 10.—Capital: Sub-sect. 6, B.; sub-sects. 7, 8 & 9. Sect. 11: Sub-sect. 1.]

GENERAL & COMMERCIAL INVESTMENT TRUST, [1894] 2 Ch. 239; 63 L. J. Ch. 456; 70 L. T. 516; 10 T. L. R. 393; 38 Sol. Jo. 384; 1 Mans. 136; 7 R. 170, C. A.

Annotations:—Consd. Wilmer v. McNamara, [1895] 2 Ch. 245; Bond v. Barrow Hæmatite Steel Co., [1902] 1 Ch. 353; Ammonia Soda Co. v. Chamberlain, [1918] 1 Ch. 266. **Appld.** Lawrence v. West Somerset Mineral Ry., [1918] 2 Ch. 250. **Refd.** Re Kingston Cotton Mill Co. (No. 2), [1896] 1 Ch. 331; Alcoy & Gandia Ry. & Harbour Co. v. Greenhill (1898), 79 L. T. 257; Re Barrow Hæmatite Steel Co., [1900] 2 Ch. 846; Dovey v. Cory, [1901] A. C. 477; Foster v. New Trinidad Lake Asphalt Co., [1901] 1 Ch. 208; Re Crichton's Oil Co., [1902] 2 Ch. 86; Re Welsbach Incandescent Gas Light Co., [1904] 1 Ch. 87; Hinds v. Buenos Ayres Grand National Tram. Co., [1906] 2 Ch. 654; Wall v. London & Provincial Trust, [1920] 1 Ch. 45; Cross v. Imperial Continental Gas Assn., [1923] 2 Ch. 553. **Mentd.** Re Spanish Prospecting Co., [1911] 1 Ch. 92.

1115. ———.]—WILMER v. MCNAMARA & CO., LTD., No. 1120, post.

1116. ———.]—BOND v. BARROW HÆMATITE STEEL CO., No. 1112, ante.

1117. ———.]—AMMONIA SODA CO. v. CHAMBERLAIN, No. 820, ante.

1118. ——— Depreciation of works.]—DAVISON v. GILLIES (1879), 16 Ch. D. 347, n.; 50 L. J. Ch. 192, n.; 44 L. T. 92, n.

Annotations:—Expld. Dent v. London Tram. Co. (1880), 50 L. J. Ch. 190. **Expld. & Distd.** Lee v. Neuchatel Asphalte Co. (1889), 41 Ch. D. 1. **Refd.** Lambert v. Neuchatel Asphalte Co. (1882), 51 L. J. Ch. 882; Verner v. General & Commercial Investment Trust, [1894] 2 Ch. 239.

1119. ———.]—The arts. of assocn. of a limited tramway co. provided that no dividend should be declared except "out of profits"; that the directors should, with the sanction of the co., declare annual dividends "out of profits"; & that the directors should, before recommending a dividend, set aside "out of profits," subject to the sanction of the co. "a reserve fund for maintenance, repairs, depreciation, & renewals." The co. had for several years carried on their business, paying dividend half-yearly on their ordinary shares; but they failed to set apart a reserve fund adequate for the maintenance of their tramway, which eventually became worn out. The co. having again declared a half-yearly dividend on their ordinary shares, & the total sum appropriated for the dividend being, as it appeared, much less than the sum required to reinstate the tramway:—Held:** the co. could only declare a dividend out of the net profits, & the net profits could not be ascertained without first restoring the tramway to an efficient condition, or making due provision for the purpose out of the co.'s assets.**

An injunction was accordingly granted restraining the co. from paying the half-yearly dividend they had declared, but leave was given them to move to dissolve the injunction, in the event of their being able to satisfy the ct., that there were profits available for the dividend:—**Held:** the holders of preference shares, the dividend on which was "dependent on the profits of the particular year only," were entitled to a dividend out of the profits of any year after setting aside a proportionate amount sufficient for the maintenance of the tramway for that year only; & were not to be deprived of that dividend in order to make good the sums which in previous years should have been set aside by the co. for maintenance, but which had been improperly applied by them in paying dividends.—**DENT v. LONDON TRAMWAYS CO. (1880), 16 Ch. D. 344; 50 L. J. Ch. 190; 44 L. T. 91.**

Annotations:—Expld. & Distd. Lee v. Neuchatel Asphalte

Co. (1889), 41 Ch. D. 1. **Refd.** Lambert v. Neuchatel Asphalte Co. (1882), 51 L. J. Ch. 882; Verner v. General & Commercial Investment Trust, [1894] 2 Ch. 239; Re St. Thomas Floating Dock Co. (1895), 64 L. J. Ch. 361.

1120. ——— Depreciation of goodwill.]—(1) Where the value of the assets of a solvent co. has fallen below the nominal amount of the share capital, the co., in the absence of any special provisions in its arts. or of a contract binding the co., is under no obligation to make good such depreciation in the value of the assets, before declaring a dividend out of the profits.

(2) Depreciation in the value of the leases & goodwill of a co. is a loss of "fixed" as distinguished from "floating" capital. The balance-sheet of a co. cannot, therefore, be impeached on the ground that it does not charge anything against revenue in respect of depreciation of goodwill.—**WILMER v. MCNAMARA & CO., LTD., [1895] 2 Ch. 245; 64 L. J. Ch. 516; 72 L. T. 552; 43 W. R. 519; 11 T. L. R. 371; 39 Sol. Jo. 450; 13 R. 513.**

Annotation:—As to (1) Refd. Bishop v. Smyrna & Cassaba Ry., [1895] 2 Ch. 265.

Calculation of profits & net profits.]—See Sect. 30, sub-sect. 8, A., post.

1121. Circulating capital lost—Duty to replace—Before payment of dividends.]—VERNER v. GENERAL & COMMERCIAL INVESTMENT TRUST, No. 1114, ante.

1122. ———.]—BOND v. BARROW HÆMATITE STEEL CO., No. 1112, ante.

1123. Debenture interest paid out of capital for several years—Duty to replace—Before payment of dividends on ordinary shares.]—The principal mine of a mining co. fell in, rendering further working impossible without a previous expenditure of large sums of money in reopening it. To obtain the necessary funds for this purpose the capital of the co. was increased by the issue of shares & debentures, & ultimately the mine was reopened & working recommenced. From the date of the issue of the debentures to the date of the reopening of the mine the co. made no profits & the interest on the debentures was paid out of capital. When the working recommenced, profits were made & the debenture interest & all outgoings were paid out of income. The directors then proposed to pay a dividend out of the profits for the year, & to carry over the remainder to a sinking fund which they opened, with the object of recouping the amount paid out of capital for interest on the debentures. Upon a motion for an injunction to restrain them from paying a dividend out of profits until the amount paid out of capital for debenture interest in previous years had been repaid:—Held:** the co. were not bound to apply profits in replacing the amount paid out of capital for debenture interest in previous years, before declaring a dividend.—**BOSANQUET v. ST. JOHN D'EL REY MINING CO., LTD. (1897), 77 L. T. 206; 13 T. L. R. 525.****

Whether money paid by guarantor under guarantee of interest applicable.]—See No. 4000, post.

SUB-SECT. 7.—CAPITALISATION OF RESERVES.

1124. Appropriation of undivided profits—On issue of new shares—Whether taken as capital or income—As between tenant for life & remainderman.]—Testator bequeathed his residuary personal estate to his exor. B. in trust for testator's wife for her life & after her death to B. Part of the residuary estate consisted of shares in a co. whose

directors had power, before recommending a dividend, to set apart out of the profits such sum as they thought proper as a reserve fund, for meeting contingencies, equalising dividends or repairing or maintaining the works. After testator's death the directors of the co. proposed to distribute certain accumulated profits, which had been temporarily capitalised, as a bonus dividend, to allot new shares, partly paid-up, to each shareholder, & to apply the bonus dividend in part payment of the new shares. This proposal was carried out, & with B.'s consent new shares were allotted to him & registered in his name, the bonus dividend on testator's old shares being applied in part payment of the new shares:—*Held*: looking at all the circumstances the real nature of the transaction was that the co. did not pay or intend to pay any sum as dividend, but intended to, & did, appropriate the undivided profits as an increase of the capital stock; the bonus dividend was therefore capital of testator's estate, & the life tenant was not entitled to the bonus or the new shares.—*BOUCH v. SPROULE* (1887), 12 App. Cas. 385; 56 L. J. Ch. 1037; 57 L. T. 345; 36 W. R. 193, II. L.; *reversg.* S. C. *sub nom.* *Re BOUCH, SPROULE v. BOUCH* (1885), 29 Ch. D. 635, C. A.

Annotations:—*Distd.* *Re Bromley, Sanders v. Bromley* (1886), 55 L. T. 145. *Consd.* *Re Alsbury, Sugden v. Alsbury* (1890), 45 Ch. D. 237; *Re Bridgewater Navigation Co.*, [1891] 2 Ch. 317; *Re Paget, Listowel v. Paget* (1892), 9 T. L. R. 88; *Re Armitage, Armitage v. Garnett*, [1893] 3 Ch. 337; *Eastern & Australian S.S. Co. Ltd., & Reduced* (1893), 68 L. T. 321. *Appld.* *Re Malam, Malam v. Hitchens*, [1894] 3 Ch. 578. *Distd.* *Re Despard, Hancock v. Despard* (1901), 17 T. L. R. 478; *Re Hume Nisbet's Settlement*, (1911), 27 T. L. R. 461. *Appld.* *Re Palmer, Palmer v. Cassel* (1912), 28 T. L. R. 301; *Re Evans, Jones v. Evans*, [1913] 1 Ch. 23. *Consd.* *Re Thomas, Andrew v. Thomas*, [1916] 2 Ch. 331; *Re Ogilvie, Ogilvie v. Ogilvie* (1919), 88 L. J. Ch. 159. *Appld.* *I. R. Comrs. v. Blott, I. R. Comrs. v. Greenwood*, [1921] 2 A. C. 171. *Refd.* *Re Northage, Ellis v. Bartfield* (1891), 60 L. J. Ch. 488; *Re Piercy, Whitwham v. Piercy*, [1907] 1 Ch. 289; *Pool v. Guardian Investment Trust Co.*, [1922] 1 K. B. 347.

See, generally, SETTLEMENTS; TRUSTS & TRUSTEES.

SUB-SECT. 8.—UNCALLED CAPITAL.

Liability of shareholders—On calls.—*See* Sect. 21, sub-sect. 4, *post*.

— **In winding up.**—*See* Sect. 36, sub-sect. 10, E. (e), Sect. 37, sub-sect. 7, C., *post*.

— **Not liable to called up—Except on winding up.**—*See, generally*, Sect. 21, sub-sect. 9, *post*.

— **Reduction.**—*See* No. 892, *ante*.

— **Mortgage of.**—*See* No. 4593, *post*.

SUB-SECT. 9.—STAMP DUTIES.

1125. "Registered capital"—How calculated.—By Stamp Act, 1891 (c. 39), s. 112, "a statement of the amount which is to form the nominal share capital of any co. to be registered with limited liability shall be delivered to the Registrar of Joint Stock Cos., & a statement of the amount of any increase of registered capital now registered or to be registered with limited liability shall be delivered to the registrar, & every such statement shall be charged with an *ad valorem* stamp duty of 2s. for every £100 of the amount of such capital or increase of capital, as the case may be."

The arts. of assocn. of a co. gave the directors power, with the sanction of a general meeting, to increase the capital of the co. by the creation & issue of new shares. A resolution was passed at a

general meeting of the co. that "the directors be, & they are hereby authorised to, increase the capital of the co. by an amount not exceeding the nominal sum of £5,000,000, by the creation & issue from time to time of new ordinary shares of £5 each." The directors thereupon passed a resolution that "the capital of the co. be increased by £200,000 by the creation & issue of 40,000 new ordinary shares of £5 each"; on July 1, 1908, the directors passed a further resolution increasing the capital by £2,800,000. The Crown claimed stamp duty under the above Act, in respect of an increase of capital of £5,000,000. Defts. contended that they were only bound to pay stamp duty in respect of an increase of capital of £3,000,000, the amount of capital actually created & issued by the directors of the co.:—*Held*: "registered capital" in the above Act, meant authorised capital, i.e., maximum amount of capital which the co. had power to issue; & by the resolution of the co. there had been an increase of that capital by £5,000,000, upon which sum *ad valorem* stamp duty was payable.—*A.-G. v. ANGLO-ARGENTINE TRAMWAYS CO., LTD.*, [1909] 1 K. B. 677; 79 L. J. K. B. 366; 100 L. T. 609; 25 T. L. R. 339; 53 Sol. Jo. 358; 16 Mans. 118.

1126. Payment by solicitor—How charged.—A payment by a solr., who is instructed by the promoter of a co. to act for him in relation to the formation & registration of the co. under the Cos. Acts, of the stamp duty payable on the registration of the co. on the amount of its nominal share capital under Stamp Act, 1891 (c. 39), s. 112, as extended by Finance Act, 1899 (c. 9), s. 7, ought not to be included in the solr.'s bill of costs as a "disbursement" within the meaning of Solicitors Act, 1843 (c. 73), s. 37, but should be entered in the cash account.—*Re BLAIR & GIRLING*, [1906] 2 K. B. 131; 75 L. J. K. B. 624; 94 L. T. 873; 22 T. L. R. 547; 50 Sol. Jo. 500.

On increase of capital.—*See* No. 1125, *ante*, & compare cases in Part IX., Sect. 5, sub-sect. 1, *post*.

SECT. 11.—UNDERWRITING AND BROKERAGE.

NOTE.—Prior to Jan. 1, 1901, it was uncertain how far a company might lawfully pay an underwriting commission for getting its capital subscribed. By 1900 Act, s. 8, such a commission was authorised upon any offer of shares to the public for subscription provided it was authorised by the articles of association & the amount or rate per cent. was disclosed in the prospectus: *see, now*, 1908 Act, s. 89.

SUB-SECT. 1.—DEFINITIONS.

1127. Underwriting—Agreement to take shares offered to public—But not applied for.—After the formation of a co., & before its shares had been fully offered to the public, H. & Co. by letter agreed with an agent of the co. to "underwrite" 10,000 shares "at 15 per cent. discount." & "to pay the application money upon any balance of shares required to make up the 10,000." In pursuance of this agreement, & without any further application by H. & Co., 8,555 shares were allotted to them. H. & Co. returned the allotment notice, & wrote declining to take the shares. The co. shortly afterwards went into liquidation, & the liquidator entered the name of H. & Co. upon the list of contributories in respect of these shares:—*Held*: (1) the agreement to underwrite must be treated not merely as a guarantee, but as an application for an allotment of so many of

Sect. 11.—Underwriting and brokerage: Sub-sects. 1 & 2, A. (a).]

the 10,000 shares as should not be applied for by the public, & such agreement authorised the secretary to issue an allotment to H. & Co.; (2) the word "discount" in the agreement must be construed as "commission," so that the agreement was not one to issue shares at a discount; & accordingly, (3) H. & Co. had been rightly settled upon the list of contributories.—*Re LICENSED VICTUALLERS' MUTUAL TRADING ASSOCN.*, *Ex p.* AUDAIN (1889), 42 Ch. D. 1; 58 L. J. Ch. 467; 60 L. T. 684; 37 W. R. 674; 5 T. L. R. 369; 1 Meg. 180, C. A.

Annotations:—*As to* (1) *Consd.* *Re* Harvey's Oyster Co., Ormerod's Case, [1894] 2 Ch. 474. *Distd.* *Re* Globe Blocks Gold Mining Co. (1895), 12 T. L. R. 92. *Refd.* *Moir v. Marten* (1891), 7 T. L. R. 330; *Sangster v. Netter* (1893), 9 T. L. R. 441; *Re* Hemp, Yarn & Cordage Co., Hindley's Case, [1896] 2 Ch. 121; *Re* London-Paris Financial Mining Corp'n. (1897), 13 T. L. R. 569; *Re* Greater Britain Insee. Corp'n., *Ex p.* Brockdorff (1920), 124 L. T. 194.

1128. ————.]—(1) To "underwrite" shares is to agree to take shares, which have been offered to, but not applied for by, the public.

(2) The obligation of the Paris Co. to endeavour to procure the public to take the shares before calling on the Globe Co. existed as to all the shares which that co. underwrote & had the option of taking. There remains the question whether the Paris Co. has any legal justification for not appealing to the public. Its obligation to do so rests on its own express agreement to issue 250,000 shares, which involves an issue to the public, not only of one-half, but also of all of the other half which the Paris Co.'s members did not take; & even if it were proved that none would have been taken, still, the condition was a condition precedent, & unless performed the obligation to arise on its performance, never became perfect (LINDLEY, L.J.).—*Re* LONDON-PARIS FINANCIAL MINING CORPN., LTD. (1897), 13 T. L. R. 569, C. A.

1129. Brokerage—Distinguished from commission.]—ANDREA v. ZINC MINES OF GREAT BRITAIN, No. 1139, *post*.

Agreement to place shares.]—See No. 1480, *post*.

SUB-SECT. 2.—WHETHER ALLOWED.

A. On Formation of New Company.

(a) Commission.

1130. Before 1900 Act—For placing shares—To person in fiduciary relationship to company.]—A co. being unable to get its shares taken up, the directors resolved that a commission of 2s. 6d. per share should be paid to any one who should find persons to take the shares. B., the secretary & solr. of the co., accordingly made a proposal for the allotment of 2,000 shares to a client of his. The directors passed a resolution that the offer should be accepted, & that £250, being commission at 2s. 6d. per share, should be paid to B. The shares were duly allotted to K., the co.'s engineer, & by him transferred to R. B., who was chairman of the company, & also B.'s father. The directors knew that R. B. was the person who was really taking the shares. The co. was wound up, & upon a summons taken out by the liquidator for that purpose:—*Held*: B. must repay the

liquidator the £250 commission.—*Re* STAPLEFORD COLLIERY CO., LTD., *Ex p.* CHATTERIS (1880), 49 L. J. Ch. 253.

1131. ———— **Payment out of capital—Power under memorandum to do acts "conducive to" objects of company—Ultra vires.]—**(1) If directors of a limited co. apply the money of the co. for purposes so outside its powers that the co. could not sanction such application, they may be made personally liable as for a breach of trust; but if they apply the money of the co., or exercise any of its powers, in a manner which is not *ultra vires*, then a strong & clear case of misfeasance must be made out to render them liable for a loss thereby occasioned to the co.

(2) Payment of brokerage or commission to a stockbroker for placing a co.'s shares, is an improper application of its capital, & is not authorised even by a power given by the memorandum of assocn. to do whatever may be "conducive to" the specified objects of the co.

The memorandum of assocn. of a limited co. empowered the co. to carry on the businesses there specified & "to do all such other things as the co. may deem conducive to the attaining of any of the aforesaid objects." The arts. of assocn. provided that no transfers of shares not fully paid up should be registered unless "approved" by the directors. M., a stockjobber, offered to take a large number of £10 shares at par, paying £2 per share at once, provided the directors paid a commission to the stockbroker who had introduced the shares to him. Thereupon the directors allotted the shares to M., he paying £2 per share, & they paid a commission of 2s. 6d. per share to the stockbroker, the total amount of commission so paid being considerable. M. subsequently transferred the shares to P., who was already a shareholder & had recently been elected a director, the directors believing that P. was a proper person to take a transfer of the shares & having been advised by their solr. that there was no valid objection to the transfer. P. afterwards became bkpt., being indebted to the co. in the balance of £8 per share. The co. having been ordered to be wound up, the liquidators took out a summons under 1862 Act, s. 165, against the directors other than P. claiming damages for misfeasance in sanctioning the transfer of the shares to P., & also repayment of the sums paid for brokerage or commission on the shares as being *ultra vires*:—*Held*: the directors had duly exercised their judgment upon & "approved" the transfer to P. within the meaning of the arts., & dishonest dealing not being charged, the approval of the transfer was not such a "misfeasance" or breach of trust within 1862 Act, s. 165, as to render the directors liable in the winding up; but the payment of commission on the shares was *ultra vires*, & the directors must repay the same to the liquidators, with interest at 4 per cent.—*Re* FAURE ELECTRIC ACCUMULATOR CO. (1888), 40 Ch. D. 141; 58 L. J. Ch. 48; 59 L. T. 918; 37 W. R. 116; 5 T. L. R. 63; 1 Meg. 99.

Annotations:—*As to* (1) *Consd.* *Sheffield & South Yorkshire Permanent Bldg. Soc. v. Aizlewood* (1889), 44 Ch. D. 412. *Refd.* *Sheffield & South Yorkshire Bldg. Soc. v. Aizlewood* (1890), 62 L. T. 678; *Re* New Mashonaland Exploraton Co. (1892), 41 W. R. 75; *Re* Lands Allotment Co. (1894), 63 L. J. Ch. 291; *Re* Kingston Cotton Mill Co. (No. 2), [1896] 1 Ch. 331. *As to* (2) *Consd.* *Metropolitan Coal Consumers' Assocn. v. Scrimgeour*, [1895] 2 Q. B. 604. *Refd.* *Re* Liverpool Household Stores Assocn. (1890), 59 L. J. Ch. 616.

PART III. SECT. 11, SUB-SECT. 2.—A. (a).

k. Agreement to pay commission on all shares allotted without authorised capital but not on additions to such capital.]—HUGGARD v. PRUDENTIAL LIFE INSURANCE CO., [1923] 1 W. W. R. 555.—CAN.

1132. — By certain date—Commission paid through shares placed after date—Repayable.]

—The directors of a co. made an agreement with G., whereby he undertook the expense of issuing a prospectus inviting subscriptions for the capital, & the co. agreed that if 2,000 shares were subscribed for on or before Apr. 30, 1886, G. should be paid a sum of £1,000. The directors also resolved to pay a brokerage on the shares placed. A small proportion only of the stipulated number of shares was subscribed for under the prospectus issued by G., but a substantial amount of capital was placed under another prospectus issued after Apr. 30, 1886. The directors, in June, 1886, paid G. the sum of £1,000, & a further sum of £221 for brokerage:—*Held*: each of those payments was a misapplication of the property of the co., & the amounts must be repaid by G. to the co.—*WEST OF ENGLAND PAPER MILLS CO., LTD. v. GILBERT* (1891), 61 L. J. Ch. 92.

1133. — Reasonable commission to brokers—Intra vires.]—It is not *ultra vires* for a limited co. to pay brokers a reasonable commission or brokerage for placing shares.—*METROPOLITAN COAL CONSUMERS' ASSOCN. v. SCRIMGEOUR*, [1895] 2 Q. B. 604; 65 L. J. Q. B. 22; 73 L. T. 137; 44 W. R. 35; 11 T. L. R. 526; 39 Sol. Jo. 654; 2 Mans. 579; 14 R. 729, C. A.

Annotation:—*Refd. Andreae v. Zinc Mines of Great Britain*, [1918] 2 K. B. 454.

1134. Under 1900 Act, s. 8—"Offer to public"—Offer to existing shareholders.]—(1) An agreement by a co. to remunerate underwriters by an option to call for an allotment of shares is prohibited by the above sect., notwithstanding that the issue price fixed by the operation exceeds the nominal amount of the shares.

(2) An offer of additional shares to existing shareholders is not an "offer to the public" within sect. 8, sub-sect. 1 (*FARWELL, J.*).—*BURROWS v. MATABELE GOLD REEFS & ESTATES CO., LTD.*, [1901] 2 Ch. 23; 70 L. J. Ch. 434; 84 L. T. 478; 49 W. R. 500; 17 T. L. R. 364; 45 Sol. Jo. 378, C. A.

Annotations:—As to (1) *Appld. Dexter v. United Gold Coast Mining Properties* (1901), 17 T. L. R. 708. *Distd. Hilder v. Dexter*, [1902] A. C. 474. As to (2) *Consd. Smith v. Charing-Cross, Euston & Hampstead Ry.* (1903), 19 T. L. R. 614.

Compare No. 476, *ante*, No. 1645, *post*.

1135. — Underwriting commission—Option to take further shares at a premium—Invalid.]—*BURROWS v. MATABELE GOLD REEFS & ESTATES CO., LTD.*, No. 1134, *ante*.

1136. — Option to take further shares at par—Valid.]—It is not illegal for a co. to agree, in consideration of a person's taking or underwriting shares, to issue at par further shares to such person at a future date or within a prescribed period.

Applts. took shares in a co. upon the terms that for each share allotted a subscriber should have the option for one year from a date mentioned of taking up at par a further share; & if the option were exercised, should have the option of taking up a third share at par at any time within two years from the said date. *Applts.*, in exercise of the first option, applied for shares, the £1 shares having risen to the price of £2 17s. 6d.:—*Held*: the contract was not invalid under the above sect., as it was not an application, direct or indirect, of "any of its shares or capital money"; there was no payment of "commission, discount, or allowance"; & there was no law to oblige a co. to issue its shares above par because they were saleable at a premium in the market.—*HILDER v. DEXTER*, [1902] A. C. 474; 71 L. J. Ch. 781; 87

L. T. 311; 51 W. R. 225; 18 T. L. R. 800; 7 Com. Cas. 258; 9 Mans. 378, H. L.; *revsq.* S. C. *sub nom. DEXTER v. UNITED GOLD COAST MINING PROPERTIES, LTD.* (1901), 17 T. L. R. 708, C. A.

Annotations:—*Consd. Shorto v. Colwill* (1909), 101 L. T. 598. *Refd. A.-G. v. Hastings Corpn.* (1902), 1 L. G. R. 41; *De La Cour v. Clinton*, *Trechmann v. Calthorpe* (1904), 90 L. T. 615; *Hong Kong & China Gas Co. v. Glen*, [1914] 1 Ch. 527.

— **Commission for taking shares—Colourable attempt to issue shares at a discount.]**—See No. 1829, *post*.

1137. — Commission for placing shares—Paid in fully-paid shares—Invalid.]—The P. P. T. Co. was incorporated in 1905, & by its memorandum of assocn. one of the objects of the co. was "to remunerate any parties for services rendered in placing or assisting to place shares in the co.'s capital"; & by art. 9 of its arts. of assocn. it was provided that "if the co. shall at any time offer any of its shares to the public for subscription, the co. may pay a commission not exceeding 100 per cent. in consideration of any person or co. subscribing or agreeing to subscribe, whether absolutely or conditionally, or procuring or agreeing to procure subscriptions absolute or conditional for such shares." In the middle of the year 1908, the co. being desirous to obtain further capital, S., a shareholder, introduced C. as one who might obtain purchasers of shares or take up unissued shares at a premium; & in Nov. 1908, two documents were entered into between the co. & C., one being an option given to C. in reference to unissued shares, the other being in reference to commission. Subsequently C. obtained D., who was willing to take up 3,000 unissued shares at £2 per share, & thereupon in accordance with the terms of the second document of Nov., there became payable to C. for commission 10s. per share, i.e. £1,500, & it was arranged that, instead of paying C. £1,500 in cash, the co. should issue to C. 1,000 of the remaining unissued shares:—*Held*: upon the true construction of the above sect. such commission could not be paid to C.—*SHORTO v. COLWILL* (1909), 101 L. T. 598; 26 T. L. R. 55.

Annotation:—*Refd. Andreae v. Zinc Mines of Great Britain* [1918] 2 K. B. 454.

1138. Under 1908 Act, s. 89—Provision applies to private & public companies.]—The above sect., which prohibits, except under the conditions therein specified, the payment by the co. of a commission to any person in consideration of his subscribing or procuring subscriptions for shares in the co., applies as well to private as to public cos.—*DOMINION OF CANADA GENERAL TRADING & INVESTMENT SYNDICATE v. BRIGSTOCKE*, [1911] 2 K. B. 648; 80 L. J. K. B. 1344; 105 L. T. 894; 27 T. L. R. 508; 55 Sol. Jo. 633; 18 Mans. 369, D. C.

1139. — Commission for securing subscriptions—Whether brokerage or commission.]—The arts. of assocn. of a private co. provided that it should be lawful for the co. to pay a commission to any person in consideration of his procuring subscriptions for any shares in the co. to any amount not exceeding 5s. per share. The co., by a letter signed by their secretary, offered to *pltf.*, who was a *feme sole*, not carrying on any business, a commission of 10 per cent. in consideration of her being the means of providing the sum of £3,000 or any other sum that they might accept from her introduction. The amount or rate per cent. of this commission was not disclosed in any statement as prescribed in sub-sect. 1 of the above sect. A certain person introduced by *pltf.* advanced a sum of £4,600 to the co., who at first proposed to issue debentures but subsequently

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allotted him 4,600 £1 shares in respect thereof. The co. paid to pltf. £200 commission. Pltf. sued the co. for the balance of £260 commission. The co. counterclaimed for the £200 paid by them as aforesaid:—*Held*: (1) the commission was not brokerage within sub-sect. 3 of the above sect.; (2) it was commission within sub-sect. 1; (3) not having been disclosed in any statement as prescribed by sub-sect. 1, it was unlawful under sub-sect. 2 & consequently, pltf. could not recover the balance of £260, & the co. could not recover the £200 already paid to pltf.

[The cases which fall within sect. 89 (3) are cases] such as commission to stockbrokers, bankers, & the like, who exhibit prospectuses & send them to their customers, & by whose mediation the customers are induced to subscribe. I do not say that the brokerage mentioned in [the sub-sect.] is absolutely confined to such transactions as I have mentioned, but those & similar transactions are contemplated by that sub-sect. (BAILHACHE, J.).—*ANDREAE v. ZINC MINES OF GREAT BRITAIN*, [1918] 2 K. B. 454; 87 L. J. K. B. 1019; 34 T. L. R. 488; 24 Com. Cas. 49.

1140. Duty of auditors in regard to—To see payment authorised—Examination of memorandum & articles.]—Auditors of a co. are bound to know or make themselves acquainted with their duties under the co.'s arts. & under the Cos. Acts for the time being in force, & if the audited balance-sheets do not show the true financial position of the co., & damage is thereby occasioned, the *onus* is on the auditors to show that this damage is not the result of any breach of duty on their part.

Auditors are *prima facie* responsible for *ultra vires* payments made on the faith of their balance-sheet, but whether, & to what extent, they are responsible for not discovering & calling attention to the illegality of payments made prior to the audit must depend on the special circumstances of each case.

The payment of a commission for placing shares was authorised by the co.'s memorandum & a board resolution. In reliance on the memorandum & resolution the auditors passed certain payments for commission in their balance-sheet without discovering & drawing attention to the fact that they were not authorised by Table A. (1906), by which in default of arts. the co. was regulated:—*Held*: in the special circumstances, the auditors were not liable for this omission.

A solr. who became a director three months after the incorporation of the co. was subsequently paid certain sums for agreed costs of incorporation & other sums for costs, rent of office, & clerical assistance. These payments were confirmed as such by boards of which the solr. was a member. The auditors passed these payments in their balance-sheet without discovering, appreciating, & drawing attention to the fact that as there was no power under Table A. (1906) for a director to contract with the co., the solr. could not charge profit costs, so that the payments to him were *pro tanto* unauthorised:—*Held*: in the special circumstances, the auditors were not liable.—*Re BOLIVIA REPUBLIC EXPLORATION SYNDICATE, LTD.*, [1914] 1 Ch. 139; 83 L. J. Ch. 235; 110 L. T. 141; 30 T. L. R. 146; 58 Sol. Jo. 321; 21 Mans. 67.

Annotation:—*Mentd. Re Suarez, Suarez v. Suarez*, [1917] 2 Ch. 131.

See, generally, Sect. 29, sub-sect. 5, Sect. 30, sub-sect. 6, *post*.

(b) Brokerage.

See 1908 Act, s. 89 (3).

1141. Before 1900 Act—Ultra vires.]—*WEST OF ENGLAND PAPER MILLS CO., LTD. v. GILBERT*, No. 1132, *ante*.

1142. — Reasonable brokerage—Intra vires.]—*METROPOLITAN COAL CONSUMERS' ASSOCN. v. SCRIMGEOUR*, No. 1133, *ante*.

Under 1908 Act—Distinguished from commission.]—*See* No. 1139, *ante*.

B. On Reconstruction.

1143. Before 1901—Commission payable out of assets of old company—Whether permissible.]

—(1) The ct. can sanction a scheme of reconstruction & arrangement providing for the transfer to an intended new co. of the assets of the old co. before the new co. is actually incorporated as well under sect. 161 of 1862 Act, as under sect. 2 of Joint Stock Companies Arrangement Act, 1870 (c. 104).

(2) The ct. will be very slow to sanction a scheme of reconstruction & arrangement which involves the payment of a commission for underwriting the shares in the new co. out of the assets of the old co.

(3) The ct. will not sanction a scheme of reconstruction & arrangement which deprives dissentient shareholders in the old co. of the right to have their shares valued by arbn. conferred by sect. 161 of 1862 Act.—*Re CANNING JARRAH TIMBER CO. (WESTERN AUSTRALIA), LTD.*, [1900] 1 Ch. 708; 69 L. J. Ch. 416; 82 L. T. 409; 44 Sol. Jo. 345; 7 Mans. 439, C. A.

Annotations:—*As to* (1) *Distd. Re General Motor Cab Co.*, [1913] 1 Ch. 377. *Follid. Re Sandwell Park Colliery Co.*, [1914] 1 Ch. 589. *Refd. Re Guardian Assce.*, [1917] 1 Ch. 431; *Re Anglo-Continental Supply Co.*, [1922] 2 Ch. 723.

1144. Under 1900 Act—Sale for shares in new company & cash—Cash applicable as commission for guarantors—Not permissible.]—A limited co. formed in 1898, having by its memorandum power to sell its undertaking either for cash or for "shares in any co." entered into an agreement, with a view to reconstruction, with certain "guarantors," for the sale to them of its undertaking, the purchasers agreeing to form a new co. for the repurchase of the undertaking in consideration of the allotment & issue, to such members of the old co. as should accept the same, of partly paid-up shares in the new co., with power for the liquidator of the old co., on its being wound up, to sell any shares not accepted by its members. To carry out that agreement a new co. was formed in 1902, with power, by its memorandum, to pay out of its funds all expenses it might incur having regard to sect. 8 of the above Act, including commission for underwriting shares; & clause 9 of its arts. provided that if at any time it should offer its shares to the public for subscription the directors might pay a commission at a "rate" not exceeding 50 per cent. to any person in consideration of subscribing or agreeing to subscribe for shares. An agreement was then entered into between the guarantors, the original purchasers, & the 1902 co. for the "sale" to that co. of the undertaking of the 1898 co. in consideration of the 1902 co. allotting & issuing to the guarantors its shares, partly paid-up, for distribution among the members of the 1898 co., the guarantors agreeing that they by themselves or their nominees would accept an allotment of such of the shares as should not be required by the 1898 co. or its liquidator; & as the balance of the consideration for the sale, the 1902 co. agreed to pay the guarantors "£12,300 in cash." Soon

after the date of that agreement the 1898 co. passed resolutions for a voluntary winding up. No prospectus of the 1902 co. had yet been issued offering any of its shares to the public for subscription. In an action to restrain the carrying out of the latter agreement as being *ultra vires*:—*Held*: the sale of the undertaking of the 1898 co., so far as it was in consideration of partly paid-up shares in the 1902 co., was authorised by the memorandum of the former co.; but the additional consideration of the payment by the 1902 co. of £12,300 in cash was *ultra vires* on the grounds that it was prohibited by sect. 8 (2) of the above Act, as being “commission in consideration of subscribing or agreeing to subscribe for shares”; & that there had been no such “offer of shares to the public for subscription” as to bring the 1902 co. within the protection of sub-sect. 1 of the above sect.; & that the sum of cash was not a “rate” within clause 9 of that co.’s arts.

An injunction was therefore granted restraining the 1902 co. from applying its capital in payment of the £12,300, but without prejudice to any question as to whether the co. could by any means bring the payment within sub-sect. 1.

Qu.: whether, in the event of a co. offering some of its shares to the public for subscription, & procuring a person or persons to take up the rest in consideration of a commission, that would be a transaction validated by sub-sect. 1 of the above sect.—*Booth v New Afrikaner Gold Mining Co., Ltd.*, [1903] 1 Ch. 295; 72 L. J. Ch. 125; 87 L. T. 509; 51 W. R. 193; 19 T. L. R. 67; 47 Sol. Jo. 91; 10 Mans. 56, C. A.

Annotations:—*Refd.* *Re Worthington, Ex p. Pathé Frères* (1914), 83 L. J. K. B. 885. *Mentd.* *Doughty v. Lomagunda Reefs* (1903), 88 L. T. 337; *Bisgood v. Henderson’s Transvaal Estates* (1908), 77 L. J. Ch. 486.

1145. Under 1908 Act—Sale for partly paid shares in new company—Guarantee to take up shares not applied for by shareholders in old company—Commission permissible.]—In 1909 a limited co. was formed having by its memorandum a power to pay out of its funds all expenses incident to its formation & the issue of its capital, including commissions for underwriting shares whether issued for cash or credited as partly paid; & clause 8 of its arts. provided that the co. might pay a commission at a rate of not exceeding 25 per cent. on the amount unpaid on any shares to any person in consideration of his subscribing or agreeing to subscribe for shares. The capital of the co. was divided into shares of 5s. each. The formation of this new co. was part of a scheme for the reconstruction of an old co. of the same name that was to go into liquidation for the purpose, & it was also part of the scheme that the liquidator should sell the undertaking of the old co., whose capital had been issued in shares of 5s. each, to the new co. for a certain number of shares in the new co. credited with 3s. 6d. paid up per share to be offered to the shareholders of the old co., share for share. The new co., to ensure working capital & before contracting to purchase the undertaking of the old co., entered into an agreement with certain parties called “contractors,” which recited the scheme & provided (clause 2) that, if the shareholders of the old co. should not within a certain period apply for 400,000 shares in the new

co. credited with 3s. 6d. paid per share, the liquidator should endeavour to sell to other persons such of the 400,000 shares as should not be so applied for, & if the liquidator should be unable to sell all the said shares within three days after the expiration of such period, the contractors would within three days thereafter purchase at a price to be agreed, not exceeding ½d. a share, so many of the said shares as should not be so applied for by the shareholders of the old co. or sold by the liquidator; apply to the new co. for an allotment of the same; pay the sum of 3d. per share on application for the same; & (clause 3) that when the whole of the 400,000 shares should have been applied for by shareholders of the old co. or by purchasers or by the contractors, & the moneys payable on application should have been received, then the liability of the contractors under clause 2 should cease, & the new co. should thereupon pay the contractors “a sum equal to 10 per cent. upon £30,000 the amount of the cash assesment on the said 400,000 shares.” No prospectus of the new co. had been issued offering any of its shares to the public for subscription. In an action to restrain the carrying out of the agreement as being *ultra vires* the new co.:—*Held*: the agreement was a valid underwriting within sect. 89 of the above Act.—*BARROW v. PARINGA MINES (1909), LTD.*, [1909] 2 Ch. 658; 78 L. J. Ch. 723; 101 L. T. 346; 16 Mans. 313.

SUB-SECT. 3.—THE UNDERWRITING AGREEMENT.

A. Whether Contract Complete.

1146. Acceptance—Time for—Within time specified in offer—Though lists closed.]—*Re HEMP, YARN & CORDAGE CO., HINDLEY’S CASE*, No. 1175, *post*.

1147. — What constitutes—Filing by company’s secretary.]—*NORTH CHARTERLAND EXPLORATION CO., LTD. v. RIORDAN* (1897), 13 T. L. R. 281, C. A.

1148. — Whether communication to underwriter necessary.]—*Re CONSORT DEEP LEVEL GOLD MINES, LTD., Ex p. STARK*, No. 1159, *post*.

1149. — [An underwriting letter, in the ordinary form, for shares in a co. in course of formation, addressed to the promoters, contained a clause whereby the underwriter agreed that he would sign & lodge with the promoters, whenever called upon, the necessary application for the number of shares underwritten, with cheque for the deposit attached thereto, & that, if he failed to do so, the agreement, which was irrevocable on his part, should, notwithstanding any withdrawal on his part, or repudiation of his responsibility thereunder, be sufficient to authorise the promoters, if & when they thought fit, in his name to apply for, & the directors of the co. to allot to him, the said shares, either with or without any further application, either from the underwriter or the promoters for the said shares:—*Held*: assuming that the offer contained in the underwriting letter was accepted by the promoters before it was repudiated, & that consequently a binding contract between the underwriter & them was constituted, yet, a request by the promoters to

PART III. SECT. 11, SUB-SECT. 3.—A.

1. Acceptance—By underwriter—Whether binding on sub-underwriter without notice.]—A sub-underwriter filled up a printed form for sub-underwriting an issue of shares to the extent of 500 shares of £1 each, & returned it to the underwriters with a form of

application addressed to the issuing co., & a cheque for £25, being the application money for the shares. The form bore that the contract & application should be irrevocable on the part of the sub-underwriter. The underwriters filled up a docket accepting the underwriting of the shares, but did not intimate the acceptance

of the proposal to the sub-underwriter. They subsequently transmitted the letter of application & the cheque to the issuing co. without notice of the sub-underwriting contract, & the co. allotted the shares to the sub-underwriter. The sub-underwriter refused to pay the instalments on the shares on the ground that there had been no

Sect. 11.—Underwriting and brokerage: Sub-sect. 3, A. & B.]

the underwriter to apply for the shares was a condition precedent to the obligation on his part to sign & lodge the application for the shares with a cheque for the deposit; & without such a request & a failure to comply with it, the promoters had no authority to make any application for shares in the underwriter's name. Although in an ordinary case to constitute a contract by correspondence there must be a proposal, an acceptance of the proposal, & a communication of that acceptance, yet, in a case where an underwriting letter had been retained by the promoters of a co. without objecting to it, the inference drawn by the ct. from the circumstances was that by the retention of the underwriting letter the promoters signified their acceptance of the terms embodied therein, & the underwriter so understood the transaction; for had the promoters meant to reject the underwriting letter they would have been bound to return it without delay.—*Re BULFONTEIN SUN DIAMOND MINE, LTD., Ex p. COX, HUGHES & NORMAN* (1897), 75 L. T. 669; 13 T. L. R. 156, C. A.

Annotation:—Reid. Re Consort Deep Level Gold Mines, Ex p. Stark, [1897] 1 Ch. 575.

— — — — —.]—*See, also, No. 1164, post.*

1150. Withdrawal of offer before acceptance—Withdrawal lost in post.]—Re GUTTA PERCHA CORPN., LTD. (1899), 15 T. L. R. 183.

See, generally, CONTRACT, Vol. XII., pp. 53 et seq.

B. Liability of Underwriter.

1151. Application for shares by underwriter—Whether underwriting agreement amounts to.]—Re LICENSED VICTUALLERS' MUTUAL TRADING ASSOCN., Ex p. AUDAIN, No. 1127, ante.

1152. — — — — —.]—Appcts., by an underwriting letter, agreed with the vendor to a co., in consideration of a commission, at any time within three months, "if & when called upon" by him, "to subscribe or find responsible subscribers for" a certain number of shares in the co., to be reduced proportionally in case the shares were partially subscribed for by the public. The agreement authorised the vendor, in the event of any underwriter "not subscribing or finding responsible subscribers as above mentioned," to subscribe for the shares in the underwriter's name, & authorised the directors to allot the shares & register the underwriter's name in respect thereof:—Held: a request to the underwriters to subscribe or find responsible subscribers was a condition precedent to their being under liability to be treated as shareholders, & as no such request had been made their names must be removed from the list of contributories in the winding-up of the co.—*Re HARVEY'S OYSTER CO., ORMEROD'S CASE*, [1894] 2 Ch. 474; 63 L. J. Ch. 578; 70 L. T. 795; 42 W. R. 701; 38 Sol. Jo. 459; 1 Mans. 153; 8 R. 715.

Annotation:—Distd. Re Globe Blocks Gold Mining Co. (1895), 12 T. L. R. 92.

1153. — — — — — For shares to be taken "firm"—Reckoned as taken by public.]—SYDNEY HARBOUR COLLIERIES, LTD. v. GREY (EARL) (1898), 14 T. L. R. 373, H. L.

See, also, No. 1163, post.

1154. Application on behalf of underwriter—Under authority in underwriting agreement—

Whether authority revocable.]—P. promoted a co. for the purpose of purchasing from him, & working, a mining property. On Feb. 21, 1896, C. signed an underwriting letter addressed to P. by which he agreed, in consideration of a commission, to subscribe for 1,000 shares in the co., such number to be reduced according to the number of shares taken by the public. C. further agreed that the agreement & application should be irrevocable, & notwithstanding any repudiation by him, should be sufficient to authorise P. to apply for shares on behalf of C. & the co. to allot them. P. by letter accepted these terms. The co. was incorporated on Mar. 24, & the subscription list was advertised to open on Mar. 27, & close on Mar. 30. On Mar. 27, C., who had applied for 1,000 shares, stopped the cheque he had given for the deposit, & on Mar. 30, wrote to P. & to the secretary of the co. repudiating the agreement. P., however, on Apr. 2, applied on behalf of C. for 980 shares, which, in the events which had happened, was the number he was bound to take, according to the terms of the letter, & the co. allotted these shares to C. & put him on the register in respect of them:—Held: C. was rightly placed on the register & was not entitled to have his name removed, for the authority given to P. by the underwriting letter to apply for shares on behalf of C. was an authority coupled with an interest, & therefore not revocable.—*Re HANNAN'S EMPRESS GOLD MINING & DEVELOPMENT CO., CARMICHAEL'S CASE*, [1896] 2 Ch. 643; 65 L. J. Ch. 902; 75 L. T. 45, C. A.

Annotations:—Fold. Re Consort Deep Level Gold Mines, Ex p. Stark, [1897] 1 Ch. 575; Re Olympic Reinsurance, [1920] 2 Ch. 341. Reid. Frith v. Frith, [1906] A. C. 254.

1155. — — — — —.]—Re CROWN LEASE PROPRIETARY CO., LTD. (1897), 14 T. L. R. 47, C. A.

1156. — — — — —.]—By an underwriting contract dated Dec. 3, 1919, a syndicate agreed with a co. in consideration of a commission to subscribe for 150,000 of 350,000 shares to be offered to the public by a prospectus then about to be issued, & all allotments to the public were to be applied in relief of the syndicate's obligation to take up the 150,000 shares. By a sub-underwriting letter applt. agreed with the syndicate to subscribe 10,000 of the 150,000 shares underwritten by them & stated: "We now hand you application for the shares hereby underwritten by us together with cheque for £1,250, being deposit of 2s. 6d. per share." The letter also provided that applt. was only to be allotted & pay for so many of the 10,000 shares as should be his due proportion of the shares not taken up by the public, & that he was to receive a commission on the shares sub-underwritten by him. The letter also contained this clause: "This contract & our said application shall, notwithstanding any withdrawal on our part &/or any repudiation of our responsibility hereunder, or under the said application form, be sufficient to authorise & empower the directors to allot to us the above-mentioned shares & enter our name in the register of members in respect thereof." Applt. did not in fact sign or hand to the syndicate any written application to the co. for the 10,000 shares as contemplated by the sub-underwriting letter, but he handed to the syndicate the letter together with his cheque for £1,250 in their favour. On the issue of the prospectus only 55,000 shares were applied for by

intimation by the underwriters to him of their acceptance of his proposal, & therefore they had no right to pass on his application for shares to the co.:—*Held: (1) in the circumstances the*

dealings of the parties precluded defender from denying that he knew of the underwriters' acceptance; (2) that the letter of application was a firm not conditioned by the sub-

underwriting letter, & the co. were therefore entitled to allot shares to the full amount applied for.—*PREMIER BRIQUETTE CO. v. GRAY*, [1922] S. C. 329.—SCOT.

the public. On Dec. 12 the syndicate verbally applied in their own name & in the names of several sub-underwriters, including applt., for an allotment of the total amount of the shares which they were bound to take up & paid with their own cheque for the total amount of the application money. On the same day the co. allotted to applt. 6,334, being his proportion of the 10,000 shares under his sub-underwriting letter. On Dec. 22, applt. wrote to the co. withdrawing his application for shares, meaning his sub-underwriting letter, but on Dec. 29 the co. sent him the usual formal notice of the allotment to him of 6,334 shares. On motion by applt. to rectify the register by removing his name therefrom as the holder of the 6,334 shares:—*Held*: the authority given by applt. to the syndicate to apply for shares was a continuing & irrevocable authority coupled with an interest which he was not entitled to withdraw, & the general rule that an appct. for shares can withdraw his application at any time before he receives notice of allotment did not apply.—*Re OLYMPIC REINSURANCE CO.*, [1920] 2 Ch. 341; 89 L. J. Ch. 544; 123 L. T. 786; 36 T. L. R. 691, C. A.; *affg.* S. C. *sub nom.* *Re OLYMPIC FIRE & GENERAL REINSURANCE CO., LTD.*, POLE'S CASE, [1920] 1 Ch. 582.

Annotation:—*Reid. Re Greater Britain Insee. Corp'n., Ex p. Brockdorff* (1920), 124 L. T. 194.

See, also, No. 1159, *post*, & generally, AGENCY, Vol. I., pp. 286 *et seq.*, 694 *et seq.*

1157. Condition precedent—To application on behalf of underwriter—Request to underwriter to apply.—*BRUSSELS PALACE OF VARIETIES, LTD. v. PROCKTER* (1893), 10 T. L. R. 72, C. A.

Annotation:—*Reid. Re Hemp, Yarn & Cordage Co., Hindley's Case* (1896), 3 Mans. 55.

1158. — — — — — *Re GLOBE BLOCKS GOLD MINING CO.* (1895), 12 T. L. R. 92.

1159. — — — — — *By an underwriting letter, addressed to the M. Co., S. offered to subscribe or find subscribers, on or before Sept. 21, for 10,000 shares, "or such less number as may be accepted by you," in the C. Co., which the M. Co. were promoting, "& in the event of my failing to comply with the terms herein stated, I authorise you, as my agent on my behalf & in my name, to apply for the number of shares (full or reduced as the case may be), guaranteed by me as above."* It was agreed that the letter was irrevocable, provided that 40,000 shares were underwritten or applied for prior to the public issue of the prospectus of the C. Co., & allotment made on or before Sept. 30. No notice of the acceptance of this offer was sent to S., but a form of acceptance at the foot of it was signed by the secretary of the M. Co. The C. Co. having been registered, the M. Co., without any previous notice to S., applied on his behalf for an allotment to him of shares in the C. Co., & 9,000 shares were accordingly allotted to him & registered in his name. Upon a motion by S. to rectify the register by omitting his name:—*Held*: (1) the underwriting letter did not constitute a contract binding S. to take shares until it had been accepted by the M. Co. & notice of acceptance had been given to him; (2) the authority to the M. Co. to apply for shares in his name did not arise until he had been informed by that co. of the number of shares for which they accepted his offer, & he had failed to apply himself for that number; (3) he was not estopped as against the C. Co. from denying the authority of the M. Co. to apply for shares in his name; & he was entitled to have his name removed from the register of members of the C. Co.—*Re CONSORT DEEP LEVEL GOLD MINES, LTD.*, *Ex p. STARK*,

[1897] 1 Ch. 575; 66 L. J. Ch. 297; 76 L. T. 300; 45 W. R. 420; 13 T. L. R. 265, C. A.

Annotation:—*As to* (1) *Folld. Re Gutta Percha Corp'n.* (1899), 15 T. L. R. 183.

1160. — — — — — *Re BULTFONTEIN SUN DIAMOND MINE, LTD.*, *Ex p. COX, HUGHES & NORMAN*, No. 1140, *ante*.

See, also, No. 1152, *ante*.

1161. — — — — — **Term of contract to apply on day list opened.**—A. signed an agreement with L., an agent employed by the promoters of a co., to arrange for the issue of its capital, that A. would subscribe, or find responsible subscribers, for 200 ordinary shares on the terms of the co.'s prospectus, & apply for the said shares on the first day when the list opened. The agreement contained provisions that if the whole issue of shares was *bond fide* subscribed for by the public, A.'s responsibility was to cease, & no allotment to be made to him; & that if the public should not subscribe the full amount of the issue, but should *bond fide* subscribe any smaller amount, A.'s undertaking was to stand for the number of shares constituting his *pro rata* contribution with the other underwriters to make up the difference between the amount subscribed by the public & the amount underwritten; & that the agreement should be irrevocable on A.'s part, & sufficient in itself to authorise L., in the event of A.'s not applying for shares as above-mentioned to apply for such shares in his name & on his behalf. A. made no application for shares. The public applied only for a small part of the capital underwritten. After the list was closed L. applied in A.'s name for 164 shares, & the co. allotted them to A., sending him notice that they were allotted in pursuance of his underwriting agreement. A. brought an action to have his name removed from the register on the ground that he had only agreed to take a proportion of the shares which the public had not applied for, & had had no notice how many the public had applied for, & no opportunity of exercising his option to subscribe himself or find other subscribers:—*Held*: A.'s obligation under the contract was to apply for shares the first day the list opened, & therefore, no such notice was necessary to enable him to discharge it or to exercise his option, & the shares had been rightly allotted to him.—*SHAW v. BENTLEY & CO. & YORKSHIRE BREWERIES, LTD.* (1893), 68 L. T. 812; 3 R. 719.

1162. — — — — — **Offer of shares to public.**—*Re LONDON-PARIS FINANCIAL & MINING CORPN., LTD.*, No. 1128, *ante*.

1163. — — — — — **"Shares to be irrevocably applied for"**—**Application by underwriters—Condition not fulfilled.**—Deft. agreed to underwrite a certain number of preference shares in a co. about to be brought out. One of the conditions of the underwriting agreement was that deft. was not to be called upon to accept any allotment unless at least 8,000 preference shares were irrevocably applied for by persons residing in France, on each of which shares the application money should have been duly paid:—*Held*: upon the construction of the agreement, an application for 8,000 shares by one of the underwriters resident in France was not a fulfilment of the condition.—*BOYER, LTD. v. EDWARDES* (1901), 18 T. L. R. 3, C. A.

1164. Shares issued at premium—So stated in prospectus—Offer to underwrite "at par" & to be bound by prospectus.—A co. entered into a contract with C. & Son to underwrite the whole of an issue of its unissued capital & to take the shares upon the terms of the co.'s prospectus, so far as

Sect. 11.—Underwriting and brokerage: Sub-sect. 3, B. & C. (a), (b) & (c). Sect. 12: Sub-sect. 1.]

they were not applied for by the public, a commission being payable to C. & Son. The prospectus offered the shares to the public at a premium of 1s. per share. C. & Son entered into various sub-underwriting contracts, among them one with B., whereby he agreed to subscribe at par for, or obtain responsible subscribers for, 30,000 shares upon the terms of the prospectus, & to be bound by the prospectus, & to take up a proportion of the shares not applied for by the public, & a commission was to be paid. The prospectus stated the underwriting contract with C. & Son & that they had entered into sub-underwriting contracts. B. paid C. & Son a cheque for the amount of the application money on the underwritten shares. C. & Son put in an application on behalf of B. for 30,000 shares, with others, upon the terms of his sub-underwriting contract, & paid the cheque to the co., & 23,375 shares were allotted to B. The allotment letter stated that the allotment was made upon the terms of the prospectus. The co. claimed from B. the balance of the sum payable per share on allotment after allowing for the money paid. B. claimed that he had only undertaken to sub-underwrite the shares at par, & moved under 1908 Act, s. 32, that the register of members of the co. should be rectified by expunging his name. It was decided that, this being a case where the interests of third parties were concerned, it was not for the ct. to exercise discretionary jurisdiction conferred upon it by the above sect., in the absence of C. & Son, even if satisfied, but that B. must seek to enforce his claim in an action to which C. & Son could be made parties. The appct. appealed:—*Held*: the insertion of the words "at par" in B.'s sub-underwriting contract did not avail him, & must be rejected as being inconsistent with the rest of the document; & therefore his claim to have the register of members of the co. rectified was not maintainable.—*Re GREATER BRITAIN INSURANCE CORPN., LTD., Ex p. BROCKDORFF* (1920), 124 L. T. 194, C. A.

1165. On death of underwriter—Passes to executors.]—The liability on a contract to apply for shares under an underwriting agreement passes to the exors. of the person contracting, as the contract is not one involving personal skill, & if the person contracting had notice that the object of the other party to the contract was that he might be enabled to perform another underwriting agreement, the damages are not too remote to be recoverable.—*WARNER ENGINEERING CO., LTD. v. BRENNAN* (1913), 30 T. L. R. 191, D. C.

1166. ———.]—An underwriting contract by which A. agrees to place the share capital of a co. is not a contract personal to A. dependent on the continuance of his life, but is a contract which can be fulfilled by his exors., & if A. dies before completion of the contract & his exors. do not complete, damages for breach of contract may be recovered from his estate.

By an agreement dated Nov. 30, 1912, W. agreed with a French co. to form within seven days an English co. with a capital of £105,000 divided into 100,000 ordinary shares of £1 & 100,000 participation shares of 1s. each; to place the ordinary share capital in three blocks of shares by certain short dates; to procure the English co. to enter into a contract of purchase with the French co. in the terms of an agreed draft; & that he should be at liberty to receive from the English co. 5 per cent. of its ordinary shares fully paid up for forming

that co. & procuring the contract, & by an agreement dated Dec. 9, 1912, W. agreed with the English co. to procure the French co. to enter into the contract of purchase in the terms of the agreed draft in consideration of being allotted 5,000 fully-paid ordinary shares of the co. By another agreement, also dated Dec. 9, 1912, the French co. agreed to sell to the English co. certain rights in consideration, *inter alia*, of being paid in cash 10 per cent. of the ordinary share capital of the English co. as & when subscribed, & the agreement was upon the express condition that the ordinary share capital should be subscribed in three blocks of shares by the dates specified in the agreement of Nov. 30, 1912. On Dec. 10, 1912, the English co. was registered with the stipulated capital & with the object of carrying into effect the two agreements of Dec. 9, 1912. Its arts. authorised the payment to any person of a commission not exceeding 10 per cent. for procuring subscriptions for its share capital. Its prospectus, issued the same day, offered 50,000 ordinary shares for subscription at par, & stated that no underwriting commission had been or would be paid, & also that part of the purchase consideration was 5,000 fully paid up shares to be allotted to W. for forming the co. W. placed the first block of shares & died in Feb. without placing any further shares. A claim by the French co. to prove against his estate, which was being administered in bkpcy., for damages for breach of the agreement of Nov. 30, 1912, was objected to by the trustee on the grounds that that agreement was a contract personal to W. which determined at his death, & that the three agreements were one transaction which was in contravention of sect. 89 of 1908 Act:—*Held*: (1) the agreement of Nov. 30 was not a contract personal to W., but was enforceable against his exors., for the breach of which damages would lie; (2) the three agreements did not form a scheme which was in contravention of 1908 Act, s. 89; & (3) even if there was such a scheme, the commission of 5,000 shares payable to W. was sufficiently disclosed in the prospectus.—*Re WORTHINGTON, Ex p. PATHÉ FRÈRES*, [1914] 2 K. B. 299; 83 L. J. K. B. 885; 21 Mans. 119; *sub nom. Re WORTHINGTON, Ex p. COMPAGNIE GÉNÉRALE DES ÉTABLISSEMENTS PATHÉ FRÈRES PHONOGRAPHIE ET CINÉMATOGRAPHIE*, 110 L. T. 599, C. A.

C. Rights of Underwriter.

(a) Commission.

1167. Application for shares by promoter on behalf of underwriter—Underwriter's right to commission not lost.]—*SANGSTER v. NETTER* (1893), 9 T. L. R. 441, D. C.

1168. Agreement to pay commission "on allotment" on amount of issue—Partial allotment—Amount of commission payable.]—*BROWNE v. PICKERING & Co.* (1888), 4 T. L. R. 726, C. A.

(b) Rescission.

1169. Grounds for—Misrepresentation in prospectus—Agreement on basis of draft prospectus—Issued without authority of directors—Substantially repeated in final prospectus.]—*Re CANADIAN DIRECT MEAT CO., LTD.* (1892), 9 T. L. R. 7; 36 Sol. Jo. 865, C. A.

1170. ——— Amount of guaranteed working capital.]—*Re GLOBE BLOCKS GOLD MINING CO., LTD., DADSON'S CASE* (1896), 12 T. L. R. 482.

1171. ——— Variation between draft & final prospectus—Agreement providing for variation—Material variation creating essentially different risk.]

Sect. 12.—Membership: Sub-sects. 1, 2 & 3, A. & B.]

1179. Whether compulsory—Formation of new company by existing company.]—*Re LIFE & FIRE INSURANCE CO.* (1807–25), cited 3 L. J. O. S. Ch. at p. 83, L. C.

*Annotation:—*Consd. *Kinder v. Taylor* (1825), 3 L. J. O. S. Ch. 68.

Alien enemy members—Effect of.]—*See ALIENS*, Vol. II., pp. 145, 146, Nos. 194, 196.

Acquisition of membership—For purpose of instituting suit.]—*See ACTION*, Vol. I., p. 76, Nos. 612, 613, & compare No. 7872, *post*.

SUB-SECT. 2.—CAPACITY.

1180. Company.]—A limited co. may become a shareholder in another limited co., if authorised by its own memorandum & arts. of assocn. to do so.—*Re BARNED'S BANKING CO., Ex p. CONTRACT CORPN.* (1867), 3 Ch. App. 105; 37 L. J. Ch. 81; 17 L. T. 269; 16 W. R. 193, L. J.

*Annotations:—*Consd. *Re Asiatic Banking Corp., Royal Bank of India's Case* (1869), 4 Ch. App. 252. *Apld. Re Peruvian Rys., Ex p. International Contract Co.* (1869), 19 L. T. 803. *Reid. Re Land Credit Co. of Ireland, Weikersheim's Case* (1873), 28 L. T. 253; *Mersey Steel & Iron Co. v. Naylor* (1882), 9 Q. B. D. 648; *Re Thomas, Thomas v. Sully*, [1915] 1 Ch. 325. *Mentd. Re International Contract Co. Hughes' Claim* (1872), L. R. 13 Eq. 623; *Staple of England (Mayor, etc., of Merchants of) v. Bank of England* (1887), 21 Q. B. D. 160.

1181. Married woman.]—The separate estate of a married woman is bound by her debts, obligations, & engagements, contracted for herself upon the credit of that estate; & whether such obligations were so contracted must be judged of by the circumstances of each particular case. There is nothing in the nature of a joint-stock co., in the absence of any special clauses in the deed of

settlement, to prevent a married woman being a shareholder in her own right, so as to bind her separate estate. Therefore, where a married woman, having separate estate, contracted to take shares in her own name in a joint stock co., which was afterwards wound up: the ct., being of opinion that such contract was entered into upon the credit of her separate estate, & that the deed of settlement did not exclude married women from being shareholders so as to bind their separate estate, placed the married woman on the list of contributories in her own right, so as to bind her separate estate.—*Re LEEDS BANKING CO., MATTHEWMAN'S CASE* (1866), L. R. 3 Eq. 781; 36 L. J. Ch. 90; 15 L. T. 266; 12 Jur. N. S. 982; 15 W. R. 146.

*Annotation:—*Folld. *Butler v. Cumpston* (1868), L. R. 7 Eq. 16.

—.]—*See, generally, HUSBAND & WIFE.*

As signatories to memorandum & articles.]—*See Sect. 7, sub-sect. 2, ante.*

As transferee—Infant.]—*See Sect. 23, sub-sect. 15, A. (b), post.*

SUB-SECT. 3.—WHAT CONSTITUTES.

A. Signature of Memorandum.

See 1908 Act, s. 24 (1).

1182. Subscriber to memorandum—Printed copy subscribed—Before original signed or registered.]—Deft., having applied for shares in a proposed co. & paid the deposit, signed a printed form of memorandum of assocn. & by the arts. of assocn. agreed to accept certain shares allotted to him; some weeks afterwards the original memorandum of assocn. & arts. of assocn. were signed & registered, & deft.'s name was placed on the register of shareholders:—*Held: deft. was a*

PART III. SECT 12, SUB-SECT. 3.—A.

m. Subscriber to memorandum—*Mercly lending name.]—*Where in winding-up proceedings it appeared that an alleged contributory joined in the petition for incorporation wherein it was untruly stated that he had taken 250 shares of the capital stock, whereas the shares he held had, after incorporation, been voted to him by a resolution of the directors as paid-up stock, for services in connection with the formation of the co.:—*Held: in view of Ontario Joint Stock Cos. Letters Patent Act*, he was a contributory in respect of, at least, the number of shares voted to him. *Semble: he was liable for the full number of shares mentioned in the petition.*—*Re COLLINGWOOD DRY DOCK SHIP BUILDING & FOUNDRY CO., WEDDELL'S CASE* (1890), 20 O. R. 107.—CAN.

n. —.]—Pltf.'s name appeared on the demand for incorporation, & in the letters patent. There never was a regular meeting of the co.; no election of president & officers; the provisional directors were never replaced. Pltf. maintained he was only a *prote-nom*:—*Held: as co. was legally in existence pltf. was a contributory.*—*LAFLEUR v. ST. ARMOUR* (1908), 6 E. L. R. 53.—CAN.

o. —*Misrepresentation in prospectus—Subsequent acts of signatory.]—*Where the prospectus of a proposed co. sets out that the capital is £10,000 in 1,000 shares, a person who subscribes the memorandum of assocn. cannot repudiate his share on the ground that the whole of the shares have not been subscribed for. Where there appear in a prospectus of a co., as provisional directors, the names of

persons who have not consented thereto, & who do not take shares in the co., a shareholder who subscribes the memorandum of assocn., attends meeting of shareholders, & takes part in the election of directors cannot subsequently repudiate his shares on the ground of misrepresentation. The subscribers to the memorandum of assocn. of a co. before the election of directors are provisional directors, & the term "provisional directors" used in a prospectus has no meaning except that such persons are favourable to the formation of the co.—*PALMERSTON BREWERY CO., LTD. v. WOILLERMAN* (1884), 2 N. Z. L. R. 223.—N.Z.

p. —*Subsequent repudiation of shares—No notice of allotment nor entry in register.]—*A shareholder who has signed the memorandum of assocn., but who on sufficient grounds repudiates his shares, who receives no notice of allotment & is not placed on the share register nor on the list of shareholders supplied to the Registrar of Joint-Stock Cos., is not liable as a contributory on winding up.—*COLONIAL LAND SETTLEMENT OF NEW ZEALAND CO. (LTD.) v. BOHAN* (1885), 3 N. Z. L. R. 98.—N.Z.

q. —*Without notice of allotment—No entry on register.]—*Pltfs., an incorporated co., sued deft. for the amount due on twenty shares of their capital stock taken by deft. Deft. contended that he could not be made liable unless the shares were allotted to him, notice of allotment given to him, & his name placed upon the register:—*Held: allotment & notice are material only where there is no agreement without them; & deft., having signed the memorandum of assocn. required by Cos. Act, s. 7, & set after his name the number of shares*

he took, & having signed also the arts. of assocn., as required by sect. 13, & the memorandum & arts. having been registered as required by sect. 14, thus constituting the subscribers a body corporate (sect. 17), had become a member of the co., & his agreement to take the number of shares set opposite his name had become a binding agreement, & the price of the shares a debt due from him to the co. in the nature of a specialty (sect. 13).—*ALBERT IMPROVEMENT CO. v. PEYERETT* (1914), 27 W. L. R. 801; *affd.* 30 W. L. R. 185.—CAN.

r. —*Though share given him as fully paid.]—*The B. co. having gone into liquidation, the official liquidator applied to have E. placed on the list of contributories in respect of one share for which he had subscribed, & signed the memorandum & arts. of assocn. on Feb. 26, 1885. The co. was registered on Mar. 5, 1885, & went into liquidation in July, 1886. In his affidavit E. stated that he had been induced to sign the memorandum & arts. of assocn. by P. who was a promoter of the co., & who had promised to give him a fully paid-up share as the share he had signed for; that in Mar. 1886, P. had accordingly handed him the certificate of a fully paid-up share; that the share was one out of 100 fully paid-up shares which were given by the co. to P. in part payment of money due to him from the co., & that the share was duly entered in the share register of the co. as having been fully paid-up on Sept. 18, 1885. He contended that the co. was estopped from denying that the share was fully paid-up; that no other share had been allotted to him, & that all the shares of the co. had been allotted:—*Held: (1) he*

shareholder in the co. & liable for calls.—*NEW BRUNSWICK & CANADA RY. & LAND CO., LTD. v. BOORE* (1858), 3 H. & N. 249; 27 L. J. Ex. 330; 31 L. T. O. S. 102; 157 E. R. 464.

1183. Paid-up shares allotted—For consideration other than cash.]—A party who has subscribed the memorandum of assocn. of a joint-stock co., & has had paid-up shares allotted to him in consideration of moneys paid in the preliminary proceedings & goods furnished for the use of the co., is a shareholder within 1856 Act, s. 19, & upon his death his exor. is a contributory in respect of such shares.—*Re GENERAL SMELTING & REFINING CO., LTD., MASON'S EXECUTOR'S CASE* (1859), 34 L. T. O. S. 47.

See, also, No. 373, ante.

Signature of memorandum—& liability of signatories.]—*See, generally, Sect. 7, sub-sect. 6, ante.*

was liable in respect of the share. The transaction between him & P. did not bind or affect the co. The present of a paid-up share by a third party did not satisfy the obligation of a subscriber of the memorandum. The issue of the certificate did not estop the co. so long as the certificate had not passed to a *bona fide* transferee for value. If E. had not, in fact, paid money or money's worth for the one share subscribed for, the co. was still entitled to prove the non-payment, & claim the value of the share; (2) as there were left shares available for allotment, the fact that none had been allotted to E. made no difference, & the liquidator was entitled to hold him to the contract which he had made with the co. when he signed the memorandum.—*Re BOMBAY ELECTRICAL CO., LTD., ELMORE'S CASE* (1888), 1 L. R. 13 Bom. 57.—IND.

s. Memorandum subscribed must be registered memorandum.]—Defts., amongst others, subscribed (for 101 shares) a copy of the memorandum & arts. of assocn. of pltf. co. then in process of formation, but subsequently, & before registration, gave notice that he would withdraw his signature, & would have no connection thenceforth with the proposed co.; his withdrawal, however, was not accepted. Subsequently to the receipt of the notice, the memorandum & arts. of assocn. so signed by deft. & others were presented for registration; but registration was refused on the ground that the documents were not printed. A printed copy of each was then procured & registered. The registered copies differed, in respect of the signatures subscribed thereto, from the copies signed by deft. Deft.'s name was put upon the register of the co. as the holder of 101 shares, but without deft.'s assent or knowledge, & two calls were made upon him in respect of the said shares. Deft. denied that he was a member of the co. or liable for calls.—*Held*: deft. was not a member of pltf. co., as a "subscriber of the memorandum of assocn." under the earlier part of Indian Cos. Act, sect. 22, inasmuch as the memorandum there referred to was the registered memorandum, of which the document signed by deft. was not even a true copy.—*GUZERAT SPINNING & WEAVING CO. v. GIRDHARLAL DALPATRAM* (1880), 1 L. R. 5 Bom. 425.—IND.

t. —.]—On Apr. 13, 1886, L. signed a printed copy of the proposed memorandum of assocn. of a projected co. for ten shares, which was registered on Aug. 3. On that day L. received a notice from the secretary of the co., informing him that the co. had been duly registered & requesting him to pay R.100 as the deposit on the shares subscribed by him. On Aug. 5, L. replied, stating that he had decided not to take up the shares. On Aug. 6 the secretary wrote to L., stating that

he had already become a shareholder, & could not withdraw. On Sept. 25 the directors held their first meeting, & resolved that the shares applied for be allotted, & application & allotment money be called in. On Oct. 1 the secretary notified to L. the allotment of ten shares, & requested him to pay the overdue deposit call of R.10 per share & the allotment call of R.15 per share. L. refused to pay, & repudiated his liability in respect of the shares. He contended that he had never become a member of the co.:—*Held*: deft. was not a member of the co., & was not liable to pltf.'s claim. The fact that he had signed the proposed memorandum of assocn. did not make him a member, inasmuch as the document which he had signed was not the document which was registered, nor even a true copy of it.—*IMPERIAL FLOUR MILLS CO. v. LAMB* (1888), 1 L. R. 12 Bom. 647.—IND.

a. —.]—A person signing a duplicate memorandum of assocn. is not bound as one who has signed the original memorandum, although such duplicate is signed after the co. has been registered. Such signature cannot be binding, because it does not amount to a signing of the memorandum itself, & does not satisfy the requirements of sect. 45 of 1882 Act. It does not create the positive agreement which the law has made the necessary consequence of the signature of the real memorandum before registration was too late.—*Re BOMBAY ELECTRICAL CO., LTD., NUSSERVANJI DADABHOY, KATRUCK'S CASE* (1888), 1 L. R. 13 Bom. 1.—IND.

b. —.]—When a person signs a duplicate of the memorandum of assocn. after the registration of the original memorandum, he does not thereby become a subscriber within Indian Cos. Act, VI. of 1882, s. 45. Such signature, however, is equivalent to a proposal to the co. to take shares, & if such a proposal is accepted, the person signing is a person who has agreed with the co. to become a member within above sect., & is liable to calls if entered on the register.—*BOMBAY NATIONAL MANUFACTURING CO., LTD. v. AHMED BIN ESSA KHALIFFA* (1890), 1 L. R. 14 Bom. 196.—IND.

c. —.]—Applt. with others signed what was intended to be a memorandum of assocn. of a co., wherein they agreed to take the number of shares set opposite to their names. Applt. signed for 25 shares. This memorandum, being technically irregular, was not acted on, & applt. thereafter refused to sign a new memorandum which was subsequently drawn up. The co., after being duly formed, sued applt. for £25, being the price of the shares alleged to have been purchased by & allotted to him:—

B. Agreement to become Member and Entry on Register.

See 1908 Act, s. 24 (2).

1184. General rule.]—Where a person applies for & is allotted shares in a co., he becomes from that time, in the absence of an express bargain, liable to all the debts & entitled to all the profits of the co.; therefore, where a co. issued reserved shares on the terms that the persons taking them should not be entitled to profits until a certain day, but to interest in the meantime, & before the specified day an order to wind up the co. was made:—*Held*: the parties taking the new shares were liable as contributories & to calls in respect of the shares.—*Re LEEDS BANKING CO., Exp. BARRETT* (No. 2) (1865), 6 New Rep. 286; 13 L. T. 206; 13 W. R. 855; *previous proceedings, sub nom. Re LEEDS BANKING CO., BARRETT'S CASE*, 3 De G. J. & Sm. 30, L. J. 1185. —.] Fifty shares in a co. were

Held: as the first memorandum was not an application for shares to the co. when formed, but an agreement between the signatories to take a number of shares & to sign a memorandum of association, & as in fact there was no valid allotment of shares to applt., he was not liable.—*HESSIE v. WOODSTOCK SWEETS CO., LTD.* (1915), 6 C. P. D. 594.—S. AF.

d. Signature by unauthorised agent.]—Applt. signed a proposed memorandum of assocn. for the formation of a co., & agreed to take 100 shares. This proposed memorandum was attached to the prospectus of the co. At the same time applt. signed a consent to act as a director of the proposed co. The memorandum of assocn. did not correspond entirely with the document which applt. had signed. Applt. being unable to attend to business, B., without his authority, signed on his behalf the memorandum of assocn. prepared for registration, & the co. was registered. The allotment of shares was proceeded with:—*Held*: applt. was entitled to have his name removed from the register of members of the co., & to recover the moneys paid in by him.—*Re FRANK HARRIS GRANITE CO., LTD.* (No. 2) (1913), 32 N. Z. L. R. 837.—N.Z.

e. Signature in blank—Effect of.]—L. signed the arts. of assocn. of a co. in blank & authorised the secretary to insert opposite his name such number of shares as might be necessary in order to obtain the registration of the co. The secretary acted on the authority. Liquidation having supervened, it was contended that L. had agreed to accept, as portion of the shares subscribed by him, certain shares due by the co. to vendors. There was no proof that the co. had agreed to allot any such shares to L., or that the latter had authorised or ratified such an allotment; but the secretary stated that he intended the shares filled in against L.'s signature to be assigned to certain vendors. There was no evidence that L. had been authorised to act for the vendors:—*Held*: L. was liable to be placed upon the list of contributories in respect of all shares opposite his name for such an amount as remained unpaid thereon.—*LONG'S EXECUTRIX v. ROSE-MOUNT GOLD MINING SYNDICATE, LTD.*, [1905] T. S. 563.—S. AF.

f. Attestation—Necessity for.]—Where a memorandum of assocn. of a co. has been registered, a subscriber cannot divest himself of his liability as a member of the co., although his signature to the memorandum may not have been properly attested. The transaction may be irregular, but it is not void.—*CHHOTALAL CHHAGANLAL v. DALSUKHRAM HARGOYINDAS* (1892), 1 L. R. 17 Bom. 472.—IND.

Sect. 12.—Membership: Sub-sect. 3, B., C., D. & E.]

registered in the joint names of a father & son on their application, & they paid £150 by way of deposit & allotment money. Shortly afterwards a call of £2 a share was made. The father became a director, & having, as he said, discovered that the co. was formed under circumstances of gross fraud, wrote to the chairman, warning the directors against involving the shareholders in any fresh liability. Shortly after he resigned his seat as director. Two months afterwards, the call being unpaid, the father wrote to the chairman, requesting the directors to declare the shares forfeited; & said that he & his son must be satisfied that their names were taken off the register. A resolution was thereupon passed that the shares be forfeited; but the names were not removed from the register of shareholders, & were on it when the winding-up order was made more than a year afterwards. No steps were taken on one side to enforce the call, or on the other to recover the deposit & allotment money. Upon summons by the official liquidator, that the names might be settled on the list of contributories:—*Held*: the so-called forfeiture of shares was void; & resps. must be settled on the list of contributories.—*Re LONDON & PROVINCIAL STARCH CO., GOWER'S CASE* (1868), L. R. 6 Eq. 77; 18 L. T. 283; 16 W. R. 751.

1186. —.]—When a person agrees to become a member of a co., is placed upon the register, & afterwards acts as a shareholder, he cannot resist being placed upon the list of contributories, whatever may have been the circumstances under which the shares were transferred or allotted to him. The transfer, being bad as a deed, would not affect the question of his liability, nor even dishonest conduct on the part of officers of the co.—*Re INTERNATIONAL CONTRACT CO., LANGER'S CASE* (1868), 37 L. J. Ch. 292; 18 L. T. 67, L. J.

Annotations:—*Refd. Re General Provident Assce., Bridger's Case* (1869), L. R. 9 Eq. 74; *Re National Equitable Provident Soc., Wood's Case* (1873), L. R. 15 Eq. 236.

1187. Whether agreement to become member sufficient—Or whether signature of memorandum & payment of calls necessary.]—(1) In an action for calls deft. alleged that he was not a member of the co., that the co. was not properly formed, & that he was exempted by the terms of the arts. from any further claim:—*Held*: it was not necessary to sign the memorandum of assocn. nor to have paid calls, to make a registered appct. a member; where the prospectus proposed to incorporate a previously existing co., & the arts. made an arrangement for buying out of the funds of the new co. the shares in the old one at their full value, the variance was not sufficient to invalidate the co.

(2) The prospectus stated that no call was contemplated beyond the amounts payable on application & allotment:—*Held*: it was impossible to interpret the words "no further calls are contemplated" into an assurance or pledge that no call should at any time be made.—*ACCIDENTAL & MARINE INSURANCE CORPN., LTD. v. DAVIS* (1866), 15 L. T. 182, L. J.

1188. Entry on register—Entry in book containing names of allottees.]—A joint-stock co. being in course of formation under 1856 Act, W. applied for shares by a note in writing, by which he agreed to accept them & pay the deposit on them if allotted to him. Shares were allotted to him accordingly, & he paid the deposit, but no certificates were given to him. His name was not entered in the register of shareholders, but only in a book in which the names of persons to whom shares had been allotted were inscribed, the shares to which they were entitled not being distinguished therein by numbers, as required by sect. 19 of the Act. An order having been made in the following year for winding up the co.:—*Held*: the register ought to be amended by inserting the name of W., & he ought to be on the list of contributories.—*Re WEST HAM DISTILLERY CO., LTD., WHITTET'S CASE* (1858), 2 De G. & J. 577; 44 E. R. 1113, L. J.

Annotation:—*Refd. Re Mosely Green Coal & Coke Co., Ex p. Fox* (1863), 2 New Rep. 1.

1189. — **Register made prima facie evidence of membership—Formalities not complied with.]**—Deft. obtained an allotment of shares in a joint-stock co., completely registered under 8 & 9 Vict., c. 110, the capital of which was to consist of £500,000 in 50,000 shares. He paid the deposit, & his name was inserted in the register of shareholders, but he never executed the deed of settlement. The proposed amount of capital was never subscribed, but the co. commenced business with less; & having become embarrassed, an Act of Parliament was passed for winding up the affairs of the co. This Act, after reciting the deed of settlement, & that certain shares were unpaid, empowered the directors to sue for calls, & enacted that, in such actions, the register should be *prima facie* evidence of deft. being a shareholder, & of the number of his shares, provided that such calls should be made according to the provisions of the deed of settlement, & as regarded the liability of shareholders, should be deemed to have been under such provisions; & also provided that nothing in that Act contained, except as therein expressly enacted, should render liable to calls any shareholder or other person who would not have been liable thereto if that Act had not passed. Deft. having been sued for calls:—*Held*: (1) the private Act applied to shareholders only, & deft. was not liable as a shareholder,

PART III. SECT. 12, SUB-SECT. 3.—B.

g. Whether agreement to become member sufficient—Or whether allotment necessary.]—Where an application was made by the agent of a co. to W. to subscribe for shares in the co. & W. agreed to take shares & pay the calls thereon, the transaction was complete & W. thus became a shareholder, although no shares were formally allotted to him, & no notice of allotment was given to him.—*ACADIA LOAN CORPN. v. WENTWORTH* (1905), 40 N. S. R. 525.—CAN.

h. — Or whether entry on register necessary.]—A binding agreement to take shares will constitute a person a contributory, although formalities necessary to complete membership,

such as entry of his name on the register, have been omitted.—*Ex p. PALMER* (1868), 2 I. R. Eq. 573.—IR.

k. Company must exist at time of agreement.]—Deft., amongst others, subscribed a copy of the memorandum & arts. of assocn. of pltf. co. then in process of formation, but subsequently, & before registration, gave notice that he would withdraw his signature, & would have no connection thenceforth with the proposed co.:—*Held*: Deft. was not a member of pltf. co., by reason of an "agreement to take shares" under Cos. Act, s. 22, inasmuch as the agreement there alluded to was an agreement with the co., & the agreement (if any) entered into by deft. was not, & could not have been, an agreement with the co., the

co. not being at that time in existence.—*GUZERAT SPINNING & WEAVING CO. v. GIRDHARLAL DALPATRAM* (1880), 1 L. R. 5 Bom. 425.—IND.

l. Entry on register—Evidence of membership.]—H. applied verbally to the M. co. for 30 shares offering to pay by two bills at three & four months. The co. accepted the offer, H. accepted the two bills for the price & left the shares as security. Scrip were filled in but not signed or issued. H. signed no application & did not sign the deed or the register but his name was entered on the register as a member. The original number of directors was six & a resolution increasing them to nine was passed. No notice or copy of this resolution was sent to the registrar general to

inasmuch as he had never executed the deed of settlement; (2) even if the Act included subscribers, deft. was not liable, for his contract was conditional upon the full amount of capital being raised, & that condition had not been performed or waived.—**GALVANIZED IRON CO. v. WESTOBY** (1852), 8 Exch. 17; 7 Ry. & Can. Cas. 318; 21 L. J. Ex. 302; 19 L. T. O. S. 299; 16 Jur. 892; 155 E. R. 1240.

Annotations:—As to (1) **Consd.** *Murray v. Bush* (1873), L. R. 6 H. L. 37. **Refd.** *Moss v. Steam Gondola Co.* (1855), 17 C. B. 180.

1190. — Effect of misspelling of name—Or other informality.]—J. T. C. applied, through an agent, for fifty shares in a joint-stock co. provisionally registered, & at the same time paid up the value. He entered into no agreement in writing to take the shares, but they were allotted to him, & when the deed of settlement was tendered to him he refused to execute it; but assigned no reason for his refusal. The deed contained a schedule in which his fifty shares bore distinctive numbers. The co. was completely registered, & the name of J. T. C., was inserted in the register of shareholders as T. C., the holder of fifty shares, but numbered differently from the schedule to the deed. After an order for winding up the co., J. T. C. was placed on the list of contributories in respect of fifty shares:—**Held:** the alteration in the distinctive numbers of the shares was unimportant, as was the mistake in the Christian name; the order must be confirmed.

A person may be a contributory in respect of his appln. for shares, although he signs no written agreement to take shares, & does not, therefore, fall within the description of a "subscriber" mentioned in 1844 Act, s. 3.—**Re ELECTRIC TELEGRAPH CO. OF IRELAND, COOKNEY'S CASE** (1858), 3 De G. & J. 170; 28 L. J. Ch. 12; 32 L. T. O. S. 82; 5 Jur. N. S. 77; 7 W. R. 22; 44 E. R. 1233, L. J.J.

Annotations:—Appld. *New Theatre Co. (Ltd.), Bloxam's Case* (1864), 33 Beav. 529. **Consd.** *Re Life Assn. of England, Thomson's Case* (1865), 4 De G. J. & Sm. 749. **Distd.** *Re Universal Banking Corpn., Gunn's Case* (1867), 3 Ch. App. 40. **Appld.** *Re Peruvian Rys., Ex p. Wallis* (1868), 18 L. T. 676. **Refd.** *Re Athenaeum Life Assn. Soc., Sheffield's Case* (1859), Johns. 451; *Electric Telegraph Co. of Ireland v. Bunn* (1860), 29 L. J. Ch. 913; *Re Adelphi Hotel Co., Best's Case* (1865), 13 W. R. 762; *Ramsgate Victoria Hotel Co. v. Montefiore, Ramsgate Victoria Hotel Co. v. Goldsmid* (1866), L. R. 1 Exch. 109.

1191. — — —.]—If the entry of a party's name upon the register of a co. be sufficient to identify him, a misspelling of the name, or other informality, in the entry will not release him from liability as a contributory.—**Re LITTLE DOWN & EBBER ROCKS MINERAL & MINING CO., LTD., OLERENSHAW'S CASE** (1860), 2 L. T. 522. *Annotation:—Mentd.* *Re Compressed Coal Co., Ex p. Official Liquidator* (1863), 8 L. T. 59.

be recorded. The nine directors made calls & sued H. for them in the Cty. Ct. pending the currency of his bills which they had negotiated. The judge of the Cty. Ct. nonsuited the co., on appeal:—**Held:** (1) H.'s signature of the acceptances only was evidence of his consent to be a member if such consent were necessary; (2) without such consent proof of his name being in the register was *prima facie* proof of his being a shareholder; (3) the acts of the nine directors *de facto* were valid; & the nonsuit was wrong.—**McIVOR HYDRAULIC SLUICING & GOLD MINING CO. v. HUGHES** (1867), 4 W. W. & A'B. 111.—**AUS.**

m. — — —.]—In an action against A. for the amount of a call & interest thereon. A share register was put in evidence purporting to be a register of the S. Co.:—**Held:** the

register book complied with all the statutory requirements & was rightly admitted as evidence of membership; & deft. was liable.—**SUGAR LOAF MINING CO. v. PILE** (1874), 4 Q. S. C. R. 62.—**AUS.**

n. — Under agreement to place shares—No ground for repudiation.]—A person who applied for shares in a co., & authorised his name to be placed on the register of members, becomes on allotment of the shares & registration of his name in terms of his authority a shareholder of the co., & is not entitled to have his name removed from the register by showing that he did not become a shareholder on his own account but merely that he might by agreement with the directors place the shares among such persons as he found willing to take them.—**MILN v. NORTH BRITISH FRESH FISH SUPPLY**

1192. — Whether condition precedent.]—W., T. & P. applied for shares in a limited co. established for the purpose of purchasing & working a concession from a foreign govt. T. & P. were directors of the co. The directors sent letters of allotment to the appcts., in which they called on them to pay the allotment money by a certain day. But their names were never entered on the register, nor was any allotment money paid nor certificates of shares issued. Three years afterwards the directors made a fresh arrangement with the owners of the concession under which they purported to cancel the old allotments & to allot all the shares, except a few reserved for the directors & other persons, to the vendor of the concession & his nominees. The shares were accordingly entered in the register in their names. Soon afterwards the co. was ordered to be wound up, & the liquidator applied to the ct. to rectify the register by placing on it the names of W., T. & P. for the number of shares allotted to them, & to diminish the number of shares for which the vendor of the concession was entered on the register to a like amount:—**Held:** whether the effect of the application & allotment was that W., T. & P. became actual members of the co. in respect of the shares allotted to them or only agreed to become such members, it was now too late, under the circumstances which had occurred, for the co. to insist on placing their names on the register. **Semble:** according to the true construction of 1862 Act, s. 23, they did not become members in respect of the allotted shares, the entry on the register being a condition precedent to such membership.—**Re FLORENCE LAND & PUBLIC WORKS CO., NICOL'S CASE, TUFNELL & PONSONBY'S CASE** (1885), 29 Ch. D. 421; 52 L. T. 933; 1 T. L. R. 221, C. A.

Annotations:—Consd. *Re Argyll Coal & Cannell Co., Ex p. Watson* (1885), 54 L. T. 233. **Refd.** *Re West London Commercial Bank, Whiteley's Case* (1889), 60 L. T. 807.

1193. — — — Recovery of money payable on allotment.]—**URAL GOLD FIELDS OF WESTERN SIBERIA v. PAPPAS** (1899), 15 T. L. R. 330. *See, also,* Nos. 1479, 1482, *post.*

C. Application for and Allotment of Shares.
See Sect. 17, post.

D. Purchase of Shares.
See Sect. 23, post.

E. Other Cases.

1194. Admission of membership—Though formalities not complied with.]—Where a pltf. sued the members of a joint-stock co. for goods sold & delivered, & the defence was, that he was himself a member of the co.:—**Held:** (1) his own letters,

Co. (1887), 15 R. (Ct. of Sess.) 21; 25 Sc. L. R. 36.—**SCOT.**

PART III. SECT. 12, SUB-SECT. 3.—**E.**

o. Person acting as member.]—A contributory is a person who has agreed to become a member of the co., and although he has signed no transfer, yet, if he has been treated as a shareholder by the co., & has acted as a shareholder, both he & the co. will be estopped from denying that he is a shareholder.—**Re SWITCHBACK RAILWAY, ETC., CO., LTD., Ex p. HAYDON & MOUNT** (1890), 16 V. L. R. 339.—**AUS.**

p. —.]—A proposed corporator in a joint-stock co., who, in advance of the incorporation, takes a practical part in the prosecution of the intended business of the co., or who sanctions

Sect. 12.—Membership: Sub-sect. 3, E.; sub-sect. 4, A. (a).]

in which he spoke of himself as a member, were evidence to show, that he was a member, although it was provided by the partnership deed, that none should be members who did not execute the deed, & it did not appear that pltf. had executed it; (2) those letters were evidence of his being a member at the time at which they were written, although his shares had been entered in the books of the co. as transferred to another person; the provisions of the deed requiring the execution of a formal transfer, which it did not appear had ever been executed.—*HARVEY v. KAY* (1829), 9 B. & C. 356; 7 L. J. O. S. K. B. 167; 109 E. R. 132.

1195. Under 1844 Act — Deed of settlement not signed.]—*Re WOLVERHAMPTON, CHESTER, & BIRKENHEAD JUNCTION RY. Co., NORRIS v. COTTLE* (1850), 2 H. L. Cas. 647; *Re INDEPENDENT ASSURANCE Co., BIRD'S CASE* (1850), 1 Sim. N. S. 47; *Re MERCHANT TRADERS' SHIP, LOAN, & INSURANCE Co., YELLAND'S CASE* (1852), 5 De G. & Sm. 395; *Re ROYAL BANK OF AUSTRALIA, ROBINSON'S EXECUTOR'S CASE* (1852), 2 De G. M. & G. 517; *Re AMAZON LIFE ASSURANCE & LOAN Co., Ex p. PICKLES* (1856), 27 L. T. O. S. 195; *BAILEY v. UNIVERSAL PROVIDENT LIFE ASSOCN.* (1857), 1 C. B. N. S. 557; *Re ELECTRIC TELEGRAPH Co. OF IRELAND, COOKNEY'S CASE* (1858), 5 Jur. N. S. 77.

1196. — Deed of settlement signed.]—*Re INDEPENDENT ASSURANCE Co., HOLT'S CASE* (1851), 1 Sim. N. S. 389; *Re LIFE ASSURANCE TREASURY Co., TAYLOR'S CASE, NEWTON'S CASE* (1862), 6 L. T. 603.

1197. — Fraudulent tampering with deed.]—*COX'S CASE* (1856), cited in 4 K. & J. p. 308; *Re ATHENÆUM LIFE ASSURANCE Co.* (1858), 32 L. T. O. S. 174; *Re ATHENÆUM LIFE ASSURANCE SOCIETY, SHEFFIELD'S CASE* (1859), John. 451.

1198. Under 1856 Act—Signature of memo-

or ratifies the conduct of affairs by some act, not being a mere subscription to shares, is liable to contribute, with other subscribers to stock in a like position, to a liability properly incurred in carrying out the objects of the projected co., & the proportionate amount of contribution by each depends on his share subscription irrespective of the amount paid on the shares.—*SANDUSKY COAL Co. v. WALKER* (1896), 27 O. R. 677.—CAN.

q. — Vendor of undertaking to company for shares.]—P., who was the owner of a mine, approved of & acquiesced in the publication of a prospectus for the formation of a co. to work the mine, in which he was represented as a director & holder of 1,000 shares, & as having agreed to dispose of his interest in the mine to the co. for 6,000 paid-up shares. He signed copies of the memorandum & arts. of assocn., which were registered (without his name to them), & in which he was also represented as a director & holder of 1,000 shares. The co. was registered, but the capital was not subscribed & there was no allotment of shares or register of shareholders made out by the directors:—*Held*: (1) there was an agreement binding on P. to take shares, under which the directors should have inserted his name on the register; (2) he was estopped by his conduct from denying his liability as a contributory & the ct. directed him to be placed on the list.—*Re OOLA LEAD & COPPER MINING Co., PALMER'S CASE, SMYTH'S CASE* (1868), 2 I. R. Eq. 573.—IR.

r. — Ineligible at time of admission.]—F., a minor, applied for & was allotted certain shares in a limited co. He received dividends, & continued to do so after attaining majority. On the winding up of the co. he was included in the list of contributories:—*Held*: having intentionally permitted the co. to believe him to be a shareholder & in that belief to pay him dividends since he attained majority, he was estopped by his conduct while a person *sui juris* from denying as between himself & the co. that he was a shareholder.—*FAZULBHOY JAFFER v. CREDIT BANK OF INDIA, LTD.* (1914), 1 L. R. 39 Bom. 331.—IND.

s. —]—At a meeting of the directors of the M. Incorp. Ltd., S. was admitted as a member. On account of his age, & for other reasons, S. was, in accordance with the arts. of assocn., ineligible for membership, but he accepted membership & acted as a member till Mar. 20, 1906, when he sent in a letter of resignation. The incorporation sued S. for payment of dues incurred by him prior to the date of his resignation. S. pleaded that he never was a member of the incorporation, & had consequently never incurred the dues:—*Held*: (1) defender was liable on the ground that he was a member of the incorporation, the objections to his admission being pleadable by the co. & by no one else; (2) whether he was technically a member or not, he was bound by his agreement with the incorporation.—*ABERDEEN MASTER*

random—Allotment of paid-up shares for consideration other than cash.]—*Re GENERAL SMELTING & REFINING Co., LTD., MASON'S EXECUTOR'S CASE, No. 1183, ante.*

1199. Under 1862 & 1908 Acts—Mortgage of unissued shares—Security for loan.]—A hotel was built at the London terminus of a railway, by a co., on land leased to them by the railway co. The hotel co. borrowed money from the railway co., to complete their hotel, upon the security of unissued shares, which were placed in the names of trustees, with power to sell the shares & reduce the amount of debt. The hotel was afterwards sold to the railway co., & the hotel co. was thereupon wound up:—*Held*: upon summons under the winding up, the two cos. being distinct & separate, the railway co. were not to be treated as shareholders in the hotel co., but as creditors, & were entitled to deduct from their purchase-money the advance made upon the security of the shares.—*Re CITY TERMINUS HOTEL Co., SOUTH EASTERN RY. Co.'s CLAIM* (1872), L. R. 14 Eq. 10.

1200. — Conversion of existing association into limited company—Mutual insurance company—Member conducting himself as such.]—Where a member of a mutual insurance co., afterwards converted into a limited co., has vessels on its books as insured, & pays calls, & otherwise acts as if he were a member of the co., he is, in any action brought against him by the limited co. for calls on losses estopped from denying his liability, & from setting up either any irregularity in the transfer from the one co. to the other, or that the losses were paid without any stamped policies being entered into in contravention of 30 Vict. c. 23, s. 7.—*BARROW MUTUAL SHIP INSURANCE Co., LTD. v. ASHBURNER* (1885), 54 L. J. Q. B. 377; 54 L. T. 58; 5 Asp. M. L. C. 527, C. A.

1201. — Burial society.]—A burial society which subsequently conducted life assurance business up to a limited amount was registered under Friendly Society Act, 1896 (c. 25), & attained to a membership of 373,000, with an income of £149,000 a year. In 1913 a special

MASONS' INCORPORATION, LTD. v. SMITH, [1908] S. C. 669.—SCOT.

t. Membership—Evidence of.]—A. subscribed to a list on which was stated the number of his shares, & afterwards voted upon such stock:—*Held*: *prima facie* evidence that A. was a shareholder.—*BUFFALO, BRANTFORD & GODERICH RY. Co. v. PARKE* (1855), 12 U. C. R. 607.—CAN.

u. —]—Where under arts. of assocn. read with the share certificates, the shareholders on the one hand, paid certain weekly instalments, & the co. on the other hand promised to make advances & the shareholders had a right to participate in the profits of the co. & by amended arts. were allowed to attend & vote at meetings both before & after liquidation:—*Held*: the shareholders were not creditors of the co., but shareholders in the ordinary sense of the word.—*Ex p. MUTUAL HOUSE & LAND ASSOCN., LTD.* (1912), 3 C. P. D. 904.—S. AF.

v. Whether shareholder must be holder of stock certificate—Trustee.]—Under a provision of 1905 Act, "not less than one-fifth in value of the shareholders of the co." may apply for the appointment of an inspector:—*Held*: two men who owned shares, standing in the name of a trust co. as bare trustees were "shareholders" within the meaning of the enactment.—*Re KOOTENAY VALLEY FRUIT LANDS Co.* (1911), 18 W. L. R. 145.—CAN.

w. Bondholders.]—Where a statute authorised a railway co. to enter into

resolution was passed for the conversion of the society into a co. limited by shares pursuant to sect. 71 of that Act. The objects of the co. under its memorandum were restricted to the objects of the society immediately prior to the conversion. There were no signatories to the memorandum of assocn. & no register of shareholders of the co. nor had any shares been in fact allotted. It was estimated that two years might elapse before the allotment of shares could be made. In 1914 a special resolution of the co. was passed altering & extending the object clauses of the memorandum. Upon a petition being presented by the co. for the confirmation by the ct. of this special resolution:—*Held*: the conversion of the society into a limited co. under Friendly Society Act, 1896 (c. 25), did not involve the simultaneous conversion of the members of the society into members of the co., & inasmuch as there were no members of the co. in existence within the definition of 1908 Act, s. 24, there was no special resolution properly passed which the ct. could confirm, & no such order as was asked could be made on the petition.—*Re* BLACKBURN PHILANTHROPIC ASSURANCE CO., LTD., [1914] 2 Ch. 430; 84 L. J. Ch. 145; 58 Sol. Jo. 798; 21 Mans. 342.

— **Allotment of shares—Without entry in register.**—See No. 1192, *ante*.

— *See, generally*, Sect. 17, sub-sect. 3, *post*.

By estoppel.—See No. 1482, *post*.

Loan to company—Interest varying with profits earned.—See No. 6218, *post*.

SUB-SECT. 4.—RIGHTS AND LIABILITIES OF MEMBERS.

A. Rights.

(a) In General.

Fixed by memorandum & articles.—See No. 6, *ante*.

Effect of Statute of Limitations—On right to dividends declared.—See No. 3962, *post*.

— **On right to return of capital.**—See No. 933, *ante*.

Pass to executors—Right to allotment of new shares on increase of capital.—See No. 832, *ante*.

1202. — **Right to agree to vote always for**

particular director.—Exors. holding shares in a co. agreed to sell part of them to G., who stipulated that as part of the transaction he should nominate X. & W. as directors, & that the exors. should, when either X. or W. should retire by rotation, vote for & not against his re-election. The agreement extended to shares whether held by the exors. in that capacity or in their own personal capacity. W. was about to retire by rotation, & some of the exors. threatened to oppose his re-election:—*Held*: the agreement was valid as regarded shares held by the exors. either as such or as directors, & that on W. undertaking to retire, if required by the ct., at the ordinary meeting next after the trial, an injunction must be granted until the trial restraining such of the exors. as threatened to do so from voting against the re-election of W. on his retirement by rotation.—GREENWELL v. PORTER, [1902] 1 Ch. 530; 71 L. J. Ch. 243; 86 L. T. 220; 9 Mans. 85.

— **Right of voting at meetings.**—See No. 3806, *post*.

See, further, Sub-sect. 5, *post*, & generally, EXECUTORS & ADMINISTRATORS.

1203. **Rights in property of company—Personal property—Ship owned by company.**—PERRONETT v. DAY (1849), 13 L. T. O. S. 92.

1204. — **Land—No right of registration as elector.**—The members or shareholders of a joint stock co. incorporated under 1856 Act & Joint Stock Companies Act, 1857 (c. 14), have no such freehold interest, legal or equitable, in lands held by the corpn., as to entitle them to be registered as electors, their rights being confined to a proportionate share in the profits of the co.—BULMER v. NORRIS (1860), 9 C. B. N. S. 19; K. & G. 321; 30 L. J. C. P. 25; 3 L. T. 470; 25 J. P. 8; 7 Jur. N. S. 342; 9 W. R. 122; 142 E. R. 8.

Annotations:—*Apld.* Acland v. Lewis (1860), 9 C. B. N. S. 32; Robinson v. Ainge (1869), 1 Hop. & Colt. 193. *Reid.* Bennett v. Blain (1863), 15 C. B. N. S. 518; Watson v. Black (1885), 16 Q. B. D. 270. *Mentd.* Thomas v. Wells (1864), 16 C. B. N. S. 508.

See, further, CORPORATIONS, Vol. XIII., pp. 369, 370, Nos. 1010–1019.

— **Effect of irregular formation.**—See No. 295, *ante*.

To sell property to company.—See No. 9, *ante*.
Shareholder an executor or trustee.—See Sub-sect. 5, B., Sect. 24, sub-sect. 1, *post*.

an agreement with any other co., for leasing or working its line, provided that assent thereto should be given at least two-thirds of the shareholders present, or represented by proxy, at any meeting specially called for the purpose:—*Held*: the word "shareholder" must be interpreted to include all who were entitled to vote as shareholders, which included bondholders.—HENDRIE v. GRAND TRUNK RY. CO. OF CANADA, GRAND TRUNK RY. CO. OF CANADA v. TORONTO, GREY, & BRUCE RY. CO. (1883), 2 O. R. 441.—CAN.

d. **Suspensive condition in allotment letter—No liability until condition fulfilled.**—A joint-stock co. formed for the purpose of purchasing & working certain mines in Canada & registered under 1862 & 1867 Acts issued a prospectus inviting applications for shares. No immediate allotment was made, but after the lapse of some days during which negotiations were going on between the vendors & directors, which resulted in an agreement that a deputation should be sent to Canada to inspect the mines & that the purchase of the mines should depend on the report, letters of allotment were issued requesting payment of £1 per share payable on allotment. At the

end of the allotment letter this notandum was added: "after this payment no further call will be made till the deputation shall have reported on the mines. If the Board resolve not to purchase the mines the money will be returned to the shareholders without deduction." After the payments on allotment had been made the deputation reported unfavourably & the directors resolved not to complete the purchase of the mines. This resolution was approved of at a meeting of the "shareholders" (i.e. allottees of shares) & the money paid on application & allotment was returned to the allottees.

In a petition to settle the list of contributories at the instance of an official liquidator subsequently appointed for the winding up of the co.:—*Held*: the letter of allotment contained a suspensive condition & did not render the allottees shareholders of the co. until it was purified.—CONSOLIDATED COPPER CO. OF CANADA, LTD. v. PEDDIE (1877), 5 R. (Ct. of Sess.) 393.—SCOT.

PART III. SECT. 12, SUB-SECT. 4.—A. (a).

e. **Shareholders dissenting from amalgamation of company—Whether regis-**

tered shareholder in amalgamated company.—When Mining Co. A. was amalgamated with another B., on terms that shares in amalgamated co. should be allotted to shareholders in co. A., & one of the shareholders in co. A. & one of the shareholders in co. B. refused to assent to amalgamation & repudiated shares allotted to them in the amalgamated co.:—*Held*: the amalgamation was not binding on them & they might have followed property of co. A. in hands of amalgamated co. but they could not under the circumstances claim to be shareholders in the amalgamated co. & to have their names put on its list of registered shareholders.—COOK v. LADY BARKLY GOLD MINING CO. (1882), 8 V. L. R. 51.—AUS.

f. **Purchase of shares for voting purposes.**—An election of officers obtained by a trick or artifice cannot be considered a *bond fide* election, but when shares have been actually purchased & paid for, the fact of their being purchased with a view to influence the election is no objection.—TORONTO BREWING & MALTING CO. v. BLAKE (1882), 2 O. R. 175.—CAN.

g. **Misrepresentation by promoters—Whether action by individual share-**

Sect. 12.—Membership: Sub-sect. 4, A. (a), (b) & (c).]

1205. Termination — Construction of memorandum & articles.]—A colliery co. was a member of resp. co., & as such member was entitled to an indemnity against all proceedings, costs, damages, claims & demands in respect of compensation resulting from any accident to its workmen. By the arts. of assocn., "Whenever a member's protection has been determined he shall not be entitled to any indemnity in respect of any accident." The colliery co. made default in payment of a call, & resp. co. removed its name from the list of protected mines & works. The colliery co. was afterwards wound up. Resp. co. had become liable to pay an indemnity to the colliery co. in respect of an accident to applt., one of its workmen, which occurred while the colliery co. was still a member of resp. co.:—*Held*: the clause in the arts. of assocn. referred to accidents happening after the protection had been determined, not to accidents which had happened while it was existing, & on the winding up of the colliery co. resp. co. was liable to pay compensation to applt. under Workmen's Compensation Act, 1906 (c. 58), s. 5.—*DAFF v. MIDLAND COLLIERY OWNER'S MUTUAL INDEMNITY CO.* (1913), 82 L. J. K. B. 1340; 109 L. T. 418; 29 T. L. R. 730; 57 Sol. Jo. 773; 6 B. W. C. C. 799; 20 Mans. 363, H. L.

(b) Against Company.

1206. Right of criticism—By circular to other shareholders.]—A shareholder in a co. had issued to his brother shareholders a circular intimating that the co. was a rotten one & inviting their co-operation in self-defence. It was not alleged that he intended to continue issuing the circular, & the statements in it were not shown to be untrue:—*Held*: though the ct. had jurisdiction upon an interlocutory application to restrain the issue until the hearing, yet it would not do so, & the motion must be refused upon any one of the three following grounds: (1) that the statements were not shown to be false; (2) that there was no allegation of any intention to continue to issue the circular; (3) that it was a privileged communication.—*QUARTZ HILL CONSOLIDATED GOLD MINING CO. v. BEALL* (1882), 20 Ch. D. 501; 51 L. J. Ch. 874; 46 L. T. 746; 30 W. R. 583, C. A. *Annotations*:—*Consd.* *Bonnard v. Perryman*, [1891] 2 Ch.

holders lies.—Individual shareholders cannot take action against promoters for damages caused by alleged misrepresentations by the latter as to the prospects of the co. when formed, the injury, if any, being an injury to the co., not to the respective shareholders. If the shareholders could bring such action a delay of four years, during which they suffered the business of the co. to go on with full knowledge of the alleged misrepresentations, would disentitle them to relief.—*BEATTY v. NEELON* (1886), 13 S. C. R. 1.—*CAN.*

h. Resolution adopted by majority intra vires—Minority cannot restrain carrying out of resolution—Unless fraud on minority.]—The ct. will not at the instance of a minority interfere to restrain the carrying out of a resolution adopted by a majority *intra vires*, unless it clearly appears that such resolution practically constitutes a fraud on such minority.—*ENGLISH v. NEW RIEFFONTEIN DEEP LEVEL GOLD MINING CO., LTD., LIQUIDATORS* (1895), 2 O. R. 249.—*S. AF.*

k. Shareholder lending money to company—Rate of commission fixed by directors—Shareholder can dispute rate.]—*Pltf.* was a shareholder of a co.,

the trust deed of which empowered its directors to fix the rate of commission chargeable on moneys handled. The rate had been fixed at 5 per cent. but there was no evidence to show that the shareholders knew of the rate so fixed:—*Held*: *pltf.* was not estopped from disputing the rate so fixed, & whether a shareholder or not, he would be entitled to object if the rate so fixed & charged was unreasonable in a case in which he himself had entrusted the handling of moneys to the co.—*TYSON v. GRIQUALAND WEST BOARD OF EXECUTORS* (1905), 10 H. C. 1.—*S. AF.*

l. Contract right cannot be extinguished—By majority of similar class of shareholders.]—The contract rights of a shareholder cannot be extinguished by a majority of the class of shareholders to whom he belongs or by the co.—*GILL v. ARIZONA COPPER CO., LTD.* (1900), 2 F. (Ct. of Sess.) 843; 37 Sc. L. R. 602; 7 S. L. T. 439.—*SCOT.*

PART III. SECT. 12, SUB-SECT. 4.—A. (b).

1207i. Right to inspect books & documents—General rule.]—A shareholder of a co. registered under Cos. Act, 1899,

269. *Reid. Poulett (Commonly called Hinton) v. Chatt & Windus & Walford* (1887), 4 T. L. R. 35. *Mentz Quartz Hill Gold Mining Co. v. Eyre* (1883), 11 Q. B. 1674; *Pollard v. Photographic Co.* (1888), 40 Ch. D. 345 *London Motor-Cab Proprietors Assocn. & British Motor Cab. Co. v. Twentieth Century Press* (1912) (Ltd.) (1917) 34 T. L. R. 68.

1207. Right to inspect books & documents—General rule.]—The books & papers of a co. are the property of its shareholders, who are entitled to inspect them, though there is a secrecy clause in the arts. of assocn. & though in the course of inspection they will become acquainted with matters which should be kept secret. But it is their duty not to divulge such information so acquired; & the ct. will restrain them by injunction from so doing, & will punish them should they offend.—*Re JOINT-STOCK DISCOUNT CO., LTD., Ex p. BUCHAN* (1866), 36 L. J. Ch. 150; *sub nom. Re JOINT STOCK DISCOUNT CO., BUCHANAN'S CASE*, 15 L. T. 261; 15 W. R. 99.

Annotation:—*Reid. Re North Brazilian Sugar Factories Co.* (1887), 57 L. J. Ch. 110.

1208. — Books—To prove justification in libel action.]—A shareholder in a joint-stock company is not entitled to an inspection of their books for the purpose of proving a plea of justification in an action against him for libel imputing insolvency to the co.—*METROPOLITAN SALOON OMNIBUS CO., LTD. v. HAWKINS* (1859), 4 H. & N. 146; 32 L. T. O. S. 281; 5 Jur. N. S. 201; 157 E. R. 792.

Annotations:—*Consd.* *Arnold & Butler v. Bottomley*, [1908] 2 K. B. 151. *Reid. Yorkshire Provident Life Assce. v. Gilbert & Rivington*, [1895] 2 Q. B. 148.

1209. — Accounts—Provision in articles—Effect of voluntary winding up.]—A clause in the arts. of assocn. of a co., directing that the books of account, thereby directed to be kept, should, subject to any reasonable restrictions as to the time & manner of inspecting the same that might be imposed by the co. in general meeting, be open to the inspection of the shareholders during the hours of business, is no longer applicable when the co. is under voluntary liquidation.—*Re YORKSHIRE FIBRE CO.* (1870), L. R. 9 Eq. 650; *sub nom. Re YORKSHIRE FIBRE CO., Ex p. NORVALL*, 18 W. R. 541.

Annotation:—*Folld. Re Kent Coalfields Syndicate* [1898] 1 Q. B. 754.

— **Register of members.]**—*See* Nos. 1295, 1296, *post.*

1210. — Debenture trust deeds—No right.]

apart from any right conferred upon the shareholders under its arts. of assocn., is not entitled as of right to investigate the co.'s affairs. His right is merely the common law right of a member of a corp'n. to inspect its documents upon some sufficient cause shown.—*EDMAN v. ROSS* (1922), 22 S. R. N. S. W. 351.—*AUS.*

1207ii. ——*As a general rule & failing any legislative enactment or an agreement to the contrary, a shareholder, being entitled to share in the co.'s profits, is entitled to inspect the books, documents & balance-sheet of the co.; but the co. by its arts. of assocn. may restrict this right. Having a right to inspect a balance-sheet a shareholder has a right to take a copy. The ct. will not assist a shareholder who claims an inspection for some improper purpose. The onus is on the co. to show that the purpose is improper.*—*HOBEN v. CAPE TOWN STEVEDORING CO., LTD.* (1915), 6 C. P. D. 326.—*S. AF.*

m. Right to have inspection of company's affairs.]—In a co. consisting of seven shareholders, *pltf.*, four of the shareholders holding 25 per cent. of the stock, claimed that there had

BURN v. LONDON & SOUTH WALES COAL CO. & RISCA INVESTMENT CO. (1890), 7 T. L. R. 118.

— **As director.**—See No. 1210, *ante*.

See, also, Sect. 28, sub-sect. 4, C., *post*.

1211. — Counsel's opinion—Taken by company—Extent of right.—The rule that where a co. takes the opinion of counsel & pays for it out of the funds of the co., a shareholder has a right to see it does not apply where the co. has brought an action against the shareholder, even although the shareholder has set up a counterclaim alleging the invalidity of the resolution authorising the action.—**WOODHOUSE & CO., LTD. v. WOODHOUSE** (1914), 30 T. L. R. 559, C. A.

1212. — Whether right to publish information acquired included.—*Re* JOINT-STOCK DISCOUNT CO., *Ex p.* BUCHAN, No. 1207, *ante*.

1213. — Whether right to copies included—Register of mortgages.—The right of a creditor or member of a co. to inspect the register of mtges. under 1862 Act, s. 43, includes a right to take copies of the register.—**NELSON v. ANGLO-AMERICAN LAND MORTGAGE AGENCY CO.**, [1897] 1 Ch. 130; 66 L. J. Ch. 112; 75 L. T. 482; 45 W. R. 171; 13 T. L. R. 77; 41 Sol. Jo. 112.

Annotations :—**Folld. Boord v. African Consolidated Land & Trading Co.**, [1898] 1 Ch. 596. **Apld. Bevan v. Webb**, [1901] 2 Ch. 59. **Re Balaghat Gold Mining Co.** (1901), 49 W. R. 625.

— **Register of members.**—See Nos. 1296, 1298, *post*.

1214. — Without payment—Documents in possession of liquidator.—*Re* ARAUCO CO., [1899] W. N. 134.

— **Banking company.**—See **BANKERS & BANKING**, Vol. III., pp. 305 *et seq.*

— **Corporate bodies generally.**—See **CORPORATIONS**, Vol. XIII., pp. 302 *et seq.*

— **In winding up.**—See Sect. 36, sub-sect. 19, D., *post*.

Right to share certificate.—See Sect. 18, sub-sect. 2, *post*.

In respect of non-disclosure in prospectus.—See Sect. 8, sub-sect. 2, C., *ante*.

been mismanagement of the co.'s funds in the payment out of large sums to the president & secretary, for salaries or services, without any legal authority therefor, & in the failure to declare any dividends though the co. had made large profits, & that no satisfactory investigation or statement of the co.'s affairs could be obtained though frequently applied for, & that it was impossible to ascertain the co.'s true financial standing. In these circumstances an investigation of the co.'s affairs was directed.—**WADDELL v. ONTARIO CANNING CO.** (1889), 18 O. R. 41.—**CAN.**

n. ——The object of Manitoba Joint-Stock Companies Act, R. S. M. 1902, c. 30, s. 81, as amended by 4 & 5 Edw. VII. c. 5, providing for the appointment by a judge, if he deems it necessary of an inspector to examine & report on the affairs of a joint-stock co. incorporated under the Act, on the application of shareholders, is simply that facts & circumstances not otherwise open may be disclosed to those concerned. A judge, therefore, should not make such order unless it is made to appear that there is reason on substantial grounds to believe that material information regarding the affairs or management of the co. is being concealed or withheld from shareholders whose interests entitle them to the disclosure, & it is not sufficient to adduce facts merely tending to show mismanagement by the directors.—*Re* TOWN TOPICS CO., LTD. (1911), 20 Man. L. R. 574.—**CAN.**

o. ——In the absence of some
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definite allegation of misconduct, or some suggestion that the directors or the majority of the shareholders are concealing things, or are acting unfairly to the minority, an application, under Cos. Act, 1882, s. 90, for the appointment of inspectors to examine into the affairs of a co., & to report to the ct. will not be granted. The mere fact of ruinous loss sustained by the co. is not in itself a ground for granting such an application.—*Re* MERCANTILE FINANCE CO. (1894), 12 N. Z. L. R. 248.—**N.Z.**

p. Right to an account.—The Ct. of Ch. will grant a decree for an account of the dealings of an incorporated trading co., at the instance of a shareholder therein, although there is no allegation that the co. is insolvent.—**PHILLIPS v. ROYAL NIAGARA HOTEL CO.** (1878), 25 Gr. 358.—**CAN.**

q. Right to injunction—To restrain carrying out of resolution—Application must be bona fide.—The ct. will not consider the quantum of interest of shareholders in a co. who seek for an injunction to restrain a co. from carrying into effect a particular agreement, nor whether their interest would entitle them to vote at a meeting of the co.; but when petitioners had purchased two shares for a nominal consideration, after the agreement which they complained of had been entered into, & with full notice of it, & for the purpose of preventing its completion, the ct. refused an injunction.—**M'DONNELL**

In respect of misrepresentation in prospectus.—See Sect. 8, sub-sect. 3, C., *ante*.

In respect of memorandum & articles departing from prospectus.—See Sect. 8, sub-sect. 4, *ante*.

To petition for winding up.—See Sect. 36, sub-sect. 3, B. (c), *post*.

Rectification of the register of members.—See Sect. 13, sub-sect. 5, B. (d), *ante*.

(c) *Against Directors.*

1215. Directors guilty of misconduct—Fraudulent conduct—Relief in equity.—The holders of shares in a joint stock co., purchased immediately from the co., are entitled to relief, in equity, against the fraudulent conduct of the directors.—**BLAIN v. AGAR** (1828), 2 Sim. 289; 57 E. R. 797.

Annotations :—**Mentd. Small v. Attwood** (1832), You. 407; **Fenn v. Craig** (1838), 3 Y. & C. Ex. 216; **Wilson v. Stanhope** (1846), 2 Coll. 629; **Stewart v. Austin** (1866), 15 W. R. 122; **Peck v. Gurney** (1871), L. R. 13 Eq. 79.

— **Apart from prospectus—Inducing contract to take shares.**—See Sect. 28, sub-sect. 6, B. (d), *post*.

— **Non-disclosure in prospectus.**—See Sect. 8, sub-sect. 2, C., *ante*.

— **Misrepresentation in prospectus.**—See Sect. 8, sub-sect. 3, D., *ante*.

— **Representative action by shareholders.**—See No. 4100, *post*.

— **Obtaining benefits at expense of shareholders.**—See Sect. 28, sub-sect. 6, C. & D., *post*.

1216. Directors exceeding powers—When restrained.—Although it is the undoubted right of every shareholder in a co. to prevent the directors from exceeding their powers, still, where it appears that pltf. is merely a puppet in the hands of others, not shareholders in the co., who indemnify him against the costs of the suit, the ct. will not interfere by interlocutory injunction.—**FILDER v. LONDON, BRIGHTON & SOUTH COAST RY. CO., BARCHARD v. BRIGHTON, UCKFIELD & TUNBRIDGE WELLS RY. CO.** (1863), 1 Hem. & M. 489; 71 E. R. 214.

Annotations :—**Mentd. Seaton v. Grant** (1867), 36 L. J. Ch. 638; **Bloxam v. Met. Ry.** (1868), 3 Ch. App. 337.

v. GRAND CANAL CO. (1853), 3 I. Ch. R. 578.—**IR.**

PART III. SECT. 12, SUB-SECT. 4.—
A. (c).

r. Shareholders suffering damage—Whether one can sue alone for his share of damage—Mere irregularity on part of directors.—A shareholder of a co. cannot, as such shareholder & without in any way referring to or binding other shareholders, institute an action to obtain his proportion of damage alleged to have resulted from a mere irregularity on the part of the directors, affecting him in common with all other shareholders.—**STANLEY v. MOORE** (1891), 17 V. L. R. 285.—**AUS.**

s. — — — Directors acting in excess of authority.—A shareholder is entitled to maintain suit on behalf of himself & other shareholders against directors of a co. acting in excess of authority conferred upon them by arts. of assocn., when such action involve taking away of an individual right vested in shareholder by art.—**DAVIS v. COMMERCIAL PUBLISHING CO. OF SYDNEY, LTD.** (1901), 1 S. R. N. S. W. 37.—**AUS.**

t. — — ——The arts. of assocn. of a co. incorporated under Cos. Act, provided that: "The co. notwithstanding that the whole number of shares in the capital may not be subscribed for or issued, may commence & carry on business when, in the judgment of the director, a sufficient number of shares shall have

Sect. 12.—Membership: Sub-sect. 4, A. (c) & (d) & B. (a).]

1217. — Conferred by resolution—Issue of new capital.]—A ct. of equity will not interfere with the internal management of a joint stock or incorporated co. But where the directors of a railway co., acting upon an old resolution of the shareholders, authorising the directors to raise additional capital, & without notice to the general body of the shareholders, are about to issue new shares & appropriate them for an object different from that in respect of which the power was given to raise moneys by the issuing of shares, the ct. will interfere by injunction to restrain the directors from issuing & appropriating such shares.

A contractor who has made a railway, & been paid by shares instead of cash, has all the same rights & privileges, as to voting & otherwise, in respect of the amount of his shares, as any other shareholder.—*FRASER v. WHALLEY, GARTSIDE v. WHALLEY* (1864), 2 Hem. & M. 10; 11 L. T. 175; 71 E. R. 361.

Annotations:—Apld. Punt v. Symons, [1903] 2 Ch. 506; *Piercy v. Mills*, [1920] 1 Ch. 77.

See, generally, Sect. 28, sub-sects. 5, 6, post.

(d) *Against other Shareholders.*

1218. To enforce judgment—Obtained against company.]—The A. co. having amalgamated with the B. co., by the deed of amalgamation those shareholders of the A. co. who joined the B. co. were, & those who refused to join were not, entitled to indemnity from the B. co. against the liabilities of the A. co. W., one of the shareholders of the A. co. who refused to join the B. co., bought up a judgment debt against the A. co., & there being no assets of the A. co. applied, in the name of the creditor, under s. 68 of the 7 & 8 Vict., c. 110, for execution against C., one of the shareholders of the A. co., who had joined the B. co.:—*Held*: this was a fraudulent use by W. of the debt in order to relieve himself from liability at the expense of his co-shareholders who had joined the B. co., & the application was refused with costs.—*WOODHAMS v. ANGLO-AUSTRALIAN & UNIVERSAL FAMILY LIFE ASSURANCE CO.* (1864), 2 De G. J. & Sm. 162; 3 New Rep. 697; 10 L. T. 178; 10 Jur. N. S. 482; 12 W. R. 674; 46 E. R. 337, L. J.J.

Annotation:—Consd. Re Hercules Insee, Brunton's Claim (1874), L. R. 19 Eq. 302.

been subscribed for to justify them in so doing." After publication of the first balance-sheet, which showed a loss on the year's working, an action was raised by a shareholder, whose shares had been allotted to him after the incorporation of the co. to have A., & other persons, who were directors of the co. at the date of allotment, ordained to accept a transfer of these shares & to repay him the amount of his subscription. He averred that at the date of allotment no sufficient capital had been subscribed to justify defender proceeding to allotment or commencing business; that they had done so recklessly & negligently, & without exercising any judgment in the matter & that they had acted *ultra vires* & in breach of their duty to pursuer:—*Held*: pursuer, as an individual shareholder of a co. still carrying on business, was not entitled to sue the directors for damages to himself arising from an alleged wrong to the co. by acts of the director of such a nature as might be sanctioned & confirmed by the co. as he did not allege that he had called the attention of the co. to the matter & had been outvoted.—*BROWN v. STEWART* (1898), 1 F. (Ct. of Sess.) 316; 36 Sc. L. R.

221.—SCOT.

a. — *False reports issued by directors.]—*An action founded on fraud, not merely by lending money to insolvent persons which might be ratified by the co., but by systematically making false reports, & declaring false dividends which latter could not be ratified by the co., could be maintained by an individual shareholder.—*DAVIDSON v. TULLOCH* (1860), 22 Dunl. (Ct. of Sess.) 7; 3 Macq. 783; 32 Sc. Jur. 363.—**SCOT.**

PART III. SECT. 12, SUB-SECT. 4.—A. (d).

b. *Shareholder member of solicitor's firm acting for company—May sue for his costs.]—*At a meeting of certain shareholders in a mining co. of whom B. an attorney was one, it was agreed that B.'s firm should act for such shareholders in certain litigation relative to the co. & might charge for their services notwithstanding B. was a shareholder. In an action by B. & his partners against the other shareholders there was a verdict for plffs. for the amount of their bill of costs. On a rule for a nonsuit:—*Held*: plffs. were competent to sue

1219. Right of majority of shareholders—To bind minority—Agreement to allow forfeiture of property.]—Applt., a shareholder in a joint-stock gold-mining co. in Victoria, took proceedings to obtain possession of a claim belonging to the co. for a forfeiture under the Mining Act of the colony. By an agreement with a majority of the shareholders of the co., viz., all the shareholders except resps., applt., in consideration of their not opposing his proceedings to enforce a forfeiture, guaranteed them in the event of his success the full benefit of their shares:—*Held*: such an arrangement was one that a ct. of equity could not allow to stand.—*SMITH v. HARRISON* (1872), 27 L. T. 188; 20 W. R. 594, P. C.

— **Amalgamation of company—Rights of dissentient shareholders.]—***See Sect. 37, sub-sect. 13, E. (a), post.*

1220. — Resolution giving power to expropriate.]—Deft. co., not having power under its original arts. of assocn. to acquire compulsorily the shares of members, passed special resolutions altering its arts. & introducing a power enabling the majority of the shareholders to determine that the shares of any member, other than a certain named co., should be offered for sale by the directors to such person or persons, whether a member or members or not, as they should think fit at the fair value to be fixed from time to time at stated intervals by the directors.

The shareholders in deft. co. were principally cos. & persons manufacturing tinplates who were originally invited to become shareholders on the understanding that, although under no legal obligation to do so, they were to take the steel bars required for their tinplates from deft. co. which was formed as a private co., with the object of providing such supply. Pltf. co., which was an original shareholder of deft. co., subsequently withdrew its custom & transferred it to a new rival steel co. which pltf. co. had been instrumental in forming. Being unable to acquire pltf. co.'s shares by agreement, deft. co. passed the resolutions in question with the object of acquiring pltf. co.'s shares & of protecting deft. co. against conduct on the part of its shareholders detrimental to the interests of the co.:—*Held*: the resolutions in conferring an unrestricted & unlimited power on the majority of the shareholders to expropriate any shareholder they might think proper at their will & pleasure, went much further than was

under such an agreement.—*BENNETT v. SOLOMON* (1867), 4 W. W. & A.B. 227.—**AUS.**

c. *Secret profit made by two shareholders of company—Bargain with purchaser to use their power in influencing sale—Profit belongs to company—As part of purchase-money.]—*A secret agreement by an intending purchaser with one of several shareholders, to pay him a sum of money in consideration of his using his influence with the other shareholders to promote a sale of the co.'s assets at a certain price, is founded on an illegal consideration. Money paid under such an agreement, being really paid in order to obtain the property, must be treated as part of the purchase-money, & accounted for by the shareholder.

Two shareholders in a newspaper co. one being a contributor & the other managing director & editor, entered into an agreement for the purpose of preventing a projected sale of the co.'s assets, unless they individually received a consideration from the purchaser for the sale of their shares in addition to the price offered per share to the shareholders generally. They accordingly employed an agent

necessary for the protection of co. from the conduct of shareholders detrimental to the co.'s interests, & the power thereby conferred could not be *bonâ fide* or genuinely for the benefit of the co. as a whole & was not such a power as could be assumed by the majority.—*DAFEN TINPLATE CO., LTD. v. LLANELLY STEEL CO. (1907), LTD.*, [1920] 2 Ch. 124; 89 L. J. Ch. 346; 123 L. T. 225; 36 T. L. R. 428; 64 Sol. Jo. 446.

Meetings generally.—See Sect. 30, sub-sect. 3, *post*.

B. Liabilities.

(a) *In General.*

1221. For debts of company—Not directly liable to creditor.—*OAKES v. TURQUAND & HARDING, PEEK v. TURQUAND & HARDING, Re OVEREND, GURNEY & Co., No. 1, ante.*

— **Under 1845 Act.**—See Part IX., Sect. 6, sub-sect. 4, *B., post*.

1222. — May be liable on call made to pay creditors—Though having defence to calls generally.—*OAKES v. TURQUAND & HARDING, PEEK v. TURQUAND & HARDING, Re OVEREND, GURNEY & Co., No. 1, ante.*

1223. — Authority of company to pledge credit of shareholder—Business in country not recognising limited liability.—An English limited co., registered under the Cos. Acts, was empowered by its memorandum & arts. of assocn. to do business in a foreign country, & to do all such things as might be necessary to comply with the statutory enactments of the country. By the law of the foreign country no corp'n. organised outside the country was allowed to do business within it on more favourable terms than were prescribed by law for corpns. organised within it. By the law of the foreign country each stockholder in a corp'n. was individually & personally liable for a part of the debts of the corp'n. proportionate to his share of its capital. The co. having failed to pay a debt which after having been registered in the foreign country it had in the course of business contracted there, the creditor brought an action in England against a shareholder whose shares were fully paid up, claiming to recover from him a part of the debt proportionate to his interest in the capital:—*Held*: there were no facts from which an authority from the shareholder to the co. to pledge his personal credit could be implied, & he was not liable.—*RISDON IRON & LOCOMOTIVE WORKS v. FURNESS*, [1906] 1 K. B. 49; 75 L. J. K. B. 83; 93 L. T.

to treat with the purchaser, the result being that they received £100 per share for each held by them, the price paid to the other shareholders being £75 per share. They then attended meetings of the shareholders, & moved resolutions in favour of the sale. The transaction becoming known to the shareholders after the sale, legal proceedings were threatened by them, when one of the shareholders paid over the money received by him to the liquidators of the co., conditionally as he alleged, & afterwards sued to recover it. At the trial a verdict was entered by consent, for the amount claimed, with leave to debts. to move to enter a verdict for them:—*Held*: the transaction was fraudulent, & pltf. was a trustee for the co. in respect of the money received.—*STANFORD v. GILLIES (1879)*, O. B. & F. 91.—N.Z.

PART III. SECT. 12, SUB-SECT. 4.—*B. (a).*

d. Liability for calls—Though articles of association not strictly complied with.—In an action against debt. for the amount of a call & interest

687; 54 W. R. 324; 22 T. L. R. 45; 50 Sol. Jo. 42; 11 Com. Cas. 35, C. A.

Shares taken in name of nominee—True owner liable to be put on list of contributories.—See No. 1377, *post*.

1224. Joint ownership—Liability survives on death of joint owner.—*Re MARIA ANNA & STEINBANK COAL & COKE CO., MAXWELL'S CASE, HILL'S CASE, No. 436, ante.*

To take up & pay for shares—As signatory to memorandum.—See Sect. 7, sub-sect. 6, *ante*.

— **Under contract to take shares.**—See, generally, Sect. 17, *post*.

— **Shares issued as fully-paid.**—See Sect. 20, sub-sect. 2, *post*.

— **To promoters.**—See No. 81, *ante*.

— **To signatories of memorandum.**—See Sect. 7, sub-sect. 6, A. (b) ii., *ante*.

1225. — Pretended payment of consideration.—B., at the request of A., a director of a co., signed a letter of application for 1,000 shares; the shares were allotted to him, & share certificates were issued by the co. stating that the shares were fully paid-up. The moneys due in respect of the shares on application & allotment were nominally paid by A., & receipts, in B.'s name, for the amounts so paid were given by the bankers of the co. The moneys so paid by A. were drawn out again by him a day or two afterwards. The co. was afterwards ordered to be wound up. B. was settled on the list of contributories in respect of these shares, & a call order was made:—*Held*: on motion to discharge the call order, B. was liable to pay the call, as there had in fact been no payment to the co. of the moneys due in respect of these shares; & motion refused with costs.—*Re EUPION FUEL & GAS CO., ASPINALL'S CASE (1877)*, cited in 8 Ch. D. at p. 396; 36 L. T. 362, C. A.

Annotations:—*Reid. Re Englefield Colliery Co. (1878)*, 8 Ch. D. 388. *Mentd. Re Northern Counties Bank (1883)*, 31 W. R. 546.

Calls.—See Sect. 21, sub-sect. 4, *post*.

1226. Limited to liability on shares.—(1) The sale of all a co.'s assets & all its undertaking & the distribution of the proceeds cannot be a corporate object so that under a clause for that purpose introduced into the memorandum of assocn. such a sale & distribution can be made without regard to the provisions of sect. 161 of the 1862 Act.

(2) A co. limited by shares cannot by its memorandum & arts. of assocn. provide as part of its constitution that in an event the corporator shall

thereon, evidence was given that debt., who was both secretary of the co. & a shareholder, had signed the notice of the call sent to the other shareholders in Sydney but it was not shown that any advertisement had been inserted in newspapers at Sydney or Brisbane, according to the arts. of assocn. A share register was put in evidence purporting to be a register of the Sugar Loaf Tin Mining Co., the page on which debts. name appeared being dated Sept. 9, 1872, but on the same page was the date Jan. 15, 1873. The minute book contained in debts. handwriting a resolution dated Dec. 5, 1872, that a call of sixpence be made:—*Held*: debt. was a member of the co., & had received sufficient notice of the call, which had been properly made; & as the register book complied with all the statutory requirements, the whole page must be read together & was rightly admitted as evidence of membership; & debt. was liable for the amount of the call with interest thereon.—*SUGAR LOAF MINING CO. v. PILE (1874)*, 4 Q. S. C. R. 62.—AUS.

1226 i. Limited to liability on shares.

—*Joint-Stock Cos. Act, 1844 (c. 110)*, s. 68, provides a summary proceeding whereby a creditor who has obtained a judgment or decree against any co. incorporated thereunder, may call on any shareholder, by motion or otherwise according to the practice of the various cts., to pay his claim. Upon such an application against shareholders resident in Canada by a creditor who had obtained a decree:—*Held*: the statute did not apply to proceedings in Canadian cts.—*PENLEY v. BEACON ASSURANCE CO. (1864)*, 10 Gr. 422.—CAN.

1226 ii. ——In an action brought against a stockholder by a creditor of the co. to recover amounts due & unpaid on certain shares, debt. pleaded that prior to the issuing of the writ in this action certain other actions had been commenced against him to enforce payment of the same amounts, & that they were still pending:—*Held*: the plea was no defence, as it did not show payment to some one or more entitled to it.—*PERRY v. MCCRAKEN (1876)*, 7 P. R. 32.—CAN.

1226 iii. ——In 1872 five persons

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either submit to a liability in excess of the limit of liability on his shares or shall be dispossessed of his status as corporator.

Where a limited co., which had issued 1,770,386 fully-paid shares of £1 each, acting under the powers of its memorandum & arts. of assocn. passed resolutions in general meeting approving a scheme of reconstruction & for a voluntary winding up, & by the scheme the undertaking of the co. was to be sold to a new co. to be formed for the purpose in consideration of a like number of £1 shares in the new co., credited with 17s. 6d. per share as paid thereon, & the payment of the debts & the costs of liquidation of the old co., & the liquidator was to offer the shares in the new co., credited as aforesaid, for distribution among the members of the old co., at the rate of one of such new shares for each share in the old co. held by such members, & in the event of any of the members not accepting their due proportion of such shares within a limited time, was to use his best endeavours to sell such shares & distribute the net proceeds among the non-accepting members in proportion to the number of shares in the old co. held by them respectively:—*Held*: the scheme was *ultra vires*.—*BISGOOD v. HENDERSON'S TRANSVAAL ESTATES, LTD.*, [1908] 1 Ch. 743; 77 L. J. Ch. 486; 98 L. T. 809; 24 T. L. R. 510; 52 Sol. Jo. 412; 15 Mans. 163, C. A.

Annotations:—*As to (1) Apld.* *Etheridge v. Central Uruguay Northern Extension Ry.*, [1913] 1 Ch. 425. *Refd.* *Re Jewish Colonial Trust (Juedische Colonialbank)*, [1908] 2 Ch. 287; *Re Guardian Assce.*, [1917] 1 Ch. 431; *Re Anglo-Continental Supply Co.*, [1922] 2 Ch. 723. *As to (2) Consd.* *Re Anglo-Continental Supply Co.*, [1922] 2 Ch. 723. *Refd.* *Hickman v. Kent or Romney Marsh Sheep Breeders' Assn.*, [1915] 1 Ch. 881; *Re Aramayo*

filed in the registry office a declaration that they were desirous of forming a joint-stock co., by the name of the Dominion Safety Gas Co., for the object of the manufacture & or sale of the machinery & materials for the manufacture or production of gas from evaporating fluids, & gas fixtures of all kinds, & also the lighting of cities, etc., with gas, with a capital stock of \$6,000, in 300 shares of \$20 each, & three of debts. were stated to be trustees. Subsequently these trustees met & passed bye-laws as to the government of the co. On Feb. 17, 1873, a meeting of the shareholders was held, when an agreement was entered into for the purchase of a patent for the manufacture of gas, & a resolution was passed that the shareholders should pay on their stock enough to make a working capital of \$1,250. An agreement was made that the stock should be divided up between the five debts. in proportions stated, & these debts., as shareholders, subsequently met, increased the number of trustees from three to five, & elected themselves such trustees. No stock was ever subscribed for or anything ever paid thereon, the money required to carry on the business being raised from time to time by contribution. The co., in 1874, put up a gas machine in pltf.'s residence, which, on Feb. 12, 1874, exploded, & injured pltf., for which he sued the co. & recovered damages, & on Feb. 29, 1876, judgment was entered, & a *fi. fa.* issued against the co., which was returned *nulla bona*. This action was then brought against debts., as shareholders, for the amount of the unpaid stock, & also as trustees on their individual liability under the Act for neglecting to publish within twenty days after Jan. 1, 1875, as required by the Act, a report stating the amount of the capital stock actually

paid & of the then existing debts of the co., or to insert therein pltf.'s claim as one of such existing debts:—*Held*: debts. were not liable as shareholders in the co. to pltf., as a creditor, for to create such liability, under the statute, there must be a subscription for stock; & the fact that they had acted & been treated as shareholders would not enable a creditor to proceed against them as such; & neither were they liable as trustees for neglecting to make the report, for pltf.'s claim was not an existing debt at the time of such neglect, nor until the entry of his judgment.—*OSLER v. BOWELL* (1878), 43 U. C. R. 40.—**CAN.**

1226 iv. —.]—A circular was issued with the knowledge of the directors of debt. co., which, amongst other things, set out that "loans can be paid at any time & a discharge of the mtge. will be given, the rule of the society being, when this privilege is taken advantage of, to charge three months' additional interest at the same rate at which the loan was made." Pltf. saw this circular exposed in the office of an appraiser of the co. through whom the loan was effected, & was thereby induced to mtge. his land for twenty years, the loan to be repayable on the instalment plan:—*Held*: although the mtge. recited that the mtgor. was a member of the society, having subscribed for 88 shares of the stock, which the society had agreed to pay him in advance on receiving that security therefor, etc., yet without express stipulation to that effect, the mtgor. could not be affected by rules made subsequently to the execution of the mtge., even if he could under the system under which the operations of the society were carried on be considered a member when he had received the amount of his shares; but that at all events

Francke Mines, [1917] 1 Ch. 451; *Dibble v. Wilts & Somerset Farmers*, [1923] 1 Ch. 342. *Generally*, *Mentd. Thomson v. Henderson's Transvaal Estates* (1908), 98 L. T. 815.

Liability to charging order—Whether shares held in own right under Judgments Act, 1838 (c. 110), s. 14.]—See EXECUTION.

Shareholder a trustee.]—See Sub-sect. 5, B., post.

Shareholder an executor.]—See Sect. 24, sub-sect. 1, post.

(b) Extent.

1227. Unlimited company—Insurance company—Liability on policies limited to assets—Members not liable on policies beyond amounts of their shares.]—An unregistered assurance society issued policies under which the assets of the co. alone were liable. The co., being insolvent, was registered as an unlimited co. under 1862 Act, & immediately afterwards ordered to be wound up:—*Held*: the shareholders were liable beyond the amount of their shares for the expenses of the winding up; but there was no liability beyond the amount of the shares for any breach of contract involved in ceasing to carry on business.—*LETHBRIDGE v. ADAMS, Ex p. INTERNATIONAL LIFE ASSURANCE SOCIETY (LIQUIDATOR)* (1872), L. R. 13 Eq. 547; 41 L. J. Ch. 710; 26 L. T. 147; 20 W. R. 352.

1228. ——— Members liable beyond amounts of shares for expenses of winding up.]—*LETHBRIDGE v. ADAMS, Ex p. INTERNATIONAL LIFE ASSURANCE SOCIETY (LIQUIDATOR)*, No. 1227, *ante*.

—— Effect of subsequent registration as limited company.]—See Part III., Sect. 4, sub-sect. 5, ante.

1229. Limited company—General rule.]—Two shareholders & directors of a joint stock co. pre-

his liability could not be extended beyond the clear words of his contract, which did not point to any but the then existing rules.—*HODGINS v. ONTARIO LOAN & DEBENTURE CO.* (1882), 7 A. R. 202.—**CAN.**

1226 v. —.]—In ordinary circumstances there is no liability to pay for shares until a call is made, & notice thereof given to a shareholder, & until that time Stat. Limitations does not begin to run against the co. Therefore persons named in the charter issued in 1880 as shareholders were in 1891 held liable to pay the amount of their shares, no formal call having in the meantime been made.—*Re HAGGERT BROTHERS MANUFACTURING CO., PEAKER & RUNIONS' CASE* (1892), 19 A. R. 582.—**CAN.**

1226 vi. —.]—It is questionable whether *British Columbia Railway Act*, 1890, s. 38, providing that every shareholder shall be individually liable to the creditors of the co. for the debts of the co. to an amount equal to the amount unpaid on the shares held by him, can be worked out in any other way than by a winding up of the co. & the making of calls on the contributories.—*EDISON GENERAL ELECTRIC CO. v. EDMONDS* (1896), 4 B. C. R. 354.—**CAN.**

1226 vii. —.]—The liability of a shareholder is to be measured by his contract. The ct. cannot expand this contract; nor will it fix upon a party any engagement larger or other than that into which he has entered.—*Re MODERN HOUSE MANUFACTURING CO., DOUGHERTY & GOUDY'S CASE* (1914), 28 O. L. R. 286; 4 O. W. N. 861; 14 D. L. R. 25.—**CAN.**

e. For debts of company—Improper distribution of assets.]—REIDER v. SAIR, [1923] 1 D. L. R. 765; 16 Sask. L. R. 384.—**CAN.**

sented a petition stating that the co. had ceased to carry on business, that some of the shareholders had paid more than the full amount of the calls upon their shares, but that there were some who had not paid the full amount of calls, that the debts were all paid & a surplus remained in hand, & it was proposed to divide this surplus ratably among those who had contributed more than the calls upon their shares; & the petition prayed a reference to the master to wind up the affairs of the co. under the provisions of Joint Stock Cos. Act, 1847 (c. 45), & that the master might be at liberty if he should so think fit, to wind up without the shareholders who had not paid the full amount of the calls upon their respective shares being compelled to contribute the sums which they ought to have paid. The ct. refused to do more than make the common order to dissolve & wind up under the provisions of the Act.—*Re BRITISH & AMERICAN STEAM NAVIGATION CO., Ex p. BAINBRIDGE* (1849), 12 L. T. O. S. 394.

1230. ———.]—The obligation to contribute to the assets of the company in one way or another the nominal amount of the shares, is part of the statutory constitution of every joint stock company limited by shares embodied in its memorandum of assocn., & therefore not alterable by the co. or by the unanimous consent of all the shareholders (*LORD DAVEY*).—*WELTON v. SAFFERY*, [1897] A. C. 299; 66 L. J. Ch. 362; 76 L. T. 505; 45 W. R. 508; 13 T. L. R. 340; 41 Sol. Jo. 437; 4 Mans. 269, H. L.; *affg. S. C. sub nom. Re RAILWAY TIME TABLES PUBLISHING CO., Ex p. WELTON*, [1895] 1 Ch. 255, C. A.

Annotations:—Reid. Bigood v. Henderson's Transvaal Estates, [1908] 1 Ch. 743; *Re Home & Foreign Investment & Agency Co.*, [1912] 1 Ch. 72; *Hickman v. Kent or Romney Marsh Sheep Breeders' Asscn.*, [1915] 1 Ch. 881; *Dibble v. Wilts & Somerset Farmers*, [1923] 1 Ch. 342. *Mentd. Re Peveril Gold Mines*, [1898] 1 Ch. 122; *Re Baring Gould & Sharpington Combined Pick & Shovel Syndicate* (1899), 68 L. J. Ch. 429; *Re Welsh Whisky Distillery Co.* (1900), 16 T. L. R. 246; *Randt Gold Mining Co. v. New Balkis Eersteling* (1901), 71 L. J. K. B. 346; *Mother Lode Consolidated Gold Mines v. Hill* (1903), 19 T. L. R. 341; *Mosely v. Koffyfontein Mines*, [1904] 2 Ch. 108.

1231. ——— **Liability beyond nominal amount of shares—Special provision in articles.**—*PENINSULAR CO., LTD. v. FLEMING*, No. 415, *ante*.

1232. ——— **Liability to company.**—*Re MARIA ANNA & STEINBANK COAL & COKE CO., MCKEWAN'S CASE*, No. 437, *ante*.

1233. ——— **Limited in proportion to shares.**—*Re MARIA ANNA & STEINBANK COAL & COKE CO., MCKEWAN'S CASE*, No. 437, *ante*.

1234. ——— **One man company—Member not**

liable to indemnity.—*SALOMON v. SALOMON & CO., SALOMON & CO. v. SALOMON*, No. 11, *ante*. Compare *BANKRUPTCY & INSOLVENCY*, Vol. IV., p. 334, No. 3137.

— **Subscribers to memorandum.**—See No. 361, *ante*.

— **Commencement of liability as contributory.**—See Sect. 36, sub-sect. 10, E. (b), *post*.

As executors.—See Sect. 24, sub-sect. 1, *post*.

As trustees.—See Sub-sect. 5, B., *post*.

(c) *Termination.*

1235. By transfer of shares—Construction of partnership deed.—One clause of a joint-stock co.'s partnership deed declared that no member should in any case, as between himself & the partnership, be liable for any debts, calls, or demands upon the said company after he should have ceased to be a member, "save only & except for & in respect of any sum or sums which he shall or may be liable to pay by reason of any forfeiture, penalty, or misconduct." A subsequent clause declared, that after transfer "the former or last proprietor thereof shall thenceforth be for ever acquitted & discharged of & from all covenants, agreements, regulations, obligations, & liabilities whatsoever" in respect of the shares transferred, "save only in respect of any penalty, forfeiture, or liability which shall have been previously incurred by him, her, or them in regard thereto":—*Held*: (1) the saving as to liability in the first clause meant, in respect of any personal liability of the member to the company; (2) the saving in the latter clause must be construed to mean the same personal liability, for that to give it a larger construction would be to annul the discharge from liability previously given.—*Re OUNDLE UNION BREWERY CO., CROXTON'S CASE* (1852), 1 De G. M. & G. 600; 19 L. T. O. S. 209; 16 Jur. 507; 42 E. R. 685, L. C.

Annotations:—As to (1) Consd. Re Tipperary Joint Stock Bank, Ex p. Stirling & Kennedy (1857), 29 L. T. O. S. 403. *Reid. Re Monmouthshire & Glamorganshire Banking Co., Cape's Exor.'s Case* (1852), 2 De G. M. & G. 562. *As to (2) Reid. Re Monmouthshire & Glamorganshire Banking Co., Cape's Exor.'s Case* (1852), 2 De G. M. & G. 562. *Generally, Mentd. Re Pennant & Craigwen Consolidated Lead Mining Co., Fenn's Case* (1854), 4 De G. M. & G. 285.

1236. ——— **Transferor liable for losses before transfer.**—By the terms of a deed of settlement of a joint-stock co., it was provided that whenever any shares should be transferred to a new holder, the responsibility of the previous holder in respect of such shares should cease, but that he should

PART III. SECT. 12, SUB-SECT. 4.—
B. (c).

1. By transfer of shares—Transfer not registered—Estoppel.—Motion by A. that the register of shares of the City of Melbourne Bank be rectified by the removal of his name therefrom, & from the list of contributories, in respect of 350 shares. A., who originally had 1,130 shares in the Bank, employed a broker in Aug. 1893, to sell 350 of his shares. The broker sold them in the ordinary course, & gave him a bought & sold note, & paid him for the shares. There was at that date an undoubted *bona fide* sale of the shares to some person. After the sale A. through his son, a solr., immediately took steps to have the sale perfected by having the shares registered in the name of the purchaser. The solr. duly lodged a transfer signed by his father & attended many times at the Bank to inquire as to the progress of the transfer; & was ultimately informed by the share clerk that the transfer has been per-

fectd by registering the purchaser as transferee. Relying on the transfer having been completed A. subsequently applied to alter his scrip. He had sold 350 of the 1,130 shares & consequently required new certificates for 780 shares. Scrip was forwarded to him for 780 shares. Subsequently several applications were made to A. to pay calls of five shillings on the 780 shares only. It still, in fact, appeared in the register that A. held 1,130 shares, & the payments of calls by him were treated by the Bank as though made on 1,130 shares, although the amounts of the calls made showed that they were really made on 780 only. The Bank further wrote a letter which indicated that A.'s liability was limited to the 780 shares. The scrip for the 780 shares was signed by two directors, who must have known the state of affairs. A. had all the time no ground for supposing that the shares had not been transferred. It appeared that the real purchaser of the shares was probably the manager of the Bank. But he died in 1894.

In Feb. 1895, an application was made to A. for payment of a call on 1,130 shares, in accordance with a clause in the arts. of assocn. A. wrote denying that he had any obligation except in respect of 780 shares. After some delay, the solrs. for the Bank wrote, in May, 1895, intimating that the Bank knew nothing of the sale of 350 shares, & stating that they expected him to pay calls on 1,130, & asking him whether he would take action to have his name removed, or whether he preferred to be sued for calls. A. in answer said that he had not made up his mind. After some further correspondence the Bank went into liquidation in Aug. 1895:—*Held*: there was an estoppel against the Bank in favour of A., at all events up to Feb., 1895, & it was not now too late to agitate that question in his favour, to prevent his being made a contributory; & there was a sufficient person to prevent the transaction from amounting to a mere surrendering of the shares & to make it a *bona fide* transfer, & A. was not liable to be

Sect. 12.—Membership: Sub-sect. 4, B. (c) & C.; sub-sect. 5, A. & B. (a) i.]

not be released from his proportion of losses, if any, sustained by the co. up to the period of his ceasing to be such shareholder. It was also provided that the directors should at every half-yearly meeting procure a balance-sheet of the affairs of the co., which they never did. Upon the winding up of the co.:—*Held*: a transferor of shares was liable in respect of losses that accrued prior to the date of the transfer, though, the liability being by way of specialty, a holder who transferred his shares more than twenty years before the date of the winding up was entitled to the benefit of Statute of Limitations.

The directors never presented any balance-sheet or summary of accounts, but they produced a report half-yearly in which the affairs of the co. were mis-stated. A winding up order was obtained:—*Held*: the shareholders were not bound by the directors' reports.—*Re PORTSMOUTH BANKING CO., HELBY'S, STOKES' & HORSEY'S CASES* (1866), L. R. 2 Eq. 167; 14 L. T. 47; 14 W. R. 417.

— **Completed by registration.]—See Nos. 1288, 1422, post.**

See, generally, Sect. 23, sub-sects. 4 & 8.

— **More than twelve months before winding up.]—See Sect. 23, sub-sect. 14; Sect. 36, sub-sect. 10, E. (a) iii., post.**

1237. By amalgamation.]—WOODHAMS v. ANGLO-AUSTRALIAN & UNIVERSAL FAMILY LIFE ASSURANCE CO., No. 1218, ante.

1238. By forfeiture of shares—Shares forfeited by consent—Shareholder remains liable as contributory.]—S. owned shares by allotment & purchase in a co., & as such shareholder executed a deed of settlement containing clauses regulating the admission & withdrawal of shareholders & the transfer of shares. In the course of business difficulties arose, & it was proposed to allow certain dissentient shareholders to retire, their shares to be forfeited. Notice of this proposition was given to all the shareholders, & it was adopted at a general public meeting. S. objected to the mode in which it was proposed to allow shareholders to retire, & sought to have the co. wound up. Cross litigation followed, & whilst this was pending the directors agreed to allow him to retire upon conditions which were not contained in the deed of settlement nor in the proposition adopted at the meeting. No notice of the agreement with S. was given to the shareholders, but they were aware of the retirement of S., & no fraudulent concealment was alleged against the directors. In accordance with the terms of the agreement, the name of S. was removed from the list of shareholders in 1849. Subsequently, the co. changed its mode of conducting business, & dividends were paid, but S. received no notice of the change, he received no dividends, & took

no part in the affairs of the co.:—*Held*: the name of S. was rightly placed on the list of contributors.—*SPACKMAN v. EVANS* (1868), L. R. 3 H. L. 171; 37 L. J. Ch. 752; 19 L. T. 151, H. L.; *affg. S. C. sub nom. Re AGRICULTURIST INSURANCE CO., SPACKMAN'S CASE* (1865), 5 New Rep. 385, L. C.

Annotations:—Distd. Re Agriculturist Cattle Insce., Belhaven's Case (1865), 3 De G. J. & Sm. 41. **Consd. Re Agriculturist Cattle Insce., Stanhope's Case** (1866), 1 Ch. App. 161; *Houldsworth v. Evans* (1868), L. R. 3 H. L. 263. **Expld. Evans v. Smallcombe's Exors.** (1868), 37 L. J. Ch. 793. **Distd. Re Cobre Copper Mine Co., Kelk's Case, Pahlen's Case** (1869), L. R. 9 Eq. 107. **Folld. Re Agriculturist Cattle Insce., Dixon's Case** (1869), 5 Ch. App. 79; *Re Patent Paper Manufacturing Co., Addison's Case* (1870), 5 Ch. App. 294. **Appld. Re Bewley's Estates, Jefferys v. Jefferys** (1871), 24 L. T. 177. **Distd. Re Phosphate of Lime Co., Austin's Case** (1871), 24 L. T. 932. **Consd. Phosphate of Lime Co. v. Green** (1871), L. R. 7 C. P. 43; *Ashbury Railway Carriage & Iron Co. v. Riche* (1875), L. R. 7 H. L. 653. **Refd. Downes v. Ship** (1868), L. R. 3 H. L. 343; *Ex p. London & Colonial Co., Tooth's Case* (1868), 19 L. T. 599; *Re General Provident Assce., Cross's Case* (1869), 38 L. J. Ch. 583; *Re Agriculturist Cattle Insce., Bush's Case* (1870), 6 Ch. App. 246; *Re Accidental Death Insce., Allin's Case* (1873), 43 L. J. Ch. 116; *Re Esparto Trading Co.* (1879), 12 Ch. D. 191; *Re London & Staffordshire Insce.* (1883), 24 Ch. D. 149. **Mentd. Re Agriculturist Cattle Insce., Stewart's Exors. Case** (1866), 12 Jur. N. S. 611; *Murray v. Bush* (1873), 22 W. R. 280; *Re Scottish Petroleum Co., MacLagan's Case* (1882), 46 L. T. 880; *Re Argyle Coal & Cannell Co., Ex p. Watson* (1885), 54 L. T. 233; *Ho Tung v. Man On Insce.* (1901), 71 L. J. P. C. 46; *Re Republic of Bolivia Exploration Syndicate*, [1914] 1 Ch. 139.

See, generally, Sect. 27, sub-sect. 5, post.

By surrender of shares.]—See Sect. 26, post.

By resignation of trusteeship.]—See No. 1241, post.

C. Shareholder Estopped from Claiming Rights or Denying Liabilities.

By delay or acquiescence—Relief sought on ground of misrepresentation in prospectus.]—See Sect. 8, sub-sect. 3, C., ante.

— **Relief sought on ground of non-disclosure in prospectus.]—See Sect. 8, sub-sect. 2, C., ante.**

— **Relief sought on ground of departure from prospectus.]—See Sect. 8, sub-sect. 4, C., ante.**

— **Acquiescence in allotment.]—See Sect. 17, sub-sect. 3, F., ante.**

— **Relief sought in respect of contract to take shares.]—See Sect. 17, sub-sect. 1, G. (d), post.**

— **Relief sought in respect of contract to purchase shares.]—See Sect. 23, sub-sect. 2, C. (d) iii., post.**

— **Relief by way of rectification of register.]—See Sect. 13, sub-sect. 5, B. (f), post.**

— **Relief claimed by way of defence to action for calls.]—See Nos. 2123, 2124, 2127, post.**

By receipt of dividends.]—See Nos. 829, 830, ante.

By signing blank transfer.]—See Sect. 23, sub-sect. 3, (D. (b)), post.

made a contributory in the winding up, & his name should be removed from the register in respect of 350 shares.—*ALSTON'S CASE* (1896), 22 V. L. R. 243, n.—**AUS.**

g. — — — — —.]—W., who was the registered holder of shares in a co., sold his shares through a broker & executed a transfer. The transfer was never filled up with the name of nor executed by the transferee. It appeared that these shares, among others, had been bought with the co.'s moneys under the direction of the manager & in accordance with a resolu-

tion of the directors to buy shares either for themselves or for the co. A friend of W. subsequently called on his behalf at the office of the co., & was informed by a clerk in the office who was in charge of the register that W.'s name was not on the register. The register was open for inspection. W.'s name, in fact, had never been removed, & he still appeared on the register as a shareholder in respect of these shares. Calls were afterwards made on the shares, but no notice was sent to W.; his account was, however, by direction of the auditors, credited with the payment of the calls. The

co. went into liquidation, & W. having died in the meanwhile, his representative was settled on the list of contributors. Upon an application by the representative of W. to rectify the register:—Held: W.'s name was rightly settled on the list of contributors, & the co. was not estopped by the statement of the clerk nor by crediting W.'s account with the payment of the calls from retaining W.'s name as a shareholder.—*Re CITY & COUNTY PROPERTY BANK (IN LIQUIDATION), WEEDON'S CASE* (1896), 22 V. L. R. 235.—AUS.****

SUB-SECT. 5.—TRUSTEES AND EXECUTORS AS MEMBERS.

A. In General.

1239. Position of trustees & executors—*Distinguished.*—*Re* CITY OF GLASGOW BANK, BUCHAN'S CASE, No. 1252, *post*.

See, generally, EXECUTORS & ADMINISTRATORS; TRUSTS & TRUSTEES.

B. Trustees.

(a) Liability.

i. In General.

1240. Trustees accepting trust.]—A., being resident in Scotland, & a shareholder in an English co., by a trust disposition & deed of settlement assigned his shares to B. & C. upon trust, & by the same instrument appointed B. & C. his exors. The shares stood in A.'s name at his death. For some years after A.'s death the deed was not acted upon, & his eldest son took out administration to his personal estate in England. The co. was wound up, & the son's name was placed on the list of contributories. Afterwards the deed of settlement was set up, & declared by a decree of the Ct. of Session to be a valid document. The official manager thereupon applied to the master to have the names of B. & C. inserted in the list of contributories. The master granted the application:—*Held*: the decision of the master was

right, & the names of B. & C. were properly added to the list.—*Re* ROYAL BANK OF AUSTRALIA, *Ex p*. DRUMMOND (1860), 2 Giff. 189; 2 L. T. 349; 6 Jur. N. S. 908; 8 W. R. 659; 66 E. R. 80.

1241. — Conduct amounting to acceptance of trust.]—In 1855 stock in the City of Glasgow Bank was transferred to trustees by an ante-nuptial contract of marriage. The law agent made a declaration of the contents of the deed, & notified it to the bank, who placed all the names of the trustees on the register of shareholders, as trustees. The marriage contract was not signed by any of the trustees; but they all subscribed subsequently a transfer of railway stock from the wife as extrix. of one B. to themselves; & in this transfer they were described as "trustees nominated under & by virtue of the said ante-nuptial contract of marriage." In 1856 A., one of the trustees, signed a dividend warrant, & shortly afterwards he left the neighbourhood. On the death of the husband in 1868, it being necessary to expedite confirmation to his estate, A. refused to act any longer, & sent to the law agent a formal letter declining his office of trustee, it was accepted by the other trustees, but not regularly intimated to, or acted upon, by the bank. A.'s name remained on the register until the stoppage of the bank on Oct. 2, 1878:—*Held*: A.'s name was rightly on the list of contributories, his acceptance of the trust being clearly established by his actings,

PART III. SECT. 12, SUB-SECT. 5.—A.

h. Illegal transfer of shares by partner—*Partner constructive trustee—Priorities.*—A transferee of shares of a co. until such transfer has been registered, is merely equitable owner of the shares, & as such, liable to be postponed to those having prior equities.

Under a partnership agreement G. became entitled to certain shares, which stood in his partner's name. A doubt arose as to the number of shares to which G. was entitled, & a suit was brought by him on Feb. 15, 1897, to ascertain his rights, & a decree was pronounced on Aug. 27, 1897. In Mar. & Nov., 1897, transfers of the shares to which G. had been declared entitled, were executed by G.'s partner to C. & R. respectively, & lodged by them with the co. for registration:—*Held*: G.'s partner being a constructive trustee for G., it was no negligence in G. to allow the shares to remain in his name, & G.'s equity being prior in date prevailed over that of C.—*Re* MOUNT DAVID GOLD MINING CO. (1898), 19 N. S. W. Eq. 95.—AUS.

k. Trustees voting according to orders of beneficiaries—*Whether shareholders within Manitoba Joint-Stock Companies Act, 1905.*—*Re* KOOTENAY VALLEY FRUIT LANDS CO. (1911), 18 W. L. R. 145.—CAN.

l. Preferential dividend payable to "holder" of shares—*Death of shareholder—Whether executor "holder."*—The goodwill of a business, which a merchant had carried on, & the capital, property & assets with it, were transferred by him in 1864 to a joint-stock limited co., who agreed with him that, in consideration of the transfer by him of property, referred to in the contract as "the fixed assets," one hundred paid-up shares of £2,500 each, of which any assignment by him during the next five years from the registration of the co. should not be recognised by them as valid, should be allotted to him. It was also agreed that in consideration of the transfer, he & "his exors. or administrators shall be entitled, so long as they hold the said hundred shares, to an extra or preferential dividend." On this agreement the parties acted, & the share-

holder held the shares till he died in England in 1888, having by will directed that his exors. or administrators should hold the hundred shares in trust for his surviving brothers, of whom the exor., who proved the will, was one. Administration with the will annexed was granted in India to pltf. in this suit as the attorney of the exor. A note of this was made in the register of the co. leaving the hundred shares still in the name of testator. The co. then discontinued to pay the preferential dividend, & contended that it was no longer payable, inasmuch as testator's estate had been administered, & that the exor. no longer held the shares as exor., but as trustee for the beneficiaries under the will:—*Held*: the contract was still in operation, the exor. still "holding" the shares within its meaning; & the preferential dividend continued payable to the estate of testator, the co. being only concerned with the legal title to the shares, & not with any claims if there were any, that might be made by beneficiaries under the will against the exor. as trustee.—BOMBAY BURMA TRADING CORPN. v. SMITH (1894), 1 L. R. 19 Bom. 1; 21 L. R. Ind. App. 139.—IND.

m. Whether representatives of deceased should be put on list of contributories—*Proof that deceased was registered shareholder.*—In the winding up of a joint-stock co. registered under 1862 & 1867 Acts, to entitle the liquidators to place the representatives of deceased upon the list of contributories they must prove that before his death he was a registered shareholder, or was bound to the co. to become so.—MOLLESON & GRIGOR v. FRASER'S TRUSTEES (1881), 8 R. (Ct. of Sess.) 630; 18 Sc. L. R. 486.—SCOT.

n. Trustees on list of contributories but not members of company—*Right to challenge a special resolution—For voluntary liquidation.*—HOWLING'S TRUSTEES v. SMITH (1905), 7 F. (Ct. of Sess.) 390; 42 Sc. L. R. 321; 12 S. L. T. 628.—SCOT.

o. Shares in name of trustee—*Beneficiary entitled to dividends.*—Where the question was whether shares which were "subscribed & entered in the name of J. H." were in reality the property of his brother W for whom J.

was merely trustee:—*Held*: although in respect of the public, & of the other partners of the co., the shares were never effectually transferred into the person of W., yet in any question between J. & W. or his representatives, it must be held that W. was the actual partner or holder of the shares & entitled to all the profits thereof & liable to relieve J. of all demands or losses to which he might be liable in respect of others as the holder of the said shares.—HUME v. MIDDLEMAS (1836), 15 Sh. (Ct. of Sess.) 30.—SCOT.

p. Notice of meeting—*Trustee of debenture-holders not entitled to notice.*—Notice of a meeting need not be sent to the trustee of an insolvent member at any rate until such time as the trustee has the shares registered in his own name or formally notifies the co. of the insolvency & enters his own registered address in the co.'s book. The same principle applies to the case of a deceased member. The trustee for the debenture-holders is not entitled to notice of a meeting for the winding up of a co.—HOOTON-SMITH v. METROPOLITAN ADVERTISING CO., LTD. (LIQUIDATOR), (1916) 7 C. P. D. 471.—S. AF.

PART III. SECT. 12, SUB-SECT. 5.—B. (a) i.

q. Trustees accepting trust—*When estopped from denying—Confirmation & adoption of registration.*—Two of three trustees under a marriage contract purchased shares in a joint-stock bank registered under 1862 Act, & took the transfers in the names of the whole three trustees. The other trustee was not aware of the purchase, & did not sign the transfer. The two former signed as a majority & quorum, & the transfer was sent to the bank, & the names of the three trustees were entered as partners in the statutory register of members. The trustee who had not signed afterwards signed a minute approving of the purchase of the stock, & also signed, as one of a quorum of trustees, a mandate to the bank to pay the dividends on the stock, which was described as "belonging to the trustees," to the husband. In the liquidation of the bank:—*Held*: the trustee who had not signed the transfer was not entitled to have his

Sect. 12.—Membership: Sub-sect. 5, B. (a) i.]

extending over a long period of years; & his resignation had not the effect of exempting him from personal liability.—*Re CITY OF GLASGOW BANK, KER'S CASE* (1879), 4 App. Cas. 549, 598; *subsequent proceedings* (1880), 14 Ch. D. 628.

1242. ———.]—A fund consisting of £6,000 worth of shares in a Scottish bank, established in 1839, & registered as an unlimited co. under 1862 Act, s. 180, was, by deed, conveyed to applts. upon certain trusts, & a deed of transfer of the shares was afterwards prepared under the direction of the secretary to the bank & was executed by applts. as transferees. The stock was conveyed to them as "trust disponees" under the trust, & they accepted the same "as trust disponees aforesaid" subject to the arts. & regulations of the co. Applts. were also described in the books of the bank & in the share certificates as "trust disponees." The bank afterwards stopp'd payment, & a resolution was passed for a voluntary winding up:—*Held*: the trustees were personally liable as contributories to the co., & their liability was not limited to the amount of the trust estate.—*MUIR v. CITY OF GLASGOW BANK* (1879), 4 App. Cas. 337; 40 L. T. 339; 27 W. R. 603, H. L.

Annotations:—*Appld. Re City of Glasgow Bank, Bell's Case* (1879), 4 App. Cas. 550; *Re City of Glasgow Bank, Buchan's Case* (1879), 4 App. Cas. 583; *Re City of Glasgow Bank, Mitchell's Case* (1879), 4 App. Cas. 567; *Cree v. Somervail* (1879), 4 App. Cas. 648; *Gillespie v. City of Glasgow Bank* (1879), 4 App. Cas. 632. *Mentd. Re C. M. G.*, [1898] 2 Ch. 324; *Re Robinson's Settlement, Gant v. Hobbs*, [1912] 1 Ch. 717.

1243. Shares held by party as trustee for married woman—Trustee receiving dividends—Name not returned as shareholder until company wound up.]—A widow was entitled, as extrix. of her deceased husband, to some shares in a joint-stock banking co., which stood in the name of her husband. On her second marriage she assigned them by deed to a trustee for her separate use. Verbal notice of that deed was given to the co., but no transfer of the shares was ever made in the manner required by the co.'s deed of settlement. The trustee received the dividends, & signed receipts for them as agent for the widow, but his name was never returned to the stamp office as a shareholder until the stoppage of the bank:—*Held*: these facts were not sufficient to authorise the master to insert the name of the trustee in the list of contributories, under the Joint Stock Cos. Winding-up Act; but leave was given to the official manager to try the question of the trustee's liability in an action at law, the ct. refusing an issue for that purpose.—*Re NORTH OF ENGLAND JOINT STOCK BANKING CO., Ex p. HALL* (1849), 1 Mac. & G. 307; 1 H. & Tw. 580; 19 L. J. Ch.

name removed from the register, as his approval & adoption of the registration had been proved.—*ROBERTS v. CITY OF GLASGOW BANK* (1879), 6 R. (Ct. of Sess.) 805.—SCOT.

r. ———.]—By a trust-settlement the trustees were directed to sell the whole of the trust estate, part of which consisted of stock of a joint-stock bank registered under 1862 Act, & to invest the proceeds in certain safe kinds of securities. The trustees having been confirmed as exors., their agent sent the confirmation to the bank, & obtained a new certificate in name of the trustees as exors. Their names were entered in the books of the bank as holding the stock as exors. They sold a portion of the stock. Dividend warrants, which bore that the stock stood in the name of the exors., were issued to

them, & signed by them for four years on account of the unsold portion of stock. They stated that the reason they did not sell the whole stock was that they could not find a suitable investment for the price. The bank having gone into liquidation, the trustees' names were entered on the list of contributories as personally liable for calls on the unsold portion of the stock:—*Held*: the trustees either knew or ought to have known that their names were entered in the books of the bank as partners thereof; their conduct inferred adoption of the act of their agent; & consequently, they were not entitled to have their names removed from the list of contributories.—*GORDON v. CITY OF GLASGOW BANK* (1879), 7 R. (Ct. of Sess.) 55; 17 Sc. L. R. 7.—SCOT.

s. ———.]—M'EWEN, ETC.

69; 14 L. T. O. S. 150; 13 Jur. 951; 47 E. R. 1541, L. C.

Annotations:—*Distd. Re Phoenix Life Assce. Co., Hoare's Case* (1862), 2 John. & H. 229. *Consd. Re City of Glasgow Bank, Buchan's Case* (1879), 4 App. Cas. 583. *Mentd. Re North of England Joint Stock Banking Co., Straffon's Executors' Case* (1852), 1 De G. M. & G. 576.

1244. Shares in scrip company—Held on undisclosed trust.]—A merchant held shares in a scrip co., some in his own right & others on behalf of parties abroad; he received dividends & paid calls on all the shares in his own name, without disclosing that any of the shares were held on behalf of other parties. Upon an order to wind up the co.:—*Held*: he must be put on the list of contributories for his own shares, but as agent or trustee he was not responsible to the co. on the shares of his *cestui que trust*, or liable to be put on the list of contributories.—*Re MEXICAN & SOUTH AMERICAN MINING CO., FINLAY, HODGSON'S CASE* (1858), 26 Beav. 182; 27 L. J. Ch. 664; 32 L. T. O. S. 47; 4 Jur. N. S. 1030; 53 E. R. 867.

1245. Shares held by party as trustee for company's vendor—Surrendered to company by way of compromise—Trustee's name remaining on register.]—A co., formed for the purpose of working a coal mine, of which C. was the owner, entered into a contract with him for the purchase of the same. By the agreement it was stipulated that a part of the purchase-money should be paid by an allotment of shares. The co. induced C. to take 250 additional shares, on the representation that a third person would, in that event, subscribe for 500 shares; & it was also suggested by the co. that it would give more solidity to the co. if these shares were taken in the name of B., a friend of C., which was acceded to by the former, on condition that he would incur no liability in respect of them. No minute appeared in the co.'s books of this understanding, but the shares were allotted to B., who was registered as the holder of the shares, & the deposit was paid by C. Subsequently C. took proceedings at law against the co., on the ground that the agreement had not been carried out. The action was compromised, upon the terms that the 250 shares held by C. should be given up to the co., which was accordingly done, & transfers were executed by C. in blank. The name of B. was struck out of the share ledger, but not from the register of shareholders. It did not appear that any of the transactions had been sanctioned by the general body of shareholders. On the co. being wound up, the name of B. was put on the list of contributories. A motion, by way of appeal in Ch. & bkpcy., to remove his name from the list, was refused.—*Re MOSELEY GREEN COAL & COKE CO., LTD., BARRETT'S CASE* (1864), 4 De G. J. & Sm. 416; 4 New Rep. 308; 33 L. J. Ch. 617; 10

v. CITY OF GLASGOW BANK (1879), 6 R. (Ct. of Sess.) 1315; 16 Sc. L. R. 771.—SCOT.

t. ———.]—A woman who held stock in a joint-stock bank, registered under 1862 Act, conveyed her estate to five trustees under ante-nuptial contract of marriage. The trustees accepted the trust, & the agent in the trust, without the authority or knowledge of the trustees, caused the bank stock to be transferred to their names. Four of them afterwards signed expressly as "trustees" certain dividend warrants bearing to be stock "standing in the name of the trustees under the marriage contract of" Mr. & Mrs. S. & they, together with the remaining trustees, signed a mandate authorising the bank "to make future dividends on the stock of Mrs. S. payable to her

L. T. 594; 10 Jur. N. S. 711; 12 W. R. 925; 46 E. R. 979, L. C.

1246. Shares held by party as trustee on behalf of company—Trustee consenting to registration.]—Shares in a co. were transferred into the name of A., with his consent, to be held by him as trustee for the co.:—*Held*: although a person wrongfully put upon the register would have a right of relief even as against creditors, A.'s name having been placed by his own consent upon the register, he was liable as a contributory, although he might have a right to be indemnified by the co. for any payments made by him in respect of the shares, of which he was merely a trustee.—*Re IMPERIAL MERCANTILE CREDIT ASSOCN., CHAPMAN & BARKER'S CASE* (1867), L. R. 3 Eq. 361; 15 L. T. 528; 15 W. R. 334.

Annotations:—*Distd.* *Re West Hartlepool Iron Co., Gray's Case* (1876), 1 Ch. D. 664. *Reid.* *Oakes v. Turquand & Harding, Peek v. Turquand & Harding, Re Overend, Gurney* (1867), L. R. 2 H. L. 325. *Mentd.* *Re Cheltenham & Swansea Ry. Carriage & Waggon Co., Little's Case* (1869), 20 L. T. 162.

1247. — Trustees not consenting to registration.]—On a sale to a co. it was agreed that the vendor's shares should be transferred to two of the directors, as trustees for the co., as a security to the co. for the performance by the vendor of his guarantee that in any year, during the first five years of the co., in which the net profits were less than 10 per cent., he would make good the deficiency. The arts. of the co. provided that the trustees should not be registered as the holders of the vendor's shares without their written consent. The vendor executed a transfer of his shares to the trustees, & the co. issued to them a certificate of the transfer, which stated that the transfer had been registered in the books of the co., which, however, was not the fact. On the winding up of the co. the liquidators placed the trustees on the register & list of contributories in respect of the vendor's shares:—*Held*: as the trustees had been placed on the register without their consent, they were entitled to have their names removed, & therefore were not contributories.—*Re WEST HARTLEPOOL IRON CO., GRAY'S CASE* (1876), 1 Ch. D. 664; 45 L. J. Ch. 342; 34 L. T. 164; 24 W. R. 508.

1248. Shares held by partners—For themselves & "survivor for behoof of firm."]—For some years previous to 1878 A. & B. had carried on in partnership the business of law agents in E. By contract of co-partnership, executed in Aug. & Oct. 1878, A. & B., on the narrative that the former partnership had ceased, agreed to continue the same, & to assume C. as a partner on the terms, *inter alia*, that the new firm should continue under the firm name of A. & B.; that the bank account should be kept in the name of the firm; & that A. & B. should supply the necessary capital required in equal proportions, either by holding bank stock

in the name of the firm, or by advancing the requisite funds. Prior to the execution of this contract, but with a view to the arrangements of the new firm, £1,000 of stock of the City of Glasgow Bank, an unlimited joint-stock co., was purchased by A. & B. who supplied the price in equal proportions. A transfer was taken in favour of A. & B., " & the survivor of them for behoof of the firm " of A. & B. A similar entry appeared in the register of members. C. was not aware of the terms of the contract, or a party to the transfer. The bank stopped payment, & the liquidators placed A. & B. individually on the list of contributories as holders of £1,000 of stock as " trustee for the firm " of A. & B. In an application *inter alia* to vary the list by deleting the words " trustee for the firm " & to place A. & B. on the list as contributories each for a separate sum of £500:—*Held*: a trust was created for the benefit of the partnership, & as trustees A. & B. were jointly & severally liable for all calls in respect of the £1,000 of stock.—*GILLESPIE v. CITY OF GLASGOW BANK* (1879), 4 App. Cas. 632, H. L.

1249. Trustee acting in management of trust.]—In 1850 shares in the City of Glasgow Bank, which was a co. registered, but not formed under 1862 Act, were transferred into the names of A. & three others as trustees & exors. of a deceased trustee. A. signed mandates to the bank authorising the payment of dividends, sanctioned the purchase of additional bank stock, & signed the minutes of meetings of the trustees. On the voluntary winding up of the co.:—*Held*: A. was rightly put on the list of contributories.

Two surviving original trustees executed a deed assuming new trustees. Both new & old trustees passed an unanimous resolution to have stock standing in the names of the original trustees in the City of Glasgow Bank transferred into the names of the original & assumed trustees. A note of assumption, giving the names of all the assumed trustees was made by the bank officials on the stock ledger following the account of the original trustees. All the trustees signed a minute of a meeting of the trustees, which stated that " Mr. Lang, one of them, tabled the scrip of the bank stock showing that the same had been transferred into the names of all the trustees original & assumed as directed at the previous meeting." At the winding up of the co. the names of the assumed trustees were placed on the list of contributories. In a petition for rectification:—*Held*: the assumed trustees, except one, a female trustee, who had been a minor, & unmarried at the date of the resolution to transfer, were properly on the list of contributories; & declared as to the sometime minor, that her name should *in hoc statu* be removed from the list, without prejudice to the right of the liquidators to place thereon the names of her husband &

order at Edinburgh." The bank having gone into liquidation the trustees applied to have their names removed from the list of contributories on the ground that they had given no authority for making them members of the co.:—*Held*: the whole trustees had by their actings adopted the act of their agent in having the stock transferred to their names, & they were precluded from maintaining that they were in ignorance of what he had done.—*SMITH, ETC. v. CITY OF GLASGOW BANK* (1879), 6 R. (Ct. of Sess.) 1017; 16 Sc. L. R. 610.—*SCOT.*

a. — *Personal liability.*]—The trustees under a marriage contract accepted a transfer of certain stock in a banking co. of unlimited liability.

The transfer was prepared by the agent of the lady, she being the transferor. The agent, who was himself a trustee & agent to the trust, sent the transfer to the bank, with a request that a new certificate should be issued in the trustees' favour. This was done after a meeting of the bank directors, the minute of which bore as follows:—" Letters were read intimating the following sales of stock, subject to the bank's right of pre-emption, & the transfers in favour of the purchasers were ordered to be prepared, viz. £385, good causes, A. T. S. to her marriage contract trustees," then came a list of other transfers. The bank failed, but at the date of the failure the names of the trustees had

not been entered on the register of members. They were subsequently placed there, & also on the list of contributories. In a petition for rectification of the register & the list, in which the spouses appeared but did not oppose:—*Held*: in the circumstances the trustees were personally liable as contributories.—*STENHOUSE v. CITY OF GLASGOW BANK* (1879), 7 R. (Ct. of Sess.) 102; 17 Sc. L. R. 31.—*SCOT.*

b. — — —.]—In an action at the instance of the liquidators of the Western Bank of Scotland against the *curator bonis* of a lady proprietor of shares in the bank for payment of calls made upon him in respect of such shares:—*Held*: a *curator bonis*, who

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herself in her right.—*Re CITY OF GLASGOW BANK, BELL'S CASE* (1879), 4 App. Cas. 547, 550, H. L.; *subsequent proceedings* (1880), 14 Ch. D. 628.

Annotation:—Reid. Re City of Glasgow Bank, Buchan's Case (1879), 4 App. Cas. 583.

1250. Trustees appointed by surviving trustees.]
—*Re CITY OF GLASGOW BANK, BELL'S CASE*, No. 1249, *ante*.

ii. Nature and Extent.

1251. Nature—Whether personal or representative—Shares held by directors as trustees for company.]—The directors of a joint-stock co., in order to procure their Act of Parliament, subscribed for a large number of shares, & signed a declaration that they held them in trust for the co., but did not pay the deposit, on, or register them. Afterwards, at a special general meeting of the co., it was resolved that the trust should be annulled, & the shares transferred to the secretary, to be held by him at the disposal of the board. The directors then proceeded to make calls on the registered shares:—*Held*: (1) the said directors were primarily liable in respect of the shares subscribed for in trust for the co., as any other trustee would be, although they might be entitled to indemnity from their *cestui que trust*; (2) they were not relieved from such liability by the proceeding taken to annul the trust & transfer the shares; (3) it was the duty of the directors to make the calls in respect of all such shares, equally with the calls on the registered shares; & the ct. would compel the directors to put all the shareholders on an equal footing according to their proportions, with respect to the calls to be made upon them.—*PRESTON v. GRAND COLLIER DOCK CO.* (1840), 11 Sim. 327; 2 Ry. & Can. Cas. 335; 59 E. R. 900; *sub nom.* *PRESTON v. GUYON*, *PRESTON v. HALL*, 10 L. J. Ch. 73; 5 Jur. 146.

Annotations:—As to (1) Reid. Foss v. Harbottle (1843), 2 Hare, 461. *As to (3) Reid. Galloway v. Hallé Concerts Soc.*, [1915] 2 Ch. 233.

1252. ——— Trustee consenting to registration.]—A truster under his settlement appointed three persons A., B., & C., as his trustees, who were also to be his sole exors. with his heritable & moveable estate, which included City of Glasgow Bank stock. C. died, & the truster executed a codicil appointing D. as trustee, & with the same powers as A. & B. The truster having died in 1854, A., B., & D. accepted the trust, were confirmed exors., & were entered on the bank register as exors. for the stock. D. sometimes signed the dividend warrants as "trustee," & once as "sole surviving trustee & exor." The bank suspended payment on Oct. 2, 1878, & on

Oct. 22 D. resigned his office of trustee:—*Held*: (1) D. was personally liable, on the ground that more than twenty years before he had authorised the stock to be transferred into his name, & had ever since acted as a shareholder; (2) the resignation was of no effect to escape liability.

(3) An exor. whose testator has held shares in a joint-stock co. has generally one of two courses open to him. He may have the shares transferred into his own name, & become to all intents & purposes a partner in the co. He may, on the other hand, not wish to have the shares transferred into his name, & he ought in that case to have a reasonable time allowed him to sell the shares, & to produce a purchaser who will take a transfer of them. In any case where the bank transfers the shares into the name of the truster's exor., this House would require to be satisfied that the transfer had been authorised by a distinct & intelligent request on the part of the exor. (*LORD CAIRNS*).

(4) The case of trustees who take a transfer of shares in their names differs, in principle, from that of exors., who merely intimate their title as exors. to a co., in order to claim & exercise the rights which belong to them as the legal representatives of their testator. Trustees have not, in any proper sense of the word, a representative character, but exors. have. Having representative rights, it is impossible that they should not be entitled to produce the legal evidence of them to the co., for the purpose of having their title in some way recorded & recognised, without making themselves personally liable (*LORD SELBORNE*).—*Re CITY OF GLASGOW BANK, BUCHAN'S CASE* (1879), 4 App. Cas. 549, 583, H. L.; *subsequent proceedings* (1880), 14 Ch. D. 628.

Annotations:—As to (1) Reid. Re City of Glasgow Bank, Bell's Case (1879), 4 App. Cas. 547. *As to (4) Consd. Barton v. London & North Western Ry.* (1889), 24 Q. B. D. 77. *Reid. Re Cheshire Banking Co., Duff's Executors' Case* (1886), 32 Ch. D. 301.

Compare No. 2620, post.

1253. ——— Whether joint or several.]—A., one of five trustees appointed under a marriage contract, signed with his co-trustees a note approving the purchase of stock in a joint-stock banking co., of unlimited liability. By the authority of the law agent of the trustees, acting on the note of approval, all the names of the trustees appeared in the transfers as accepting the stock, & in the register of members of the co. A. did not sign the transfers, but he signed a subsequent letter to the co. authorising the payment of dividends. The co. was wound up, & A. & his co-trustees were placed on the list of contributories as personally & individually liable for calls. In a petition at the instance of A. for

accepted a transfer of shares in a joint-stock banking co. as *curator bonis* for his ward, & was so entered in the register of shareholders, thereby became a partner in the bank, & was personally liable in the obligations incumbent on the partners, both towards creditors & *inter socios*.—*LUMSDEN v. PEDDIE* (1866), 5 Macph. (Ct. of Sess.) 34.—*SCOT.*

PART III. SECT. 12, SUB-SECT. 5.—B. (a) ii.

1253 i. Nature — Whether joint or several.]—Two marriage contract trustees signed a transfer of shares to them, & thus became partners of a bank. In the winding up of the bank, the liquidator obtained decree as a contributory for the amount of calls against one of them only, & charged him for payment. On a suspension of this charge, the note

was passed to try the question whether the one trustee was liable *in solidum*.—*GRAHAM v. WESTERN BANK* (1866), 4 Macph. (Ct. of Sess.) 484.—*SCOT.*

1253 ii. ———.]—Four persons agreed to grant a second cheque in favour of L. to replace a former cheque granted by them in an official capacity to him, which he had lost. In order to create a security against liability for the first cheque it was agreed by a minute, that the transfer of certain bank stock, which had been purchased by L., should be computed in the names of C. & S. two of the officials as trustees for all concerned, & that the trust should continue until C. & S. were satisfied that there was no risk in transferring the stock to L., & the stock was accordingly registered in the name of C. & S. "in trust." Five years afterwards the bank went into liquidation & calls were made

upon C. & S. as registered holders of stock:—*Held*: L. was bound to relieve C. & S. of the whole calls & in the event of his being unable to do so, the loss must be borne equally by all parties to the arrangement by which, for their protection, the stock was registered in the names of two of their number.—*CURROR v. LONDON* (1879), 7 R. (Ct. of Sess.) 289; 17 Sc. L. R. 149.—*SCOT.*

c. Not estopped from denying liability—Authority of law agent to place name on list.]—Upon the death in Nov., 1875, of testator whose estate included stock of a joint-stock bank, his trustees & exors. accepted office, & instructed their law agent "to make up a title in their favour to the trust estate." The agent having obtained confirmation of the trustees as exors., on Feb. 24, 1876, transmitted to the secretary of the bank the stock certifi-

rectification of the register & list of contributories :—*Held*: the trustees were liable *in solidum* for the whole of the stock, & not *pro rata parte* for one-fifth part only.—*CUNNINGHAM v. CITY OF GLASGOW BANK* (1879), 4 App. Cas. 607, H. L.

—Right to indemnity.]—See Sub-sect. 5, B. (b), *post*.

1254. *Extent—Not limited to extent of trust estate.*—The liability of a trustee as a contributory will not be limited to the extent of the trust estate.—*Re PHENIX LIFE ASSURANCE CO., HOARE'S CASE* (1862), 2 John. & H. 229; 31 L. J. Ch. 504; 6 L. T. 240; 8 Jur. N. S. 713; 10 W. R. 381; 70 E. R. 1041.

Annotations:—*Consd. Re City of Glasgow Bank, Buchan's Case* (1879), 4 App. Cas. 583. *Refd. Re National Financial Co., Ex p. Oriental Commercial Bank* (1868), 3 Ch. App. 791.

Compare No. 2626, post.

1255. — Trustees joint holders—When liability accrues to survivor.]—*Re MARIA ANNA & STEIN-BANK COAL & COKE CO., MAXWELL'S CASE, HILL'S CASE, No. 436, ante.*

1256. — Shares issued subject to calls—Lost by default of trustee—Value of shares less amount paid for calls.]—New shares allotted in respect of original shares forming part of a trust estate, being accretions to the original shares, also become part of the trust estate, but subject to the liability to pay calls. Therefore, where a trust estate so composed has been lost by the default of the trustee, the loss to the estate is not the amount of the shares, but of the shares less the amount paid for calls.—*BRIGGS v. MASSEY* (1882), 51 L. J. Ch. 447; 46 L. T. 354; 30 W. R. 325, C. A.

iii. Termination.

1257. *By resignation—Time for.*—*Re CITY OF GLASGOW BANK, BUCHAN'S CASE, No. 1252, ante.*

1258. — — —.]—(1) If directors in the fair & *bonâ fide* exercise of their powers under the co.'s contract, as managers of the co., & in circumstances which make it a reasonable act of management, resolve not to record future transfers which

may seriously affect & alter the liability of the partners, the resolution will be effectual, & the directors in declining to record the transfers cannot be held to be in default within the meaning of 1862 Act, s. 35.

(2) Before the commencement of the winding up, but after the stoppage, & after the publishing of a notice by the directors calling a special general meeting of the shareholders of the City of Glasgow Bank, for the purpose of passing a resolution to have the bank wound up by reason of its irretrievable insolvency; & after a resolution by the directors that they would not record any future transfers, one of four trustees whose names appeared as such on the bank register resigned his office of trusteeship under Trusts, S. Act, 1861 (c. 84), s. 1, with the consent of his co-trustees & the beneficiaries. A notarial copy of the resignation was sent the next day to the bank, but the directors refused to alter the register by affixing a note, or in any other way:—*Held*: the resignation was too late to exempt the trustee from personal liability.

The trustee's resignation of his trusteeship alone would not terminate his liability. He ceased to be a trustee; but it remained for him to terminate his liability in respect of the bank by a transfer, or something equivalent to a transfer, of his shares (*LORD CAIRNS*).

(3) After the issuing to the shareholders & the public of a circular calling a meeting, with a view to the necessary resolution for a voluntary winding up, it is too late for any shareholder to part with his shares, either to the copartnership itself or to any other person (*LORD SELBORNE*).—*Re CITY OF GLASGOW BANK, MITCHELL'S CASE* (1879), 4 App. Cas. 548, 567; *sub nom. MITCHELL v. CITY OF GLASGOW BANK & LIQUIDATORS*, 40 L. T. 758; 27 W. R. 873, H. L.; *subsequent proceedings* (1880), 14 Ch. D. 628.

1259. — — —.]—In 1873 the names of four trustees were entered on the register of the City of Glasgow Bank as members. On Oct. 2, 1878,

cate in the name of deceased, the confirmation, & a mandate signed by the trustees the same day, by which they requested the manager of the bank to pay all dividends due & to become due on the stock "standing in our names as trustees under the trust-disposition & settlement of," etc. The agent at the same time requested the secretary to send a new stock certificate. The names of the trustees were then entered in the register of shareholders as holders of the stock, & a certificate to that effect sent to their agent. In the subsequent liquidation of the bank the trustees presented a petition to have their names removed from the list of contributories, or otherwise, from the first to the second part thereof. A proof having been led, all the trustees deposed that they expressly instructed their agent not to make up a special title to the bank stock in such a way as to make them liable as partners:—*Held*: the trustees had not authorised or adopted the registration of the stock in their names, the inference which might otherwise have arisen from the *res gestæ* having been explained away by the parol evidence.—*STOTT, ETC. v. CITY OF GLASGOW BANK* (1879), 6 R. (Ct. of Sess.) 1126; 16 Sc. L. R. 235.—*SCOT*.

PART III. SECT. 12, SUB-SECT. 5.—B. (a) iii.

d. *Shares transferred by trustee according to beneficiary's instruction—Liquidation of company—Trustee not personally liable.*—M. an accountant in the Real Estate Bank took a transfer of shares in the C. Estate Co.,

& became registered as a holder in respect of such shares. A deed was executed between M. & the Real Estate Bank, whereby it was declared that M. should hold the shares subject to the bank's direction, & should transfer them as required by the bank, & until such transfer should stand possessed of the shares, in trust for the bank; the bank undertook to indemnify M. against all losses. Subsequently, after the execution of the deed, M. transferred the shares at the bank's direction to some nominee of the bank, whose name did not appear. The C. Estate Co. went into liquidation. M. then applied to have the co.'s register rectified by removing his name & substituting the name of the bank therefor:—*Held*: as soon as the shares had been transferred to M. at the request of the bank, his duties as trustee ceased, & he was entitled to have the register rectified.—*Re CHATSWORTH ESTATE CO., Ex p. MARRIOTT* (1892), 18 V. L. R. 400.—*AUS*.

e. *Liquidation of company—Deceased trustee's executor—Whether liable to be put on list of contributories.*—In the liquidation of a joint-stock co. registered under 1862 Act:—*Held*: the exors. of a person whose name stood on the register of the co. as one of several trustees, but who had died prior to the liquidation, were not liable to be put on the list of contributories as partners of the co.—*OSWALD'S TRUSTEES v. CITY OF GLASGOW BANK* (1879), 6 R. (Ct. of Sess.) 461.—*SCOT*.

f. — — —.]—Where the name of the last survivor of a body

of trustees was allowed to remain on the register of shareholders of a joint-stock co. for a period of six years after his death:—*Held*: though the co. was all the time aware of his death, & his exors. were unaware of his being a trustee on the particular trust-estate, or of his holding stock in the co. as trustee, yet, his name being on the register at the time of the stoppage of the co., his estate remained liable, & his exors. must be placed on the second part of the list of contributories in the liquidation as representing him.—*LOW'S EXECUTORS v. CITY OF GLASGOW BANK* (1879), 6 R. (Ct. of Sess.) 830.—*SCOT*.

g. *By resignation—Whether liable as contributory—Resignation not intimated to co-trustees.*—A testamentary trustee executed a minute of resignation in the form of Trusts Act, 1867, Sched. A. The minute was recorded in terms of the statute, but was not intimated to his co-trustees, or to a public co., in which the trustees held stock. In the liquidation of the co.:—*Held*: the resigning trustee was not entitled to have his name removed from the register of members.—*SINCLAIR v. CITY OF GLASGOW BANK* (1879), 6 R. (Ct. of Sess.) 571; 16 Sc. L. R. 235.—*SCOT*.

h. — — — *Resignation not intimated to company.*—Testator appointed his exors. to hold & administer his estate until the majority or marriage of his children. Part of the estate consisted of stock of a public co. registered under 1862 Act. For some years the dividend warrants were paid on the receipt of A. & B.

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the bank stopped payment. On Oct. 5, the directors issued a summons convening a general meeting of the shareholders to pass a resolution for voluntary winding up. On Oct. 18, the original trustees assumed new trustees; resigned their office of trust; & executed a transfer. The directors refused to alter the register:—*Held*: the original trustees were personally liable, their resignation being too late.—*Re CITY OF GLASGOW BANK, RUTHERFURD'S CASE* (1879), 4 App. Cas. 548, 581, H. L.; *subsequent proceedings* (1880), 14 Ch. D. 628.

1260. — Not alone sufficient.]—*Re CITY OF GLASGOW BANK, KER'S CASE*, No. 1241, *ante*.

1261. — Transfer of shares necessary.]—*Re CITY OF GLASGOW BANK, MITCHELL'S CASE*, No. 1258, *ante*.

1262. Shares held by directors on behalf of company—Proceedings for termination of trust.]—*PRESTON v. GRAND COLLIER DOCK CO.*, No. 1251, *ante*.

See, generally, TRUSTS & TRUSTEES.

(b) Right to Indemnity.

See, generally, TRUSTS & TRUSTEES.

1263. In respect of what shares—Shares held as trustee for another company.]—M. held shares in the T. co. as trustee for the N. co. Both the cos. were being wound up. Calls were made upon M. in respect of the shares, & he failed to pay them:—*Held*: M. was entitled to rank as a creditor of the N. Co. for the amount of calls which had been so made on him, with interest, & also for any future calls which might be made on him in respect of the same shares.—*Re NATIONAL FINANCIAL CO., Ex p. ORIENTAL COMMERCIAL BANK* (1868), 3 Ch. App. 791; 16 W. R. 994; *sub nom. Re NATIONAL FINANCIAL CO., LTD., MAITLAND'S CASE*, 18 L. T. 895, L. J.J.

Annotations:—Refd. Re International Contract Co., Hughes' Claim (1872), L. R. 13 Eq. 623. *Mentd. Heritage v. Paine* (1876), 2 Ch. D. 594.

1264. — Shares taken at request of secretary of another company.]—M. consented, at the request of the secretary of the C. Co., to become the purchaser of shares in the W. Co. The shares were purchased by him for the C. Co., from which he received £15 for himself. He never paid anything for these shares, the money being paid by the C. Co., on whose behalf he had purchased them. M. executed transfers of the shares to the C. Co., at the written desire of the secretary of that co., & took no further trouble in the matter. The C. Co. was ordered to be wound up. The W. Co. was wound up voluntarily, under the direction of the ct. There were pecuniary transactions between the two cos. The W. Co. made a call on M. in respect of his shares. The shares were declared forfeited for non-payment of calls. M. afterwards explained all that had been done, & the W. directors, in consideration of his transferring to them all his rights & interests in the shares, released him from all liability to them. M. took out a summons for the purpose of com-

PELLING the C. Co. to indemnify him against any demands that might be made on him by, or on account of, the W. Co.:—*Held*: this was a mere case of trustee & *cestui que trust*, & M. was entitled to the indemnity.—*JAMES v. MAY* (1873), L. R. 6 H. L. 328; 42 L. J. Ch. 802, H. L.

Annotations:—Refd. Hardoon v. Belilios, [1901] A. C. 118. *Mentd. Heritage v. Paine* (1876), 2 Ch. D. 594; *Cycle-makers' Co-op. Supply Co. v. Sims*, [1903] 1 K. B. 477.

See, also, Nos. 1246, 1251, ante.

1265. — Shares held on behalf of beneficiary sui juris—Without power of disclaimer—Whether beneficiary created trust or knowingly accepted a transfer of the beneficial interest immaterial.]—A party who is *sui juris* & beneficially entitled to shares which he cannot disclaim is personally bound, in the absence of contract to the contrary, to indemnify the registered holder thereof against calls upon them. It is immaterial whether the beneficial owner originally created the trust by which the registered holder was plainly affected or accepted a transfer of the beneficial ownership with knowledge of the trust.—*HARDOON v. BELILIOS*, [1901] A. C. 118; 70 L. J. P. C. 9; 83 L. T. 573; 49 W. R. 209; 17 T. L. R. 126, P. C.

Annotations:—Apld. Matthews v. Ruggles-Brise, [1911] 1 Ch. 194. *Refd. Dodson v. Downey* (1901), 50 W. R. 57; *Wise v. Perpetual Trustee Co.*, [1903] A. C. 139; *Re Turner, Wood v. Turner*, [1907] 2 Ch. 126; *Buchan v. Ayre*, [1915] 2 Ch. 474; *Adams v. Morgan*, [1923] 2 K. B. 234; *Eastern Shipping Co. v. Quah Beng Kee* (1923), 40 T. L. R. 109. *Mentd. Re National Bank of Wales, Massey & Giffin's Case*, [1907] 1 Ch. 582.

1266. Shares held as trustee for company.]—*Re IMPERIAL MERCANTILE CREDIT ASSOCN., CHAPMAN & BARKER'S CASE*, No. 1246, *ante*.

1267. In respect of what liability—Present & future calls—Shares held on behalf of company in liquidation—Proof in winding up.]—*Re NATIONAL FINANCIAL CO., Ex p. ORIENTAL COMMERCIAL BANK*, No. 1263, *ante*.

1268. — Future liability on unpaid shares in company in liquidation—No evidence that future call likely—Action quia timet premature.]—A trustee held shares in a co. on trust for an adult *cestui que trust*. He had applied for them at the request of the *cestui que trust*, who paid the money due to the co. on the application & allotment. The trustee executed a transfer of the shares to the *cestui que trust*, & the latter sent it to the co. for registration, but the directors refused to register it, & when an order was made to wind up the co. the name of the trustee remained on the co.'s register as the holder of the shares. No further call had been made on them. The trustee brought an action against the *cestui que trust*, claiming an indemnity against liability on the shares. There was no evidence to show whether calls were likely to be made in the winding up:—*Held*: the action was a mere *quia timet* one, & it was premature & could not be maintained.—*HUGHES-HALLETT v. INDIAN MAMMOTH GOLD MINES CO.* (1882), 22 Ch. D. 561; 52 L. J. Ch. 418; 48 L. T. 107; 31 W. R. 285.

Annotations:—Distd. Hobbs v. Wayet (1887), 36 Ch. D. 256. *Refd. Blyth v. Fladgate, Morgan v. Blyth, Smith v. Blyth*, [1891] 1 Ch. 337; *Wolmershausen v. Gullick*, [1893] 2 Ch. 514; *Hardoon v. Belilios*, [1901] A. C. 118; *Ascherson v. Tredegar Dry Dock & Wharf Co.*, [1909] 2 Ch. 401.

two of these exors. A. then resigned his office of "trustee of exor." by minute intimated to his co-trustees, and registered in the form prescribed by Trusts Act, 1867, & took no further part in the administration of the estate. He executed no transfer to the remaining trustees & the resignation was not formally accepted by the co. The dividends were thereafter paid on the receipt of B. only, a fact which appeared from the books of the co:

In the liquidation of the co.:—*Held*: A. was liable as a contributory in respect that there was no evidence that his resignation had been intimated to the co., so as to entitle the bank to remove his name from the register.—*TOCHETTI v. CITY OF GLASGOW BANK* (1879), 6 R. (Ct. of Sess.) 789; 16 Sc. L. R. 415.—SCOT.

k. — Resignation intimated to company.]—When one of

several persons entered on the register of shareholders of a public co. as trustees has divested himself of the office of trustee in terms of Trust Act, 1867, s. 10, he has on intimation thereof to the co., the co. not being in liquidation, an absolute right to have his name removed from the register.—*DALGLEISH v. LAND FEUING CO., LTD.* (1885), 13 R. (Ct. of Sess.) 223; 23 Sc. L. R. 138.—SCOT.

1269. — Calls on unauthorised investment.]—Two trustees in breach of trust invested trust funds in partly paid shares of a co. Some years after the death of one trustee, the survivor, who had made every reasonable effort to dispose of the shares, but without success, paid a call of £800 as a contributory in the liquidation of the co.:—*Held*: the deceased trustee's representatives, though not liable to the co. for the call, were liable to the surviving trustee for contribution.—*JACKSON v. DICKINSON*, [1903] 1 Ch. 947; 72 L. J. Ch. 761; 88 L. T. 507; 19 T. L. R. 350.

1270. What funds liable—Shares taken up by trustees of settlement at wife's request—No power of anticipation—Savings of separate estate of wife.]—One of two trustees of a marriage settlement, under which the wife took a separate estate for life without power of anticipation, having shares in a bank vested in him upon the trusts of the settlement, obtained an allotment of new shares at the request of the wife, & upon the faith of her representation that the purchase-money should be paid out of certain savings of her separate estate. The bank failed, & calls were made upon the trustee, who filed a bill to enforce repayment out of the wife's savings:—*Held*: (1) the savings of the wife's separate estate were liable to indemnify the trustee against all calls & liabilities incurred on her behalf in respect of the shares; (2) money arising from savings of separate estate which had been invested by the wife in the names of the trustees of the settlement without any intimation that it was to be held on the trusts of the settlement, was liable to indemnify the trustee of the shares.—*BUTLER v. CUMPSTON* (1868), L. R. 7 Eq. 16; 38 L. J. Ch. 35; 19 L. T. 274; 17 W. R. 24.

Annotations:—*Generally*, *Reid*. *Pike v. Fitzgibbon* (1880), 14 Ch. D. 837; *Hale v. Sheldrake* (1889), 60 L. T. 292.

1271. — — — — — Invested by wife in name of trustees—No notice that subject to settlement.]—*BUTLER v. CUMPSTON*, No. 1270, *ante*.

1272. Who may enforce—Liquidator of company—Assignee under compromise with trustee—Action in name of trustee.]—The right of a trustee, in whose name shares in a co. were standing at the time of its being wound up, to indemnity from his *cestui que trust*, enforced by the liquidator in a suit in the name of the trustee who had compromised with the liquidator for his liability on the shares upon terms including a stipulation that the liquidator should be at liberty to continue the suit.—*HEMMING v. MADDICK* (1872), 7 Ch. App. 395; 41 L. J. Ch. 522; 26 L. T. 565; 20 W. R. 433, L. J.

Annotations:—*Reid*. *Re Hercules Insce.*, *Pugh & Sharman's Case* (1872), L. R. 13 Eq. 566; *Heritage v. Paine* (1876), 2 Ch. D. 594. *Mentd.* *Re Richardson*, *Ex p. St. Thomas's Hospital*, [1911] 2 K. B. 705.

Assignment of right of action.]—*See, generally*, *ACTION*, Vol. I., pp. 72 *et seq.*; *CHOSES IN ACTION*, Vol. VIII., pp. 426 *et seq.*

(c) *Liability of Shares for Debts of Trustee.*

1273. Trustee a bankrupt—Shares not in his order & disposition.]—Shares held by a trustee in his own name, but identified & a trust declared thereon:—*Held*: not to be in the order & disposition of the bkpt.—*PINKETT v. WRIGHT* (1842), 2 Hare, 120; 12 L. J. Ch. 119; 6 Jur. 1102; 67 E. R. 50; *affd.* without affecting this point, *sub nom.* *MURRAY v. PINKETT* (1846), 12 Cl. & Fin. 764, H. L.

Annotations:—*Mentd.* *Pennell v. Deffell* (1853), 4 De. G. M. & G. 372; *Clack v. Holland* (1854), 19 Beav. 262; *Ashwin v. Burton* (1862), 32 L. J. Ch. 196; *Aberaman Ironworks v. Wickens* (1868), L. R. 5 Eq. 485; *Deering & McQuestion v. Hibernian Joint Stock Banking Co.* (1868),

16 W. R. 578; *Brown v. Adams* (1869), 21 L. T. 71; *Re Birchall*, *Wilson v. Birchall* (1881), 44 L. T. 243; *Re Leslie*, *Leslie v. French* (1883), 23 Ch. D. 552; *Soc. Générale de Paris v. Tram. Union Co.* (1884), 14 Q. B. D. 424; *Re Bell*, *Ex p. Hodgson* (1891), 65 L. T. 245.

See, also, *BANKRUPTCY & INSOLVENCY*, Vol. V., p. 761, No. 6549.

1274. Trustee a judgment debtor—Charging order made—No ground for setting aside.]—The ct. will not set aside an order made under Judgments Act, 1838 (c. 110), s. 14, charging shares in a limited co., standing in the name of a judgment debtor, although he be owner of the shares as trustee only, & have no beneficial interest whatever therein.—*Cragg v. Taylor* (1866), L. R. 1 Exch. 148; 4 H. & C. 158; 35 L. J. Ex. 92; 13 L. T. 756; 12 Jur. N. S. 320; 14 W. R. 399.

Annotations:—*N.F.* *Cooper v. Griffin*, [1892] 1 Q. B. 740. *Reid*. *Gill v. Continental Gas Union Co.* (1872), 41 L. J. Ex. 176; *Re Blakely Ordnance Co.*, *Coates's Case* (1876), 35 L. T. 617.

1275. — — — — — Charging order refused—Not held in his own right—Director's qualification shares—Unregistered transfer.]—The liquidator of the B. Co. obtained a charging order on Oct. 24, 1876, against C. on certain stock of the O. Co. standing in the name of C. The stock had been lent to C. by his father, merely to qualify him to be a director of the O. Co. On Oct. 17, C. had retransferred the stock to his father, but the transfer was not registered until Oct. 25. On the application for the charging order, notice was given to the liquidator that the stock belonged beneficially to the father. C. moved to discharge the order:—*Held*: independently of the question of notice, the stock was not standing in C.'s name in his own right, within Judgments Act, 1838 (c. 110), s. 14. Order discharged.—*Re Blakely Ordnance Co., Ltd.*, *Coates's Case* (1876), 46 L. J. Ch. 367; 35 L. T. 617; 25 W. R. 111.

Annotation:—*Folld.* *Cooper v. Griffin*, [1892] 1 Q. B. 740.

1276. — — — — —.]—By Judgments Act, 1838 (c. 110), s. 14, the shares of a debtor, against whom judgment has been recovered, "standing in his name, in his own right," may be charged with payment of the judgment debt. The arts. of assocn. of a co. provided that the qualification of a director should be the "holding in his own right" 300 shares; & certain shareholders of the co., in order to qualify a person as managing director, & with the knowledge & assent of the directors, transferred the requisite number of shares into his name on the register of the co., the transferors themselves retaining the beneficial ownership of the shares. Judgment having been recovered against the transferee by pltf.:—*Held*: the shares were not held by the judgment debtor "in his own right," so as to entitle pltf. to a charging order upon them under the above Act.—*COOPER v. GRIFFIN*, [1892] 1 Q. B. 740; 61 L. J. Q. B. 563; 66 L. T. 660; 40 W. R. 420; 8 T. L. R. 404; 36 Sol. Jo. 325, C. A.

Annotations:—*Folld.* *Howard v. Sadler*, [1893] 1 Q. B. 1; *Sutton v. English & Colonial Produce Co.*, [1902] 2 Ch. 502.

1277. — — — — — Unregistered sale—Cestui que trust not estopped from denying his beneficial ownership.]—A director of a railway co., incorporated by an Act providing that the qualification of a director should be the possession in his own right of a certain number of shares, sold his shares; but his name remained on the register as the person entitled to the shares, & he continued to act as a director. A judgment creditor of the director having applied for a charging order on the shares under Judgments Act, 1837 (c. 110), s. 14:—*Held*: (1) the director might have possession of the shares in his own right without being the

Sect. 12.—Membership: Sub-sect. 5, B. (c) & (d) & C. Sect. 13: Sub-sects. 1, 2 & 3.]

beneficial owner; (2) there was no illegality in the transaction with regard to the sale of the shares; (3) the purchasers were not estopped from setting up that they were the persons beneficially entitled; & a charging order could not be made.—**HOWARD v. SADLER**, [1893] 1 Q. B. 1; 68 L. T. 120; 41 W. R. 126; 37 Sol. Jo. 49; 5 R. 45, D. C.

Annotation:—As to (1) **Folld. Sutton v. English & Colonial Produce Co.**, [1902] 2 Ch. 502.

See, generally, EXECUTION; TRUSTS & TRUSTEES.

Lien on shares held by party as trustee.]—See Sect. 22, sub-sect. 4, post.

Mortgage of shares by trustee—In respect of private debt.]—See Sect. 25, sub-sect. 4, C., post.

(d) **Notice of Trust.**

See, generally, EXECUTORS & ADMINISTRATORS; TRUSTS & TRUSTEES.

1278. Notice of trust—Transfer by way of mortgage by sole trustee—Transfer registered by mortgagee after receiving notice—Valid.]—A sole trustee of shares executed a transfer & delivered it with the certificate of the shares to a mtgee. who had no notice of the trust. The mtgee. did not register his transfer until after notice of the trust:—**Held**: the transfer could not be impeached. The certificate showed that the shares had formerly stood in the names of two persons:—**Held**: this was not enough to put the mtgee. on inquiry or fix him with notice.—**DODDS v. HILLS** (1865), 2 Hem. & M. 424; 12 L. T. 139; 71 E. R. 528.

Annotations:—**Consd. R. v. Shropshire Union Co.** (1873), L. R. 8 Q. B. 420. **Distd. Roots v. Williamson** (1888), 38 Ch. D. 485. **Refd. Ortigosa v. Brown** (1878), 47 L. J. Ch. 168; **Powell v. London & Provincial Bank**, [1893] 1 Ch. 610.

1279. ——— Certificates showing that shares formerly held jointly.]—DODDS v. HILLS, No. 1278, ante.

C. Executors.

See Sect. 24, sub-sect. 1, post.

SECT. 13.—THE REGISTER OF MEMBERS.

SUB-SECT. 1.—IN GENERAL.

See, now, 1908 Act, s. 25.

1280. What is a register—Members' ledger—Referred to in register.]—A partner in a banking

firm accepted a transfer of shares in a limited co. by way of security for a loan made by the firm, & he executed the transfer in the name of the firm. At the date of the transfer the transferor was not the registered holder of any shares in the co., but transfers of the shares which he purported to transfer had been executed to him & were shortly afterwards registered. The banking firm subsequently re-transferred the shares to the transferor within twelve months of the winding up of the co. The name of the firm did not appear in the "Register of Members," but in a book called the "Members' Ledger," which was referred to in the "Register of Members":—**Held**: this was a valid registration.—**Re LAND CREDIT CO. OF IRELAND, WEIKERSHEIM'S CASE** (1873), 8 Ch. App. 831; 42 L. J. Ch. 435; 28 L. T. 653; 21 W. R. 612, L. JJ.

Annotations:—Distd. Re Vagliano Anthracite Collieries (1910), 79 L. J. Ch. 769. **Refd. Re Printing Telegraph & Construction Co. of Agence Havas, Ex p. Cammell** (1894), 1 Mans. 274. **Mentd. Niemann v. Niemann** (1889), 43 Ch. D. 198.

1281. ——— Allotment sheets—Containing statutory particulars.]—Certain allotment sheets prepared in the office of a limited co. for the use of the directors at the first general allotment stated the names of the proposed allottees & the other particulars required by the Cos. Act to be contained in the register of members, except that their occupations were not stated; they contained a column for references to the register. After the allotment these sheets were signed by the chairman & secretary of the co. No formal register was acquired by the co. until a later period:—**Held**: the allotment sheets, being prepared *alio intuitu*, could not be regarded as the register in the meantime.—**Re PRINTING TELEGRAPH & CONSTRUCTION CO. OF AGENCE HAVAS, Ex p. CAMMELL**, [1894] 2 Ch. 392; 63 L. J. Ch. 536; 70 L. T. 705; 10 T. L. R. 441; 38 Sol. Jo. 437; 1 Mans. 274; 7 R. 191, C. A.

Annotations:—Refd. Re Issue Co., Hutchinson's Case, [1895] 1 Ch. 226. **Mentd. Re Hercynia Copper Co.**, [1894] 2 Ch. 403; **Molineaux v. London, Birmingham & Manchester Insee.**, [1902] 2 K. B. 589.

See, also, No. 1188, ante.

Under 1908 Act, s. 30.]—See No. 1296, post.

1282. Foreign register—Power to keep.]—B., under instructions from the board of directors of a co. registered in England, went to India for the purpose of getting shares in the co. taken up there. A large number of shares were allotted in India by B. The names of the Indian shareholders were registered in a book kept at the co.'s office in Bombay, but not in the books at the London

PART III. SECT. 12, SUB-SECT. 5.—B. (d).

1. Notice of trust—Marriage settlement—Debt of trustee—Company may not ignore rights of which they have knowledge.]—B. was entitled in her own right to shares in a bank, of which she was the registered holder. In 1877 she married R., & by her marriage settlement purported to convey the shares to C. & D. as trustees.

In 1882 the bank was incorporated under 1862 Act. The arts. of assocn. provided that (1) no person should be recognised by the co. as holding any share upon any trust, & that the co. should not be bound by any equitable interest in any share, or any other right except an absolute right to the entirety thereof in the registered holder. (2) The co. should have a first & paramount lien on all the shares registered in the name of a member, whether solely or jointly with others, for all moneys due to the co. from him, either alone or jointly with any other person, whether a

member or not, & whether such shares were presently payable or not. After the incorporation of the co. the shares were transferred into the joint names of the trustees, such transfer being made in 1885. Both before & after incorporation the bank had notice that C. & D. were trustees in respect of the shares, that the shares had been put in settlement, & that neither of the trustees had any beneficial interest therein. In 1891 D. became indebted to the bank. C. died in 1893. The bank claimed to hold the shares answerable for D.'s debt, & refused to pay any further dividends on the same till the debt was discharged:—**Held**: the bank were not entitled to a lien on the shares in respect of D.'s debt. The object of 1862 Act, s. 20, & of similar provisions in arts. of assocn., is to spare a co. the responsibility of attending to any trusts or equities whatever attached to their shares, so that they may safely deal with the person who is registered owner, recognising no other person & no different right, & freeing them from

inquiry into conflicting claims as to shares, transfers, calls, dividends, etc., & enabling them to treat the registered holder as owner of the shares for all purposes, without regard to contracts between himself & third persons. But it was not the object of the Legislature to enable a co. to ignore, for their own purposes and interest, the rights of persons of which they have knowledge.—**REARDEN v. PROVINCIAL BANK OF IRELAND**, [1896] 1 I. R. 532; 30 I. L. T. 117.—**IR.**

PART III. SECT. 13, SUB-SECT. 1.

m. What is a register—Particulars entered in different books—If taken together containing all information required by the statute.]—The register of shareholders may consist of particulars entered in different books, which taken together substantially contain all the information which the Act requires. If there be a substantial compliance with the requisitions of the Act, the register is not invalidated by reason of slight deviations from its

office, & no return of their names was ever made to the Registrar of Joint-stock Cos. In 1867 the co. was wound up & in 1869 the English shareholders were placed on the list of contributories & calls made on them, by means of which all the debts, etc., were paid. In 1874, the official liquidator filed a supplemental list of contributories, on which he placed all the Indian shareholders, with a view of making them contribute rateably to the debts which the English shareholders had paid:—*Held*: (1) S., whose name was on the register which had been kept at Bombay, & who had accepted shares & paid calls on them, was properly placed on such supplemental list; (2) under 1862 Act, s. 25, which requires a register of shareholders to be kept, "in one or more books," a co. which has foreign as well as English shareholders can keep a register abroad as well as at home.—*Re EAST INDIA COTTON AGENCY, LTD., SAND'S CASE* (1875), 32 L. T. 299.

Annotation:—As to (1) *Refd. Re Taurine Co.* (1883), 25 Ch. D. 118.

See, now, 1908 Act, ss. 34, 35.

SUB-SECT. 2.—CONTENTS.

1283. Name of shareholder—How entered—Executors.—A co. is not (in the absence of anything to the contrary in its arts. of assocn.) entitled to insert in its register of members (required by 1862 Act, s. 25) a statement that a member is entitled as exor. of a deceased shareholder, but the exor. is entitled to have his name entered as a member without any statement of the fact of his being an exor. Where there are several exors.,

directions or by unimportant omissions or defects in particulars of information.—*Re ALLIANCE FINANCIAL CORPN., BLANEY'S CASE* (1866), 3 Bom. O. C. 106.—IND.

n. List of shareholders—Must be in duplicate.—A list of shareholders transmitted to the provincial secretary contained the name of a person as holding a certain amount of stock in a joint-stock co., while in the list posted up in the head office of the co. the shareholder's name was inadvertently deleted:—*Held*: the lists were not duplicates within Ontario Cos. Act, & the co. were liable to a penalty under the Act.—*TOWNER v. HIAWATHA GOLD MINING & MILLING CO. OF ONTARIO* (1899), 30 O. R. 547.—CAN.

o. Must not be removed outside jurisdiction.—A co. formed under the Limited Liability Acts & having its registered office in Scotland, cannot competently remove the register of shareholders beyond Scotland.—*GARPEL HOMATITE CO., LTD. (LIQUIDATOR OF) v. ANDREW* (1866), 4 Macph. (Ct. of Sess.) 617; 38 Sc. Jur. 342.—SCOT.

PART III. SECT. 13, SUB-SECT. 2.

p. Name of shareholder—Purchaser of shares at a court sale—Not entitled as of right to entry on register.—A purchaser of shares of a limited co. at a ct. sale is not entitled as of right to have his name entered in the register of the co. as a shareholder. He is subject to the same rules on this point as a private purchaser is.—*MANILAL BRILJAL v. GORDHAN SPINNING & MANUFACTURING CO.* (1916), 1 L. R. 41 Bom. 76.—IND.

q. Entry of trusts—Whether notice of deposit of shares "in trust" is notice of trust.—M., the holder of fully paid up shares of stock of deft. co., having transferred the shares, some "in trust," & some not so expressed to W., the manager of a bank, to which M. was

they are entitled to have their names put upon the register in any order they choose.—*Re SAUNDERS (T. H.) & Co., LTD.*, [1908] 1 Ch. 415; 77 L. J. Ch. 289; 98 L. T. 533; 24 T. L. R. 263; 52 Sol. Jo. 225; 15 Mans. 142.

Annotation:—*Consd. Burns v. Siemens Dynamo Works*, [1919] 1 Ch. 225.

1284. — Partners.—Two or more persons in partnership, being transferees of shares in a limited co. by a transfer to them in their partnership name, are not entitled to claim to be entered on the register of the co. in their partnership name.—*Re VAGLIANO ANTHRACITE COLLIERIES, LTD.* (1910), 79 L. J. Ch. 769; 103 L. T. 211; 54 Sol. Jo. 720.

Trustee in bankruptcy.—See *BANKRUPTCY & INSOLVENCY*, Vol. V., p. 965, No. 7905.

1285. — Joint holders—Order of names.—*Re SAUNDERS (T. H.) & Co., LTD.*, No. 1283, ante.

See, also, No. 1320, post.

Misspell—On list of members at office of registrar of company.—See No. 3910, post.

Entry of trusts—Whether notice of deposit of shares is notice of trust.—See No. 2179, post.

Trustees as members.—See, generally, Sect. 12, sub-sect. 5, ante.

SUB-SECT. 3.—AS EVIDENCE.

See, now, 1908 Act, s. 32 (4).

1286. General rule.—*REESE RIVER SILVER MINING CO. v. SMITH*, No. 727, ante.

1287. How far conclusive—Of membership—Transferee entered without his knowledge—No

debted, the transfer being approved of by the co., who registered W. as transferee:—*Held*: (1) W. was entitled to the dividends declared on the shares as against the co., who sought in pursuance of powers in the arts. of assocn. to retain the dividends for a debt due to them from M.; (2) the use of the words "in trust" although contrary to the provisions of Cos. Act, must have informed the secretary of the co. that W. was applying for registration in trust in respect of the bank of which he was manager, & there was nothing to suggest that he was acting as trustee for M.—*WILSON v. BRITISH COLUMBIA REFINING CO.* (1915), 31 W. L. R. 381; 8 W. W. R. 838.—CAN.

r. — Company not accountable to cestui que trust.—An assignment by a shareholder for the benefit of his creditors excepted shares in cos. not fully paid up & declared the assignor a trustee of such shares for the assignee:—*Held*: the assignee was not entitled to call on the co. to account to him for the shares or any dealings therewith.—*ARMSTRONG v. MERCHANTS' MANTLE MANUFACTURING CO.* (1900), 21 C. L. T. 123; 32 O. R. 387.—CAN.

s. — Notice of equitable rights.—B. was entitled in her own right to shares in a bank, of which she was the registered holder. In 1877 she married R., & by her marriage settlement purported to convey the shares to C. & D. as trustees, upon usual trusts.

In 1882 the bank was incorporated under 1862 Act. Clause 8 of the arts. of assocn. provided that no person should be recognised by the co. as holding any share upon any trust, & that the co. should not be bound by or recognise any equitable interest in any share, or any other right in respect of any share, except an absolute right to the entirety thereof in the registered holder. Clause 11 provided that the co. should have a first & paramount lien & charge on all the

shares registered in the name of a member (whether solely or jointly with others) for all moneys due to the co. from him or his estate, either alone or jointly with any other person, whether a member or not, & whether such shares were presently payable or not. After the incorporation of the co., as it was then permissible, the shares were transferred into the joint names of the trustees, such transfer being made in 1885, after some further correspondence between the trustee C. & the secretary of the bank. Both before & after incorporation the bank had notice that C. & D. were trustees in respect of the shares, that the shares had been put in settlement, & that neither of the trustees had any beneficial interest therein. From 1885 the dividends on the shares were paid to the husband R., as the nominee of the trustees, till his death in 1888. From that date till Aug. 1892, they were by arrangement paid to B. In 1891, D. became indebted to the bank, & left the country in that year. C. died in 1893. The bank claimed to hold the shares answerable for D.'s debt, & refused to pay any further dividends on the same till the debt was discharged:—*Held*: the bank were not entitled to a lien on the shares in respect of D.'s debt. The effect of the section is to relieve co.'s from liabilities arising, not from the joint operation of notice & an act or omission of the co., but from notice *per se*; & not to extinguish or affect any obligation to which they would otherwise be subject by their own unconscientious conduct.—*REARDEN v. PROVINCIAL BANK OF IRELAND*, [1896] 1 L. R. 532; 30 I. L. T. 117.—IR

PART III. SECT. 13, SUB-SECT. 3.

1286 i. General rule.—The entry on a share register of the name of a person as a shareholder is only *prima facie* evidence of ownership, & consequent liability as a shareholder.—*Re*

Sect. 13.—The register of members: Sub-sects. 3, 4 & 5, A.]

formal transfer of shares.]—G., a shareholder in a completely registered co., being in prison, two of the directors, being desirous to procure his discharge, entered into an agreement with B., one of his creditors, by which B. agreed to accept 1,500 shares in part payment of his debt, & to consent to G.'s discharge; & the two directors stated that they were authorised by G. & the co. to transfer the shares, declared the shares to be transferable by delivery, & agreed that if it should appear that the shares could not be legally vested in B., without his executing the deed of settlement, they would pay him £1,500. They handed over to him scrip certificates for 1,500 shares, which described the co. as only provisionally registered, & purported to be transferable by delivery. The directors placed B. on the register of shareholders without his knowledge, & in the register of transfers they entered the shares as transferred to him by G., but it was not shown that any deed of transfer had ever been executed, & he never executed the deed of settlement, or any deed of accession to it. An order was afterwards made for winding up the co.:—*Held*: inasmuch as the shares in the co. were not transferable by delivery, & could not be vested in B. without his executing the deed of settlement, B., in the absence of conduct estopping him from disputing his being a shareholder, was not liable to be placed on the list of contributories.—*Re* ELECTRIC TELEGRAPH CO. OF IRELAND, BUNN'S CASE (1860), 2 De G. F. & J. 275; 3 L. T. 567; 9 W. R. 43; 45 E. R. 627; *sub nom.* ELECTRIC TELEGRAPH CO. OF IRELAND *v.* BUNN, 29 L. J. Ch. 913; 6 Jur. N. S. 1223, L. JJ.

Annotation:—Reid. Re Richmond-Hill Hotel Co., Elkington's Case (1867), 16 L. T. 81.

1288. ——— Delay in registering transfer.]—Where a transferor has neglected to see that the transfer of his shares is registered, the ct. will not, after a winding-up order has been made, rectify the register under 1862 Act, s. 35, although there has been unnecessary delay on the part of the co. A shareholder had compromised actions pending between himself & the co. & the directors on the terms that he should pay a certain sum, & should transfer his shares to one of the directors. He paid the sum & executed a transfer of his shares to the director, who also executed the same. The transfer was deposited with the attorney who acted for the co. & the directors in the action. No further steps were taken for more than two years,

& till after an order had been made to wind up the co., when the shareholder applied for a rectification of the register:—*Held*: the register, on which the name of the shareholder appeared, was conclusive & could not be altered.—*Re* ANGLO-DANUBIAN STEAM NAVIGATION & COLLIERY CO., WALKER'S CASE (1868), L. R. 6 Eq. 30; 37 L. J. Ch. 651; 16 W. R. 749.

1289. ——— Name entered without authority.]—*REESE RIVER SILVER MINING CO. v. SMITH*, No. 727, *ante*.

1290. ——— Name entered without sufficient cause.]—*REESE RIVER SILVER MINING CO. v. SMITH*, No. 727, *ante*.

1291. ——— Default by company in removing name.]—*REESE RIVER SILVER MINING CO. v. SMITH*, No. 727, *ante*.

1292. ——— Name omitted from register.]—*REESE RIVER SILVER MINING CO. v. SMITH*, No. 727, *ante*.

1293. ——— In proceedings under 1862 Act, s. 26.]—According to the true construction of 1862 Act, s. 26, the forwarding to the Registrar of Joint Stock Cos. of a list of members & summary which upon the face of them purport to satisfy the requirements of the Act, is not a sufficient compliance with that sect. unless such list & summary are in accordance with the facts; & a metropolitan police magistrate has jurisdiction upon a summons for penalties under sect. 27 to inquire into the truth or falsehood of the statements contained in the list & summary so forwarded, & is not precluded from hearing evidence on the complaint brought before him merely by the circumstance that the list & summary are in accordance with the co.'s register. Such register is only *prima facie* evidence of certain matters, & upon evidence that it contained fictitious entries the magistrate would be justified in disregarding such entries, & in treating a summary based upon them as false & misleading. But questions of nicety as to the title to shares & the right to be on the register cannot properly be determined by a magistrate upon such a summons, & with reference to such questions he ought to accept the co.'s register as practically conclusive.—*Re* BRITON MEDICAL & GENERAL LIFE ASSOCN. (1888), 39 Ch. D. 61; 57 L. J. Ch. 874; 59 L. T. 134; 37 W. R. 52; 4 T. L. R. 531.

See, now, 1908 Act, s. 26 (5).

1294. Of title to shares.]—*HENDERSON v. COULSON, WAGNER v. COULSON* (1889), 6 T. L. R. 28, D. C.

See, also, No. 1293, ante.

MONARCH OIL CO. v. CHAPIN, [1917] 3 W. W. R. 662.—CAN.

t. How far conclusive—Of membership—Shares registered in name of judgment debtor—On behalf of another person.]—Shares in a mining co. registered on the co.'s books in the name of a judgment debtor are not the subject of a charging order where the shares are held by the judgment debtor on behalf of another person.—*PRYOR v. POWELL* (1898), 23 V. L. R. 512.—**AUS.**

a. ——— Other evidence adduced—Contradicting or impugning register.]—The evidence adduced by the official liquidator to show that deft. was a member of the co. & so liable as a contributory consisted of the register of members, a letter written by the objector, a reply thereto written by a managing director of the co. & the oral testimony of the director himself. The objector adduced no evidence at all:—*Held*: the official liquidator might, if he had chosen to do so, have put the register in evidence,

& waited, before giving any further evidence until the objector had given some to displace the *prima facie* evidence afforded by the register, or to impugn the character of the register; but his case must be looked at as a whole, & having taken the line which he did, he must take the consequences of his other evidence contradicting or impugning the *prima facie* evidence of the register, & notwithstanding that the objector gave no evidence, the register was not conclusive.—*RAM DAS CHAKARBATI v. COTTON GINNING CO., LTD., CAWNPORE OFFICIAL LIQUIDATOR* (1887), 1 L. R. 9 All. 366.—**IND.**

b. ——— Sealed register of company.]—In an action for calls, plffs. gave in evidence the sealed registers of the co., & in each of them deft.'s name appeared as the proprietor of two hundred shares, £300 deposit paid. They also proved their subscription contract, & that a person, representing himself to be deft., signed it:—*Held*: in the absence of rebutting evidence on the part of deft. the

register established his identity & his liability.—*WATERFORD, WEXFORD, WICKLOW & DUBLIN RY. CO. v. WOISELY* (1851), 1 I. C. L. R. 444; 4 Ir. Jur. 233.—**IR.**

c. ——— Register consisting of several volumes—Last volume sealed with company's seal.]—Where the register of shareholders consists of several volumes, the co.'s seal fixed to the last volume of the series is a sufficient authentication within Clauses Consolidation (Scotland) Act, 1845 (c. 17), to make the register evidence, though the name of defender as shareholder appears only in the volume to which the seal is not attached.—*INGLIS v. GREAT NORTHERN RY. CO.* (1852), 24 Sc. Jur. 434; 1 Stu. M. & P. 749.—**SCOT.**

d. ——— Denial of membership—Onus of proof.]—The register of shareholders of a joint-stock co. is *prima facie* evidence of the membership of persons whose names appear on the register, and any person whose name so appears denying his member-

SUB-SECT. 4.—CUSTODY AND INSPECTION.

See, now, 1908 Act, s. 30.

Custody—Solicitor's lien.]—See No. 3642, *post*.

1295. Right of inspection—General rule.]—The books of a co. are part of the property of the co., & the shareholders in it have a right to the inspection of them. But that inspection will be granted at the cost of those who seek it. Only one investigation will be allowed at a time; no improper advantage must be taken or use made of the knowledge acquired; & the proceedings in the winding up must not be stayed thereby.—*Re JOINT-STOCK DISCOUNT CO., LTD., Ex p. BUCHAN* (1866), 36 L. J. Ch. 150; *sub nom. Re JOINT STOCK DISCOUNT CO., BUCHANAN'S CASE*, 15 L. T. 261; 15 W. R. 99.

1296. — Who may inspect—Non-member.]—(1) The right to inspect the register of members of a co., which is conferred by 1862 Act, s. 32, carries with it the right to take extracts from or to make copies of the entries in the register. The right, also given by the sect., to require a copy of the register on payment is in addition to, & not in substitution for, the above implied right. (2) The "register" includes the entries of the names of persons who have been, but have ceased to be, members of the co. by reason of the forfeiture of their shares or otherwise. (3) The right to extracts under the above sect. also obtains on an inspection by a non-member.—*BOORD v. AFRICAN CONSOLIDATED LAND & TRADING CO.*, [1898] 1 Ch. 596; 67 L. J. Ch. 451; 77 L. T. 553; 46 W. R. 150; 14 T. L. R. 116; 42 Sol. Jo. 115.

Annotations:—As to (1) Overd. Re Balaghât Gold Mining Co., [1901] 2 K. B. 665. *Generally, Mentd. Ormerod, Grierson v. St. George's Ironworks*, [1905] 1 Ch. 505.

1297. — What right includes—Copies.]—*BOORD v. AFRICAN CONSOLIDATED LAND & TRADING CO.*, No. 1296, *ante*.

1298. — — — — —.]—The right conferred by 1862 Act, s. 32, to inspect the register of members of a co. under that Act, does not carry with it the right to take extracts from or to make copies of the entries in the register.—*Re BALAGHÂT GOLD MINING CO.*, [1901] 2 K. B. 665; 70 L. J. K. B. 866; 85 L. T. 8; 49 W. R. 625; 17 T. L. R. 660, C. A.

Annotation:—Mentd. Ormerod, Grierson v. St. George's Ironworks, [1905] 1 Ch. 505.

1299. — Effect of winding-up proceedings.]—The right of inspecting the register of members of a co. under 1862 Act, given to all persons by sect. 32 of that Act, ceases upon the commencement of the winding up of the co., & is replaced by the provisions of sect. 156, which provides for the inspection of the books & papers of a co. which is being wound up under an order of the ct. by its creditors & contributories, & can be applied to a voluntary winding up by sect. 138 of the Act.—*Re KENT COALFIELDS SYNDICATE*, [1898] 1 Q. B. 754; 67 L. J. Q. B. 500; 78 L. T. 443; 46 W. R. 453; 14 T. L. R. 305; 42 Sol. Jo. 363; 5 Mans. 88, C. A.

1300. Costs of inspection.]—*Re JOINT STOCK DISCOUNT CO., Ex p. BUCHAN*, No. 1295, *ante*.

Right of inspection of books & documents generally.]—See Nos. 1207–1209, *ante*.

SUB-SECT. 5.—RECTIFICATION.

A. Without Application to Court.

1301. By directors — General rule.]—FIRST NATIONAL REINSURANCE CO. *v.* GREENFIELD, No. 568, *ante*.

1302. — Mistake common to directors & allottee—Shares allotted under contract not registered under 1867 Act, s. 25—Cancelled & re-allotted after contract registered.]—Certain shares were allotted & accepted as fully paid-up in pursuance of a contract with a trustee for the co., which, through inadvertence, had not been registered in accordance with the above Act. Upon discovery of the omission the directors cancelled the shares & removed the name of the allottee from the register, then registered the contract, & subsequently issued fresh shares to the allottee. The co. was afterwards wound up:—*Held*: the directors had power to rectify a mistake which was common to them & the allottee, & the transaction could not be disturbed.—*Re POOLE FIREBRICK & BLUE CLAY CO., HARTLEY'S CASE* (1875), 10 Ch. App. 157; 44 L. J. Ch. 240; 32 L. T. 106; 23 W. R. 203, L. C. & L. J.

Annotations:—Refd. Re Ambrose Lake Tin & Copper Co., Clarke's Case (1878), 8 Ch. D. 635; *Re Macdonald*, [1894] 1 Ch. 89; *Re Preservation Syndicate* (1895), 64 L. J. Ch. 723; *Smith v. Brown*, [1896] A. C. 614. *Mentd. Re Malaga Lead Co., Firmstone's Case* (1875), L. R. 20 Eq. 524; *Re Tal-y-drws Slate Co., Mackley's Case* (1875), 33 L. T. 460; *Re Anglo-Colonial Syndicate* (1891), 65 L. T. 847; *Re Staffordshire Gas & Coke Co., Rushworth's Case* (1891), 66 L. T. 48; *Re Common Petroleum Engine Co., Elsner & McArthur's Case*, [1895] 2 Ch. 759; *Re London Health Electrical Institute* (1896), 75 L. T. 658; *Re Wragg*, [1897] 1 Ch. 796.

1303. By secretary—Alteration a nullity.]—Sect. 32 of 1908 Act is brought into operation so soon as there is a person alleging himself to be aggrieved by an improper entry in or omission from the register, & thereupon it is open to the person so aggrieved or to the co., or to any member of the co., to come to the ct. under that sect. *H. sold, to M. H. & Co.*, in whose employment he then was as general manager, 930 shares in the Navigation Co., for sums exceeding £18,000. Of these shares 870 were transferred to M. H. & Co. or their nominees but in respect of the remaining 60 shares, owing to some mistake as to their title, all they received was the certificate & a transfer in blank under seal executed by H. Subsequently M. H. & Co. filled in the blank transfer with the name of G., who was a clerk in their employment, & left the same, purporting to be for a nominal consideration of 10s. & stamped with a 10s. stamp only, together with the certificate for registration by the Navigation Co. H., who had been dismissed from his employment by M. H. & Co., with whom he was now engaged in litigation, in reply to the usual notice given to him by the Navigation Co., of the intended transfer to G. asked that it should not be registered without further notice to himself, but owing to changes

ship must adduce sufficient evidence to prove that he is not a member.—*SOUTHLAND FROZEN MEAT & PRODUCE EXPORT CO. (LTD.) v. POTTER* (1889), 8 N. Z. L. R. 308.—N.Z.

PART III. SECT. 13, SUB-SECT. 4.

1295 i. Right of inspection—General rule.]—Where a person who is entitled under Indian Companies Act, 1882, s. 55, to obtain inspection of the register of shareholders of a co. applies for

inspection during business hours & not at a time when inspection is prohibited either under sect. 56 or by reason of any rules framed by the co. under sect. 55, such inspection must be granted.—*R. v. BEER* (1897), 1 L. R. 20 All. 126.—IND.

1297 i. — What right includes—Copies.]—The right of inspection of the register of shareholders, which by Mining Companies Act, 1894, s. 44, is given to creditors or shareholders

of a mining company, includes a right to make copies of the entries in the register.—*MCDONALD v. INGALL* (1898), 17 N. Z. L. R. 111.—N.Z.

PART III. SECT. 13, SUB-SECT. 5.—A.

a. Effect of removal without application to court.]—*Re ETNA INSURANCE CO., LTD., Ex p. SHIELDS, LORRIMER & WOOD* (1873), 7 L. R. Eq. 264.—IR.

Sect. 13.—The register of members: Sub-sect. 5, A. & B. (a), (b) & (c).]

in the staff this circumstance was overlooked & G.'s name was placed on the register. Subsequently & before a new certificate was issued to G. the secretary of the Navigation Co., having discovered the correspondence with H. purported to amend the register by striking out the entries showing G. to be the owner of the shares & restoring the entries showing H. to be the owner thereof. Some correspondence followed, in which H. took up the position that he was now on the register, & that if G. wished to be registered he should apply to rectify the register under the above sect. As neither H. nor G. moved further in the matter the Navigation Co., took out this summons under the sect. asking for an order that the co., might be authorised to restore & retain G.'s name as the owner of the shares. Prior to the issue of the summons the transfer had been duly stamped with an *ad valorem* stamp & a penalty paid. It was not now disputed that the 60 shares in question formed part of the 930 shares sold by H. to M. H. & Co. The arts. of assocn. of the Navigation Co., did not require a transfer to be made by deed, but only by an instrument in writing:—*Held*: (1) under the circumstances the summons was properly taken out by the Navigation Co.; (2) the alteration in the register made by the secretary of the Navigation Co. was a mere nullity; (3) the registration of the transfer to G. having been made by the Navigation Co., without notice of the insufficiency of the stamp duty & the *ad valorem*, stamp duty & penalty having been since paid, the name of G. ought to remain on the register & the costs of this summons must be paid by H.—*Re* INDO-CHINA STEAM NAVIGATION CO., [1917] 2 Ch. 100; 86 L. J. Ch. 723; 117 L. T. 212.

By liquidator—Under 1908 Act, s. 205.]—See Sect. 23, sub-sect. 14, B., post.

Cancellation of shares generally.]—See Sect. 17, sub-sect. 3, G.; Sect. 27, post.

1304. As between equitable owners—Purchasers from fraudulent vendor holding as nominee—Assignee in bankruptcy of beneficial owner.]—M., a judgment creditor of defts., placed a sum of money in the hands of D., a married woman, who, representing herself to be a widow, & in an assumed name, purchased some of the stock of defts., & was registered as a proprietor by her assumed name; afterwards, at M.'s request, D. sold the stock to plffs., & the shares were registered in their names. M. became insolvent, & defts., finding D. had only purchased for M., struck plffs.' names off the register of shareholders, & substituted the name of M.'s assignee:—*Held*: under the circumstances, the co. had no right to remove plffs.' names from the register of shareholders.—*WARD v. SOUTH EASTERN RY. CO.* (1860), 2 E. & E. 812; 29 L. J. Q. B. 177; 2 L. T.

212; 6 Jur. N. S. 890; 8 W. R. 468; 121 E. R. 304.

Annotation:—*Reid. R. v. Charnwood Forest Ry.* (1884), Cab. & El. 419.

1305. As between legal & equitable owner—For purpose of acquiring lien.]—Re YSTALYFERA GAS CO. (1887), 3 T. L. R. 321.

1306. Effect of removal without application to court—Not complete indemnity.]—A person wrongfully placed on the register of members of a co. is entitled, notwithstanding the removal by the directors of his name from the list, to apply to the ct. for an order, under 1862 Act, s. 35, to rectify the register by striking off his name, in order that, as between himself & the other members, the matter may be settled once for all. *Qu.*: whether creditors of the co. are bound by such an order.—*Re* BANK OF HINDUSTAN, CHINA & JAPAN, LTD., *Ex p.* MARTIN (1865), 2 Hem. & M. 669; 12 L. T. 671; 11 Jur. N. S. 635; 13 W. R. 988; 71 E. R. 624.

Annotation:—*Reid. Re London & Mediterranean Bank, Wright's Case* (1871), 7 Ch. App. 55.

Entry induced by forged transfer.]—See Nos. 2468, 8089, post.

Duty of company to apply.]—See No. 1351, post.

B. Under Companies (Consolidation) Act, 1908 (c. 69), s. 32.

(a) In General.

1307. Object of provision—1856 Act, s. 25.]—The above sect. enabling a shareholder whose name is without sufficient cause omitted to be entered in the co.'s register, to apply by motion for an order that the register may be rectified, was not meant to give to every shareholder *ex debito justitiæ* this summary remedy. The object of that sect. was, to enable the ct. to avoid the inconvenience & injustice which occasionally arise from capricious or frivolous objections on the part of cos. to complete the registration of their shareholders. It was not intended by the Act, that, in the event of there being a serious question to be tried, the matter should be disposed of summarily.—*Re* BRITISH SUGAR REFINING CO. (1857), 3 K. & J. 408; 69 E. R. 1168; *sub nom. Re* BRITISH SUGAR REFINING CO., *Ex p.* FARIS, 26 L. J. Ch. 369; 5 W. R. 379.

Annotations:—*Reid. Re North British Australasian Co., Ex p.* Swan (1859), 7 C. B. N. S. 400; *Re* Diamond Rock Boring Co., *Ex p.* Shaw (1877), 2 Q. B. D. 463.

1308. When section comes into operation.]—Re INDO-CHINA STEAM NAVIGATION CO., No. 1303, ante.

1309. How effected.]—Form of removing the name from the register of shareholders under 1862 Act.

The name must be erased. The best way of doing so will be to strike through the name with a pen & ink, & then add a short abstract of my order, thus:—"By an order of the Ct. of Ch., dated, etc., this name has been erased." Let it

PART III. SECT. 13, SUB-SECT. 5.—B. (a).

1309 i. How effected.]—A shareholder whose name is on the register as such cannot repudiate his obligation to pay calls to the liquidator of the co. on the ground that he was induced to take the shares by misrepresentation, unless he takes proceedings to have his name removed from the register before the commencement of the winding up.—Re FRUIT & VEGETABLE CO., LTD. (1912), 12 S. R. N. S. W. 52; 29 N. S. W. W. N. 29.—AUS.

i. May be effected—Though list of contributories settled—& final

decree for payment of calls made in winding up.]—Although in a winding up interlocutory by a Lord Ordinary settling a list of contributories & giving decree for payment of calls have been allowed to become final, this will not prevent a contributory included in them from presenting a petition to have his name removed from the register of the co. in terms of above Act.—STOCKER v. COUSTONHOLM PAPER MILLS CO., LTD. (LIQUIDATOR OF) (1891), 19 R. (Ct. of Sess.) 17; 29 Sc. L. R. 29.—SCOT.

g. — Unless controversial matters & extrinsic questions raised.]—BLAIRIE v. COATS (1893), 21 R. (Ct. of Sess.)

150; 31 Sc. L. R. 115; 1 S. L. T. 320.—SCOT.

h. — — —.] — COLQUHOUN'S TRUSTEES v. BRITISH LINEN CO. (1900), 1 F. (Ct. of Sess.) 945; 37 Sc. L. R. 732; 8 S. L. T. 45.—SCOT.

k. Effect of rectification—After winding-up order—Equities already existing apply.]—The ct. will remove from the register the name of anyone who ought not to be registered, & place thereon the name of anyone who should be registered. Where an order to wind up a co. has been granted, & an application is made to correct the share register, the equities that existed

be signed by the secretary. I object to its being erased by a penknife so as to make it appear that the name was never there (ROMILLY, M.R.).—*Re IRON SHIP BUILDING Co.* (1865), 34 Beav. 597; 55 E. R. 766.

1310. Effect of rectification—Transferee's name removed—Transferor's name not restored.]—In Dec. 1865, a co. registered a transfer of shares from A. to B., which had not been executed by B.; & placed B.'s name on the list of shareholders. In Aug. 1866, the ct., on the application of B., made an order directing B.'s name to be removed from the register of shareholders on the ground that B. had not accepted the shares. The co. accordingly removed B.'s name, but did not restore A.'s. Afterwards the co. was ordered to be wound up:—*Held*: A. was a contributory.—*Re MERCHANTS' Co.*, *HERITAGE'S CASE* (1869), L. R. 9 Eq. 5; 39 L. J. Ch. 238; 21 L. T. 479; 18 W. R. 270.

1311. — Retrospective order rendering dissent under 1862 Act, s. 161, effectual—Notices of meeting for voluntary liquidation not invalidated.]—*Re SUSSEX BRICK Co.*, No. 1333, *post*.

(b) Courts having Jurisdiction.

See, now, 1908 Act, s. 32 (2).

1312. Stannaries court—Jurisdiction concurrent with superior courts.]—Under 1862 Act, s. 35, the Vice Warden of the Stannaries has not exclusive, but concurrent, jurisdiction to entertain an application to rectify the register of members.—*Re PENHALE & LOMAX CONSOLIDATED SILVER LEAD MINING Co.* (1867), 2 Ch. App. 398; *sub nom. Re PENHALE & LOMAX CONSOLIDATED SILVER LEAD MINING Co., LTD.*, *Ex p. ATTER*, 36 L. J. Ch. 515; 16 L. T. 336; 15 W. R. 664, L. JJ.

Annotations:—*Consd.* *Dunbar v. Harvey*, [1913] 2 Ch. 530. *Refd.* *Re Silver Valley Mines* (1881), 45 L. T. 104; *Re Radium Ore Mines* (1913), 110 L. T. 57.

See, further, Part VIII., Sect. 2, *post*, & generally, *COURTS*, Vol. XVI., p. 203.

1313. Winding-up judge—Whether jurisdiction where no winding up.]—*Re BRITISH COLUMBIAN EXPLOITATION & GOLD ESTATES, LTD.*, [1899] W. N. 32.

(c) Extent of Jurisdiction.

1314. Whether general—Or confined to statutory grounds.]—W., a registered holder of shares, sold them to S., & executed a transfer to him, which S. did not register. S. afterwards agreed to make over these shares to H., & then refused to execute a transfer. H. thereupon persuaded W. to execute a fresh transfer direct to him, which H. took in for registration; but the directors, in consequence of a notice from S., refused to register it. H. then filed a bill for specific performance against S. S. put in an answer stating the transfer from W. to H., & his own willingness to concur in vesting the shares in H. in any way not involving his becoming a shareholder himself. Four days after this a petition for winding up was presented, upon which an order was made, W. being still the registered holder. The Master of the Rolls decided that the register ought to be rectified, & H. placed on the list of contributories instead of W.:—*Held*: (TURNER, L.J.) the jurisdiction given by 1862 Act, s. 35, to rectify the register is general, & not confined to cases where there has

been error, mistake, or default on the part of the co., but the ct. has a discretion whether it will exercise the jurisdiction, & in circumstances such as those of the present case it ought not to be exercised; (LORD CAIRNS, L.J.) the jurisdiction given by that sect. is confined to cases where the register is incorrect through default on the part of the co., & as in the present case there had been no such default, the ct. had no authority to rectify the register.—*Re LONDON, HAMBURG & CONTINENTAL EXCHANGE BANK, WARD & HENRY'S CASE* (1867), 2 Ch. App. 431; 36 L. J. Ch. 462; 16 L. T. 254; 15 W. R. 569, L. JJ.; *reversg.* (1866), L. R. 2 Eq. 226.

Annotations:—*Refd.* *Re Contract Corp'n.*, *Head's Case*, *White's Case* (1866), L. R. 3 Eq. 84; *Re London, Hamburg & Continental Exchange Bank*, *Emmerson's Case* (1866), L. R. 2 Eq. 231; *Re Joint Stock Discount Co.*, *Sichell's Case* (1867), 3 Ch. App. 119; *National & Provincial Marine Insce.*, *Ex p. Parker* (1867), 2 Ch. App. 685; *Re Overend, Gurney, Musgrave & Hart's Case* (1867), L. R. 5 Eq. 193; *Re Hydraulic-Tube Drawing & Steel Ordnance Co.* (1868), 16 W. R. 572; *Re Bank of Hindustan, China & Japan*, *Kintrea's Case* (1869), 39 L. J. Ch. 193; *Re Heaton Steel & Iron Co.*, *Simpson's Case* (1869), L. R. 9 Eq. 91; *Re Tahiti Cotton Co.*, *Ex p. Sargent* (1874), 22 W. R. 815; *Re Shaw* (1876), 36 L. T. 59; *Re Sussex Brick Co.* (1904), 90 L. T. 426. *Mentd.* *Re Overend Gurney*, *Re Oakes's Case*, *Re Peek's Case* (1867), 36 L. J. Ch. 233; *Skinner v. City of London Marine Insce. Corp'n.* (1885), 54 L. J. Q. B. 437.

1315. — — —.]—The arts. of assocn. of a co. (duly incorporated under 1862 Act) contained a provision, that in case the whole of the shares into which the nominal capital of the co. was divided were not subscribed for or allotted, the registered members of the co. for the time being should, if the directors should by resolution so declare, be & continue associated for the objects thereof, & that the business of the co. might be commenced from that time. W. applied for twenty shares, which were allotted to him. The whole of the capital was not subscribed for, but the directors never passed any resolution under the arts. of assocn. The co. continued, however, to carry on the undertaking, & made a call which W. refused to pay. In an action brought to enforce payment, the Ct. of Exch. decided in deft.'s favour, on the ground that there was no power to make calls, which decision was afterwards affirmed by the Ct. of Exch. Chamber. W. thereupon applied, under 1862 Act, s. 35, to have his name taken off the register of shareholders:—*Held*: inasmuch as that sect. only applies to cases where a person's name has been placed upon or omitted from the register without sufficient cause, or where default has been made in entering upon the register the fact that a person has ceased to be a shareholder, neither of which cases had been shown to have occurred, the ct. had no power to grant the application.—*Re NORTH STAFFORD STEEL, IRON & COAL Co. (BURSLEM), LTD.*, *Ex p. WARD* (1868), L. R. 3 Exch. 180; 37 L. J. Ex. 83; 18 L. T. 445; 16 W. R. 763.

Annotations:—*Refd.* *Re Bank of Hindustan, China, & Japan*, *Ex p. Kintrea* (1869), 5 Ch. App. 95; *Re Tahiti Cotton Co.*, *Ex p. Sargent* (1874), L. R. 17 Eq. 273. *Mentd.* *Peirce v. Jersey Waterworks Co.* (1870), L. R. 5 Exch. 209.

1316. — — —.]—*Re GRESHAM LIFE ASSURANCE SOCIETY*, *Ex p. PENNEY*, No. 1321, *post*.

1317. — — —.]—The summary jurisdiction conferred by 1862 Act, s. 35, enabling the ct. or a judge to order the rectification of the register of a co., extends to all cases where the register

immediately before the making of the winding-up order will be applied. The ct. will, however, apply the ordinary rules of equitable relief somewhat strictly against a shareholder.—*Re MONARCH OIL Co. v. CHAPIN*, [1917] 3 W. W. R. 662.—CAN.

PART III. SECT. 13, SUB-SECT. 5.—
B. (c).

1314 i. Whether general—Or confined to statutory grounds.]—J., a shareholder, applied to have his name removed from the register of the co. under Ind an

Companies Act, s. 38; R. a mtgee. of the uncalled capital of the shares came to ct. & opposed:—*Held*: the jurisdiction under above sect. was unlimited.—*RAMESH CHANDRA MITTER v. JOGINI MOHAN CHATTERJI* (1920), I. L. R. 47 Cal. 901.—IND.

Sect. 13.—The register of members: Sub-sect. 5, B. (c).]

is wrong, & is not confined to cases where there has been actual default or laches on the part of the co.—*Re SHAW, Ex p. PIERS* (1877), 46 L. J. Q. B. 394; 36 L. T. 573, C. A.

1318. ———.]—In order to give jurisdiction to the ct. or judge to order rectification of the register of shareholders in a co., under 1862 Act, s. 35, it is not necessary that there should be actual default in the co. It is a matter of discretion whether the ct. or judge will exercise the summary jurisdiction; & in a complicated or doubtful case the jurisdiction ought not to be exercised; but when the legal title in the appct. is clear, the order ought to be made.—*Re DIAMOND ROCK BORING Co., LTD., Ex p. SHAW* (1877), 2 Q. B. D. 463; 25 W. R. 569, C. A.

Annotations:—Refd. Re Kimberley North Block Diamond Co., Ex p. Wernher (1888), 59 L. T. 579; *Re Onward Bldg. Soc.* (1891), 65 L. T. 516.

1319. ———.]—*Re KIMBERLEY NORTH BLOCK DIAMOND Co., Ex p. WERNHER*, No. 1323, *post*.

1320. ———.]—B. & H. were the registered joint holders of all a co.'s shares except the seven belonging to the signatories. Under the arts. B. was alone entitled to vote & H. could neither vote nor be appointed proxy for a poll, so that if B. was ill or absent the voting power was lost:—*Held*: (1) in order to enable B. & H. effectually to exercise their voting power in all circumstances they were entitled to have their holding split into two joint holdings with their names in different orders, & the register must be altered accordingly; (2) 1908 Act, s. 32, is not exhaustive & does not prevent the ct. from altering the register in cases other than those therein specified.—*BURNS v. SIEMENS BROTHERS DYNAMO WORKS*, [1919] 1 Ch. 225; 88 L. J. Ch. 21; 120 L. T. 211; 35 T. L. R. 83; 63 Sol. Jo. 101.

1321. Exercise discretionary.]—The deed of settlement of a life insurance co. provided that any shareholder should be at liberty to transfer his shares to any other person who was already a shareholder, or who should be approved by the board of directors, & that no person not being already a shareholder, or the exor., etc., of a shareholder, should be entitled to become the transferee of any share unless approved of by the board:—*Held*: (1) the directors were not bound to disclose their reasons for rejecting a transferee, provided they had fairly considered the question at a meeting of the board; & that, in the absence of evidence to the contrary, the ct. would take for granted that they acted reasonably & *bonâ fide*; (2) if there is evidence to show that directors who have such a power have exercised it capriciously or unfairly, the ct. has jurisdiction to interfere, & this jurisdiction may be exercised on a summons under 1862 Act, s. 35; (3) the jurisdiction of the ct. to rectify a register under the above sect. is general, but the exercise of it is discretionary.—*Re GRESHAM LIFE ASSURANCE SOCIETY, Ex p. PENNEY* (1872), 8 Ch. App. 446; 42 L. J. Ch. 183; 28 L. T. 150; 21 W. R. 186, L. J.J.

Annotations:—As to (1) Consd. Moffatt v. Farquhar (1878), 7 Ch. D. 591; *Re Coalport China Co.*, [1895] 2 Ch. 404; *Cassel v. Inglis*, [1916] 2 Ch. 211; *Re Bede Steam Shipping Co.*, [1917] 1 Ch. 123; *Weinberger v. Inglis*, [1919] A. C. 606. *Refd. Re Bell, Ex p. Hodgson* (1891), 65 L. T. 245; *Re Hannan's King (Browning) Gold Mining Co.* (1898), 14 T. L. R. 314; *McEllistram v. Ballymacelligott Co-op. Agricultural & Dairy Soc.*, [1919] A. C. 548. *As to (2) Consd. Moffatt v. Farquhar* (1878), 7 Ch. D. 591; *Re Coalport China Co.*, [1895] 2 Ch. 404; *Cassel v. Inglis*, [1916] 2 Ch. 211; *Re Bede Steam Shipping Co.*, [1917] 1 Ch. 123; *Weinberger v. Inglis*, [1919] A. C. 606. *Refd. Re Bell, Ex p. Hodgson* (1891), 65 L. T. 245.

1322. ———.]—*Re DIAMOND ROCK BORING Co., LTD., Ex p. SHAW*, No. 1318, *ante*.

1323. ———.]—On May 4, 1887, A. deposited with B., his broker, certain certificates of shares in a co. registered under 1862 Act, & signed a blank transfer of the shares. B. signed a receipt, stating that the shares were deposited to secure the balance of A.'s account, & that he would not realise them without the sanction of A. On July 23, A. wrote, authorising a sale of the shares at a given price. On Aug. 5 A. wrote to B. that the shares in his hands would be sold by another broker, but directing him to sell certain other shares. On Aug. 27, B. sold the mortgaged shares on the Stock Exchange to W. at a price above the limit fixed by the letter of July 23. B. filled in the transfer with the name of W. & W., sent it to the office of the co. for registration. The co., having been warned by A. not to register the transfer, refused registration. W. moved under 1862 Act, s. 35, for rectification of the register by entering his name as a member, in respect of the shares, in the place of A.:—*Held*: sect. 35 gave an unlimited jurisdiction as to rectification of the registration, though there was a discretion in the ct. as to whether it ought to be registered under the circumstances of any particular case; in the present case, B. had acted as mtgee., & the jurisdiction was rightly exercised by placing the name of W. on the register.—*Re KIMBERLEY NORTH BLOCK DIAMOND Co., Ex p. WERNHER* (1888), 59 L. T. 579, C. A.

See, also, No. 1314, *ante*, No. 1331, *post*.

1324. To grant rescission of contract to take shares—On ground of departure from prospectus.]—*Re RUSSIAN (VYKSOUNSKY) IRON WORKS Co., STEWART'S CASE*, No. 776, *ante*.

See, generally, Sect. 8, sub-sect. 4, *ante*.

1325. To grant specific performance of agreement to transfer shares.]—The ct. has no jurisdiction under 1862 Act, s. 35, to grant specific performance of an agreement to transfer shares or to enforce against the co. an equitable claim to be registered as a shareholder, but where an appct. has a legal title, the ct. will compel the co. to enter his name on the register, although his title is disputed by the person registered as holder. In such case the ct. has no jurisdiction to make such person disputing the title pay the costs of the summons rendered necessary by his opposition.

The pledgee of shares with transfers executed by the pledgor with the date & name of transferee in blank has, & also his transferee has, implied power to fill up the blanks. Such transfers, although executed as deeds by the original pledgor, will not operate as deeds, & if the regulations of the co. require a deed will only confer an equitable interest & operate as contracts to transfer, but where the arts. of assocn. did not require a deed & the blanks had been filled up by the transferee of the pledgor:—*Held*: they operated as valid transfers & conferred on him a right to be registered as a shareholder, which the ct. would enforce on summons under the above sect.

Where the arts. of assocn. of a co. permit a transfer of shares to be made by "instrument in writing," it is not necessary that the transfer should be by deed, even although the uniform practice of the co. may have been to require one.—*Re TAHITI COTTON Co., Ex p. SARGENT* (1874) L. R. 17 Eq. 273; 43 L. J. Ch. 425; 22 W. R. 815

Annotations:—Consd. France v. Clark (1884), 26 Ch. D. 257. *Refd. Re Tees Bottle Co., Davies' Case* (1876), 33 L. T. 834; *Re Diamond Rock Boring Co., Ex p. Shaw* (1877), 2 Q. B. D. 463; *Re Shaw, Ex p. Piers* (1877), 46 L. J. Q. B. 394; *Ortigosa v. Brown* (1878), 47 L. J. Ch.

168; *Re Kimberley North Block Diamond Mining Co., Ex p. Wernher* (1888), 58 L. T. 305; *Moore v. North-Western Bank* (1891), 64 L. T. 456; *Ireland v. Hart*, [1902] 1 Ch. 522. *Mentd. Re Lancaster, Ex p. Lancaster* (1877), 5 Ch. D. 911; *Re Keith Prowse*, [1918] 1 Ch. 487.

See, generally, Sect. 23, sub-sect. 2, C. (e) ii., *post*.

1326. To enforce equitable claim to registration.]—*Re TAHITI COTTON Co., Ex p. SARGENT*, No. 1325, *ante*.

1327. To enforce legal claim to registration—Though title disputed.]—*Re TAHITI COTTON Co., Ex p. SARGENT*, No. 1325, *ante*.

1328. To decide question of title.]—A., the owner of shares, deposited with B., the certificates of his shares & a transfer thereof signed by him, but with the name of the transferee left blank, to secure a previously existing debt. The arts. of assocn. of the co. permitted a transfer of shares to be made by "instrument in writing." The debt remaining unpaid, B. filled in his own name as transferee, & the co. declining to register, applied under 1862 Act, s. 35, to have the register rectified:—*Held*: B. was entitled to have his name on the register; the ct. had jurisdiction to decide the question of title between B. & A. (who had been served), and also to order the costs of the application to be paid by A.

Where a mortgagee of shares, claiming under a legal title, applies, under the above sect., to have the register of the co. rectified, the ct. may direct an account to be taken of what is due from the mtgor. to the mtgee.; & in the event of the mtgor. declining to take such account within a limited time, will order the mtgee.'s name to be put on the register.—*Re TEES BOTTLE Co., LTD., DAVIES' CASE* (1876), 33 L. T. 834.

Annotation:—*Reid. Ortigosa v. Brown* (1878), 47 L. J. Ch. 168.

1329. To order account between mortgagor & mortgagee—On application by mortgagee to rectify.]—*Re TEES BOTTLE Co., LTD., DAVIES' CASE*, No. 1328, *ante*.

1330. Extends to transfer lodged before liquidation begun—But not registered.]—A transfer of shares in a limited co., which had been duly executed by the transferor & transferee, was left for registration at the office of the co., but in consequence of the failure of the co. on the following day, no registration took place. The co.'s arts. provided that the registration of transfers should be subject to the approval of the directors, & that until registration the transferor should be deemed to be the holder of the shares. In the subsequent winding up under supervision, the liquidator, finding the transfer unregistered, substituted the name of the transferee for that of the transferor on the register & list of contributories. Upon summons by the transferee to have his name removed:—*Held*: the ct. had power under 1862 Act, s. 35, to authorise the registration of the transfer by the liquidator.—*Re OVEREND, GURNEY & Co., WARD & GARFIT'S CASE* (1867), L. R. 4 Eq. 189; 36 L. J. Ch. 416; 16 L. T. 148; 15 W. R. 531.

Annotations:—*Reid. Re Diamond Rock Boring Co., Ex p. Shaw* (1877), 2 Q. B. D. 463. *Mentd. Re Maria Anna & Steinbank Coal & Coke Co., McKewan's Case* (1877), 6 Ch. D. 447.

1331. Extends to transfers executed after winding up begun.]—In the case of a sale & transfer of shares in a co. after a compulsory winding-up order, the transferee is not entitled to be registered as owner of the shares without the sanction of the ct.; the ct. has power to order the rectification of the register of members by the insertion of such transferee's name; but the exercise of that power

is discretionary, & such an order ought not to be made except on strong grounds.—*Re ONWARD BUILDING SOCIETY*, [1891] 2 Q. B. 463; 60 L. J. Q. B. 752; 65 L. T. 516; 56 J. P. 260; 40 W. R. 26; 7 T. L. R. 601.

Annotation:—*Reid. Re National Bank of Wales, Taylor, Phillips & Richards' Cases*, [1897] 1 Ch. 298.

1332. —.—(1) Where an interlocutory injunction has been granted to restrain the voluntary liquidator & the directors of a co. from acting upon resolutions to wind up the co., the directors in refusing to register transfers of shares pending the trial of the action are not acting "without sufficient cause" within 1862 Act, s. 35.

(2) The jurisdiction of the ct. extends equally to shares the transfers of which were executed before the commencement of the winding up, & to transfers executed after the winding up.—*Re VIOLET CONSOLIDATED GOLD-MINING Co.* (1899), 68 L. J. Ch. 535; 80 L. T. 684; 43 Sol. Jo. 476; 7 Mans. 102.

1333. Exercisable after liquidation begun.]—The power given to the ct. by 1862 Act, s. 35, of rectifying the register of members of a limited co. is exercisable in any of the cases therein mentioned, whether a co. is in liquidation or not; & accordingly, in a liquidation the power is not, by sect. 98, limited to rectification for the purpose of settling the list of contributories. In ordering rectification of the register under sect. 35, whether the co. is in liquidation or not, the ct. has power, in a proper case, to fix a particular date at which the registration shall become operative, even to the extent of making it retrospective; but subject, if necessary, to conditions protecting the rights of third persons. The transferee of shares in a limited co. sent in his transfer to the co. for registration in the usual course, but by mistake or oversight registration of the transfer was omitted. Subsequently the co. passed resolutions for a voluntary winding up with a view to reconstruction, whereupon the transferee, in the belief that his transfer had been registered, & purporting to act under sect. 161 of the above Act, served the liquidator with notice of dissent, which, however, the liquidator disregarded on the ground that the transferee was not a "member" of the co. as required by the sect. Upon an application by the transferee, under sect. 35, for rectification of the register so as to render his notice of dissent effectual:—*Held*: (1) there had been such "default or unnecessary delay" in registration as entitled appct. to an order for rectification by entering his name on the register as on a day prior to the passing of the winding-up resolutions; (2) the order did not invalidate the notices to registered members by which the meetings for a voluntary liquidation had been called, & would not, in the circumstances, work any injustice to other members of the co.—*Re SUSSEX BRICK Co.*, [1904] 1 Ch. 598; 73 L. J. Ch. 308; 90 L. T. 426; 52 W. R. 371; 11 Mans. 66, C. A.

— **Transfer lodged but not registered before liquidation.]**—*See* No. 1330, *ante*.

— **Winding-up petition presented before transfer lodged.]**—*See* No. 1364, *post*.

— **Transfer after liquidation begun.]**—*See* Nos. 1331, 1332, *ante*.

Where shares declared forfeited.]—*See* Nos. 1343, 1344, *post*.

Where shareholder's name already struck out.]—*See* No. 1306, *ante*.

As to costs.]—*See* No. 1328, *ante*, Nos. 1356, 1396, 1415, *post*.

As to damages.]—*See* No. 2423, *post*.

Sect. 13.—The register of members: Sub-sect. 5, B. (d) i. & ii.]

(d) *When Granted.*

i. *In General.*

Jurisdiction.]—See Nos. 1318, 1321, 1323, ante.

Discretionary.]—See Nos. 1318, 1321, 1323, 1331, ante.

1334. Action for calls pending against transferor.]—The ct. refused to make an order, under 1856 Act, s. 23, on a co. to rectify its register, by inserting the name of a purchaser of shares, at the instance of the seller, pending an action by the co. against the seller for calls, alleged to be due on the shares before the transfer.—*Re ANGLO-FRENCH PORCELAIN CO., Ex p. HARRIS* (1860), 5 H. & N. 809; 29 L. J. Ex. 364; 157 E. R. 1404.

Annotation:—Mentd. *Womersley v. Merritt* (1867), 17 L. T. 43.

1335. —.]—Where an action is brought for calls, & in which the question whether deft. is or is not a shareholder will be determined, the ct., on an application by such deft. to correct the register, by omitting his name, will postpone its decision until the result of the action is known.—*ALEXANDRA HALL CO., ROEBUCK'S CASE* (1866), 35 Beav. 467; 55 E. R. 977.

Compare No. 1365, post.

1336. Principles of equity apply—Fraudulent transfer to escape liability for call.]—In adjudicating on an application under 1862 Act, s. 35, a ct. of equity is not bound to follow what a ct. of law would do in such a case, but will take into consideration any principle of equity applicable to the subject.

The arts. of a co. provided that on proof of title & execution of transfer, the co. should register the transferee, but that no transfer of shares should be made or registered after a call on such shares had been made until payment thereof. At a meeting of the board of directors the propriety of making a call was discussed. A shareholder present induced the directors to postpone consideration of the matter, & then, without informing them of his intention, transferred his shares to a pauper, in order to escape all further liability. The directors having declined to register the transfer:—*Held*: the ct. would not, under the above sect., rectify the register by removing the name of the transferor, & substituting that of the transferee. *Semble*: in a case of doubt, the ct. may, instead of adjudicating between a co. & a person claiming to be registered as a share-

holder under the above sect., direct a suit to be instituted for the purpose of determining the rights of the parties.—*Re NATIONAL & PROVINCIAL MARINE INSURANCE CO., Ex p. PARKER* (1867), 2 Ch. App. 685; 15 W. R. 1217, L. J.

Annotations:—Folld. *Re Stranton Iron & Steel Co.* (1873), L. R. 16 Eq. 559. **Distd.** *Re Cawley* (1889), 42 Ch. D. 209. **Refd.** *Re Heaton's Steel & Iron Co., Simpson's Case* (1869), 39 L. J. Ch. 41; *Re National Provincial Marine Insee., Gilbert's Case* (1870), 5 Ch. App. 562, n.; *Re Bell, Ex p. Hodgson* (1891), 65 L. T. 245.

See, generally, Sect. 23, sub-sect. 13, post.

1337. In clear case only.]—A motion under 1862 Act, s. 35, to rectify the register of a co. not in liquidation will be refused, unless the case be clear, free from difficulty, or material doubt; therefore, where the liability of a person to take shares turned upon the disputed construction of certain documents, his motion to be taken off the register was refused, without prejudice to his filing a bill.—*Re HEATON STEEL & IRON CO., SIMPSON'S CASE* (1869), L. R. 9 Eq. 91; 39 L. J. Ch. 41; 21 L. T. 629.

Annotation:—Refd. *Re Tees Bottle Co., Davies' Case* (1876), 33 L. T. 834.

1338. —.]—*Re DIAMOND ROCK BORING CO., LTD., Ex p. SHAW*, No. 1318, ante.

1339. Where complete justice cannot be done.]—*Re BAGNALL & CO., LTD., Ex p. DICK*, No. 519, ante.

1340. Transfer after compulsory winding up begun—Strong grounds necessary.]—*Re ONWARD BUILDING SOCIETY*, No. 1331, ante.

1341. Application in infant's name of user—Shares registered in real name.]—An infant, whose baptismal names were H. C., & whose surname, one of user only, was T., appeared on the register of a limited co. as H. C. only. Afterwards, when on the ground of variance between the prospectus & the memorandum, etc., several shareholders had applied for & obtained a removal of their names from the register, an application was made on behalf of the infant that "the name of H. C., meaning thereby H. C. T.," might also be removed. The co. insisted that appct. H. C. T. was not a shareholder, & the motion was dismissed with costs.—*Re RUSSIAN (VYKSOUNSKY) IRON WORKS CO., LTD., TORRENS'S CASE* (1866), 15 W. R. 247.

ii. *Name Entered or Omitted without Sufficient Cause.*

1342. Name entered in register—Negligence of shareholder—Blank transfer facilitating forgery.]—A holder of shares in a joint-stock co., by en-

PART III. SECT. 13, SUB-SECT. 5.—
B. (d) i.

1. Principles of equity apply—Countervailing equities.]—Where there are countervailing equities against the right of a shareholder to have his name removed from the share register such as the facts that appct. is a financial agent in active business at the place where the co. carries on its business & that pltf. became a director in the co. & that the co. embarked in a large way of business & incurred very considerable liabilities, such equities ought to prevail.—*FITZHERBERT v. DOMINION BED MANUFACTURING CO.* (1915), 8 W. W. R. 743; 23 D. L. R. 125; 21 B. C. R. 226, 241.—CAN.

1337 i. In clear case only.]—In a simple case where an immediate rectification is essential, it may be desirable to apply under Indian Companies Act, s. 38; but if the case is at all complicated, an action should be brought.—*RAMESH CHANDRA MITTER v. JOGINI MOHAN CHATTERJI* (1920), I. L. R. 47 Calc. 901.—IND.

m. — Not where alleged transferor absent—& doubt expressed as to

*bona fides of transaction.]—**Re LUCHMEE CHUND, LUCHMEE CHUND v. BENGAL COAL CO.* (1882), I. L. R. 8 Calc. 317.—IND.

n. Transfer before winding up—Register not altered at time of winding up—No unnecessary delay or default by company.]—Appct., a shareholder in the Indian Specie Bank, Ltd., sold some of his shares to respts. by various transfers which were lodged with the co. for registration. The co., however, went into liquidation before the transfers were in due course approved of by the Board of Directors. According to the practice observed by the co., transfers lodged up to the end of the previous week were placed before the Board of Directors at their meeting in the following week. The co. went into liquidation on Nov. 29, 1913. At a meeting of the Board of Directors held on the previous day, the transfers lodged in the previous week up to Nov. 22 only were considered. The transfers in dispute were lodged with the co. between Nov. 25 & 28, 1913. Appct. was accordingly placed by the liquidator on the list of contributories in Sched. A., for the shares which stood

in his name on Nov. 29, 1913. Appct. contended that the register of shareholders should be rectified by the ct. under Indian Companies Act, ss. 58, 157, by substituting the names of respts. as transferees in place of his own name:—*Held*: as appct. had not proved that there was either absence of sufficient cause, or default, or unnecessary delay on the part of the co. in dealing with the transfers, the register of shareholders could not be rectified.—*Re INDIAN SPECIE BANK, LTD., SORABJI NUSSEERWANJI v. PATWARDHAN* (1915), I. L. R. 40 Bom. 134.—IND.

o. Where register defective—On proof of shareholder's ignorance—& consent of parties interested.]—Where the requirements of Companies Act, 1882, s. 34, are not complied with, the ct. will only rectify the register on proof that the shareholder was innocent of that fact, & probably only where every person affected by such rectification consents or is protected.—*LODGE v. ROXBURGH AMALGAMATED MINING & SLUICING CO. (LTD.)* (1892), 11 N. Z. L. R. 467.—N.Z.

trusting his broker with blank transfers signed by him, & affording him an opportunity of obtaining access to a box containing the certificates for the shares, enabled him by forgery & fraud to induce the co. to register the transfers of the shares in the names of *bonâ fide* purchasers. On a motion under 1856 Act, s. 25, & Joint Stock Companies Act, 1857 (c. 14), ss. 8, 9, to rectify the register by replacing thereon the name of the original shareholder :—*Held*: (1) (ERLE, C. J., & KEATING, J.) appct. had precluded himself by his negligence from availing himself of the equitable jurisdiction of the ct. under the statutes; (2) (WILLES, & BYLES, JJ.), the property in the shares had not been changed by the forged transfers; (3) the motion failed.—*Re NORTH BRITISH AUSTRALASIAN CO., LTD., Ex p. SWAN* (1860), 7 C. B. N. S. 400; 30 L. J. C. P. 113; 141 E. R. 871; *subsequent proceedings, sub nom. SWAN v. NORTH BRITISH AUSTRALASIAN CO., LTD.* (1862), 7 H. & N. 603; (1863), 2 H. & C. 175, Ex. Ch.

Annotations:—*As to* (1) *Consd.* *Re Diamond Rock Boring Co., Ex p. Shaw* (1877), 2 Q. B. D. 463. *Generally, Reid.* *Swan v. North British Australasian Co.* (1863), 2 H. & C. 175; *Soc. Générale de Paris v. Walker* (1885), 11 App. Cas. 20; *London Joint Stock Bank v. Macmillan & Arthur*, [1918] A. C. 777. *Mentd.* *Ashpitel v. Bryan* (1863), 3 B. & S. 474; *Soc. Générale v. Metropolitan Bank* (1873), 27 L. T. 849; *Arnold v. Cheque Bank, Arnold v. City Bank* (1876), 1 C. P. D. 578; *Scholfield v. Londesborough*, [1895] 1 Q. B. 536.

See, generally, Sect. 23, sub-sects. 3, D., 12, D. (a), post.

1343. — Includes names entered but struck out—On forfeiture of shares.—(1) L. was a holder of 102 shares in the I. Bank which was subsequently amalgamated with the Bank of H., etc. The directors of that bank put the name of L. on the register of its shareholders for 102 shares in it. They gave him notice thereof, & then made a call upon him in respect of the shares. He repudiated the shares & the call, whereupon the directors erased his name from the register, & declared his shares forfeited, but threatened to sue him at law under their special powers, for the unpaid calls. L. thereupon moved, under 1862 Act, s. 35, for an order to rectify the register, with respect to the 102 shares :—*Held*: the ct. had jurisdiction to entertain the motion.

(2) L. having had due notice of the amalgamation of the two banks, & of the voluntary winding up of the I. Bank, was informed by the secretary of the Bank of H. that he would be entitled to 102 shares in it & certain other advantages, if he would declare his option to take them, & sign an accompanying document, then sent to him, to that effect within a given time. He signed the document & returned it within the time; but he altered the terms of it. He was then told that the altered document could not be accepted as a declaration by him of his option; that he must either accept or reject the proposed shares, etc., unconditionally, as offered to him in the first instance. He then, some time afterwards, wrote to the secretary stating that he would have nothing to do with the 102 shares. The directors of the Bank of H., who had put his name on the register of that bank for the 102 shares, then erased the name, & declared the share forfeited. Upon the above-stated motion being made :—*Held*: the name of L. ought never to have been put upon the register of the Bank of H. for the 102 shares; & he was entitled to a declaration of the ct. to that effect, with costs as against the co.

Is the name of the appct., in this case, "entered in" the register of members of a co.? In my opinion it was entered in without sufficient cause,

& that by the co.'s own admissions. The question is whether the fact of their having forfeited the shares since they made the entry deprives this ct. of any jurisdiction to rectify the first entry, which, in the opinion of the ct. was an improper one. I am of opinion it does not (ROMILLY, M.R.).—*Re BANK OF HINDUSTAN, CHINA & JAPAN, LTD., Ex p. LOS* (1865), 6 New Rep. 327; 34 L. J. Ch. 609; 12 L. T. 690; 11 Jur. N. S. 661; 13 W. R. 883.

Annotations:—*As to* (1) *Reid.* *Re London & Exchange Bank* (1867), 16 L. T. 340. *As to* (2) *Appl.* *Re New Quebrada Co., Pontifex's Case* (1867), 36 L. J. Ch. 903. *Generally, Mentd.* *Re Imperial Bank of China, India & Japan* (1866), 14 L. T. 211; *Re Empire Assoc. Corpn., Ex p. Bagshaw* (1867), L. R. 4 Eq. 341.

1344. — — — — ——No shareholder of a joint-stock co. which is in the course of voluntary liquidation is bound, in the absence of express assent on his part, to accept shares in any other co., although the liquidators may have agreed that such shall be taken, & such agreement may have been duly confirmed by a meeting of the shareholders in manner prescribed by the 1862 Act, s. 161. But if he do not express his dissent from the agreement in the manner or within the time specified in that sect., he can get no other consideration for his shares, & must submit to lose them utterly if he refuses to accept the new shares. General powers of amalgamation given to the directors in the arts. of assocn. do not authorise them to bind non-assenting shareholders to accept the new shares. *Semble*: no power which could be given to directors, short of express words to that effect, would enable them to do so.

On application, under 1862 Act, s. 35, the name of a shareholder of the original co. ordered to be struck off the register of a new co. with which an amalgamation had been negotiated.

Under the above sect., the ct. had power to order a shareholder's name to be struck off the register, although his shares have been declared forfeited.—*Re BANK OF HINDUSTAN, CHINA & JAPAN, LTD., HIGGS'S CASE* (1865), 2 Hem. & M. 657; 6 New Rep. 327, 332; 12 L. T. 669; 13 W. R. 937; 71 E. R. 619.

Annotations:—*Appl.* *Re New Quebrada Co., Pontifex's Case* (1867), 36 L. J. Ch. 903. *Reid.* *Postlethwaite v. Port Phillip & Colonial Mining Co.* (1889), 43 Ch. D. 452; *Wall v. London & Northern Assets Corpn.*, [1898] 2 Ch. 469. *Mentd.* *Nicholl v. Eberhardt Co.* (1888), 59 L. T. 860.

1345. Entered or omitted without sufficient cause—Company regulations not complied with—Deed of settlement not signed—Constructive assent.—A joint-stock co. being completely registered, two shares were allotted by the letter of the managing director to an appct. for shares, who paid £10 as deposit at the co.'s office. The co.'s deed of settlement provided that, upon the execution of the deed, the person executing, being otherwise duly entitled, should be entered on the register of shareholders, & duly returned to the Joint Stock Co.'s Registry Office, & should thenceforth, but not before, assume the liabilities & privileges of a shareholder. Appct. did not execute the deed, but the co. inserted his name on the register of shareholders, & returned his name to the Registry Office :—*Held*: appct. had authorised the co. to put his name on the register without execution of the deed, & his name had been properly placed on the list of contributories.—*Re MERCHANT TRADERS' SHIP, LOAN, & INSURANCE CO., YELLAND'S CASE* (1852), 5 De G. & Sm. 395; 64 E. R. 1169; *sub nom. Re PORT OF LONDON SHIPOWNERS' LOAN & ASSURANCE CO., Ex p. YELLAND*, 21 L. J. Ch. 852; 19 L. T. O. S. 224; 16 Jur. 509, L. JJ.

Annotations:—*Appl.* *Re Great Cambrian Mining & Quarrying Co., Hawkins' Case* (1856), 2 K. & J. 253. *Foll.* *Re*

Sect. 13.—The register of members: Sub-sect. 5, B. (d) ii. & iii.]

Electric Telegraph Co. of Ireland, *Cookney's Case* (1858), 26 Beav. 6. **Consd.** *New Brunswick & Canada Land & Ry. Co. v. Muggeridge* (1859), 4 H. & N. 580. **Apld.** *New Theatre Co., Bloxam's Case* (1864), 33 Beav. 529. **Refd.** *Re Great Cambrian Mining & Quarrying Co., Richardson's Case* (1856), 4 W. R. 670.

Transfer not signed by transferee.]—
See No. 1379, post.

1346. —.]—It appearing that an alleged shareholder had never agreed directly or indirectly to take shares in the co., by an original motion in Ch., & by way of appeal in bkpcy., his name was struck off the list of contributories & the public register. *Semble*: where the name of a person appears on the public register as a shareholder, although he is not one in fact, the comr. is bound to put him on the list of contributories.—*Re ANGLO-FRENCH AGRICULTURAL TRADING Co., Ex p. DUNLOP* (1863), 8 L. T. 846, L. C.

1347. —.]—The name "Henry Webb" appeared on the register of shareholders without any further description, & his name was accordingly placed by the comr. on the list of contributories. A person of the same name, believing himself to be the party indicated, applied to have his name removed from the list, on the ground, which he established, that he had never accepted shares or in any way made himself liable as a shareholder. On appeal a declaration was made that appct. was not a shareholder in or a contributory to the co., & his name was directed to be removed from the list of contributories, but as it was doubtful whether appct. was the same person whose name appeared on the register of shareholders, the ct. refused to order that the name should be removed from the register.—*Re SOUTHAMPTON, ISLE OF WIGHT, & PORTSMOUTH IMPROVED STEAMBOAT Co., LTD., Ex p. WEBB* (1863), 8 L. T. 478; 9 Jur. N. S. 856, L. C.

1348. —.]—*Re MOSELEY GREEN COAL & COKE Co., LTD., FOX'S CASE* (1863), 3 De G. J. & Sm. 465; 2 New Rep. 1; 32 L. J. Bcy. 57; 8 L. T. 223; 9 Jur. N. S. 785; 11 W. R. 577; 46 E. R. 715, L. C.

1349. — **Shareholder dissenting from amalgamation.]—***Re BANK OF HINDUSTAN, CHINA & JAPAN, LTD., Ex p. LOS*, No. 1343, *ante*.

1350. —.]—*Re BANK OF HINDUSTAN, CHINA & JAPAN, LTD., HIGGS'S CASE*, No. 1344, *ante*.

1351. — **Repudiation of allotment.]—**B. without authority, applied on behalf of C., & as his agent, for shares in a co., & C. was thereupon registered as a shareholder. On the shares being allotted C. wrote to B. repudiating the transaction, & asking him to "rectify the mistake." No steps were taken by C., & afterwards on a call being made, B. wrote to the secretary of the co. informing him of the mistake, & requesting that his name might be taken off the register. This was not done, & subsequently on the co. being wound up C. applied to the ct. to have his name removed from the list of contributories:—*Held*: as C.'s name had been wrongfully placed on the register by no act of his own, & as the co. were made aware of that fact, it devolved upon them under 1862 Act, s. 35, to have had it removed before the winding up, but as this had not been done C. was now entitled to its removal from the list of contributories, & to costs from the liquidators.—*Re PATENT FILE Co., LTD., Ex p. WHITE* (1867), 16 L. T. 276; 15 W. R. 754.

1352. —.]—*Re LONDON & LANCASHIRE PAPER MILLS Co.* (1887), 3 T. L. R. 644.

1353. — Conditional application for shares—

Condition unfulfilled.]—A scheme was proposed for the transfer of the business of C. Co. to B. Co.; after which C. Co. was ordered to be wound up compulsorily, but was eventually wound up voluntarily under the supervision of the ct. Certain shareholders in C. Co. applied for & were allotted shares in B. Co. in lieu of their shares in C. Co., & on the understanding that the transfer would be completed. The ct., however, held that the transfer could not be effected. The shareholders then applied to the ct. for an order to rectify the register of members in B. Co. by striking out their names therefrom:—*Held*: their names must be struck out, & B. Co. must pay them their costs.—*Re LONDON & EXCHANGE BANK, LTD.* (1867), 16 L. T. 340; *sub nom. Re LONDON & EXCHANGE BANK, LTD., Ex p. COLLISON, SWEETINGBURGH & BROWNING*, 15 W. R. 778.

1354. —.]—A. signed an application for shares in a co. upon condition that he should be appointed secretary, & his acceptance of the office was to be subject to further inquiries, which he had caused to be made respecting the position of the co. The shares were allotted the next day, but A., in consequence of information he received, declined the appointment, & required that the allotment should be cancelled. The co. was wound up voluntarily, & A.'s name was placed on the list of contributories:—*Held*: the application for shares was conditional, & the condition not having been fulfilled, A.'s name must be removed from the register & list of contributories, & as he had been placed there without any justification, he must receive costs as between solr. & client by way of damages under 1862 Act, s. 35, for the extra expenses incurred by him.—*Re NATIONAL EQUITABLE PROVIDENT SOCIETY, WOOD'S CASE* (1873), L. R. 15 Eq. 236; 42 L. J. Ch. 403; 21 W. R. 645.

Annotation:—Refd. Re Scottish Petroleum Co., Anderson's Case (1880), 43 L. T. 723.

1355. — **Condition unknown to company.]—***Re BENTLEY (HENRY) & Co. & YORKSHIRE BREWERIES, LTD., Ex p. HARRISON*, No. 1174, *ante*.

1356. — **Names improperly entered or omitted.]—**K., a shareholder in a co. which was in difficulties, but whose shares had still a market price, transferred them to L. by a deed, in consideration of a sum expressed to be paid by L., being about the market price. No sum was, in fact, paid, nor had there been any contract of sale, K. having brought the transfer to L., & asked him to execute it, saying it was a transfer of shares to him, but saying nothing more. L. was a ship's steward whose wages were £1 a week. The transfer was duly registered, the directors, who had a power of declining to receive any transfer, not objecting, & L. was entered on the register. A few weeks afterwards an order was made to wind up the co. The official liquidator having applied to rectify the register by restoring the name of K.:—*Held*: (1) the ct. had jurisdiction to set the matter right under 1862 Act, s. 35, for the name of any person improperly entered or omitted must be considered to be entered or omitted "without sufficient cause"; (2) as this was part of the proceedings in the winding up, the ct. had jurisdiction to order K. to pay costs; (3) the application ought to have been in the name, not of the liquidator, but of the co., & the summons must be amended accordingly. *Qu.*: whether in the case of a going concern costs could have been given against K.—*Re BANK OF HINDUSTAN, CHINA & JAPAN, Ex p. KINTREA*

(1869), 5 Ch. App. 95; 39 L. J. Ch. 193; 21 L. T. 688; 18 W. R. 197, L. J.

Annotations:—As to (1) **Folld.** *Re Imperial Mercantile Credit Assocn., Payne's Case* (1869), L. R. 9 Eq. 223. **Apld.** *Re Bank of Hindustan, China & Japan, Rogers' Case* (1871), 25 L. T. 406. **Refd.** *Re Bank of Hindustan, China & Japan, Harrison's Case* (1871), 6 Ch. App. 286. As to (3) **Refd.** *Re Diamond Rock Boring Co., Ex p. Shaw* (1877), 2 Q. B. D. 463; *Re Pyle Works* (1890), 44 Ch. D. 534.

1357. — **Refusal to register pendente lite—Validity of winding-up resolution disputed.**—*Re VIOLET CONSOLIDATED GOLD-MINING CO., No. 1332, ante.*

1358. — **Name entered in wrong order.**—*Re MOORE'S ESTATE, FOX v. MOORE, Re MOORE (B. A.) & SONS, LTD.* (1904), 48 Sol. Jo. 762.

iii. *Default or Unnecessary Delay in Removing Name.*

1359. **No meeting of directors before presentation of winding-up petition.**—S. executed a transfer of shares to H. in Dec. 1865. The transfer according to the arts. of assocn., required the sanction of the directors, who might refuse it in certain cases. The transfer was not left at the office for approval till Mar. 3, 1866. In the ordinary course of business, the directors met once a week. Their last meeting had been on Mar. 1, & their next was to be on the 8th. On Mar. 7 a petition to wind up the co. was presented, & on the 17th a winding-up order was made. The transfer had never been registered:—**Held**: there had been no default or unnecessary delay on the part of the co. in placing H. on the register of shareholders; & an application by S., to which H. consented, to have the register rectified, & the name of H. substituted for that of S. on the list of contributories, was refused.—*Re JOINT STOCK DISCOUNT CO., SHEPHERD'S CASE* (1866), 2 Ch. App. 16; 36 L. J. Ch. 32; 15 L. T. 198; 12 Jur. N. S. 897; 15 W. R. 26, L. J.

Annotations:—**Expld.** *Re Joint Stock Discount Co., Nation's Case* (1866), L. R. 3 Eq. 77. **Folld.** *Re English Joint-Stock Bank, Marzetti's Case* (1866), 15 W. R. 220; *Re Joint Stock Discount Co., Sichel's Case* (1867), 36 L. J. Ch. 815 (see 3 Ch. App. 119). **Consd.** *Shepherd v. Gillespie* (1867), L. R. 5 Eq. 293. **Distd.** *Re Joint Stock Discount Co., Shipman's Case* (1868), 16 W. R. 354. **Apld.** *Re Joint Stock Discount Co., Fyfe's Case* (1869), 4 Ch. App. 768. **Refd.** *Re Imperial Mercantile Credit Assocn., Marino's Case* (1867), 15 W. R. 557; *Re Overend, Gurney, Ward & Garfit's Case* (1867), L. R. 4 Eq. 189; *Re Hydraulic Tube-Drawing & Steel Ordnance Co.* (1868), 18 L. T. 205.

1360. **Transfer not registered at first available meeting—Subsequent winding up.**—The omission by the directors of a co. to register the transfer of shares at one board meeting passed, is unnecessary delay; & the name of a person which is on the list of contributories through such delay will be struck off, under 1862 Act, s. 35. The ct. will not in such a case consider the state of the affairs of the co. at the time when the registration ought to have been completed.—*Re JOINT STOCK DISCOUNT CO., NATION'S CASE* (1866), L. R. 3 Eq. 77; 36 L. J. Ch. 112; 15 L. T. 308; 15 W. R. 143.

Annotations:—**Distd.** *Re Joint Stock Discount Co., Shipman's Case* (1868), L. R. 5 Eq. 219. **Folld.** *Re Joint Stock Discount Co., Fyfe's Case* (1869), 4 Ch. App. 768; *Re Hercules Insce., Lowe's Case* (1870), L. R. 9 Eq. 589; *Re Sussex Brick Co., [1904] 1 Ch. 598.*

1361. — — — — — **Re JOINT STOCK DISCOUNT CO., HILL'S CASE** (1867), 4 Ch. App. 769, n.; 36 L. J. Ch. 814, n.

Annotations:—**Folld.** *Re Joint Stock Discount Co., Sichel's Case* (1867), 36 L. J. Ch. 814 (see 3 Ch. App. 119); *Re Joint Stock Discount Co., Fyfe's Case* (1869), 4 Ch. App. 768; *Re Hercules Insce., Lowe's Case* (1870), L. R. 9 Eq. 589.

1362. — — — — — **F., a registered holder of shares in a limited co., transferred them to S., but the transfer was not registered, through the default of the co. An order was made to wind up the co. in Mar. 1866, & in June F. appeared in person at Chambers on a summons to place him on the list of contributories, but no order was made on the summons. In June, 1867, S. died, & had no legal personal representative. In May, 1869, F. received notice from the official liquidator that his name was placed on the list of contributories. He then applied to have it removed:—Held**: there was no laches on the part of F., & his name must be removed from the list of contributories.—*Re JOINT STOCK DISCOUNT CO., FYFE'S CASE* (1869), 4 Ch. App. 768; 38 L. J. Ch. 725; 21 L. T. 131; 17 W. R. 978, L. J.

Annotations:—**Folld.** *Re Hercules Insce., Lowe's Case* (1870), L. R. 9 Eq. 589; *Union Debenture Co. v. Fletcher* (1895), 11 T. L. R. 193. **Refd.** *Re National Bank of Wales, Taylor, Phillips & Rickards' Cases, [1897] 1 Ch. 298.*

1363. — — — — — **UNION DEBENTURE CO. v. FLETCHER** (1895), 59 J. P. 708; 11 T. L. R. 472, C. A.

1364. — **Winding-up petition presented before transfer lodged—Subsequent resolution to wind up voluntarily.**—L. transferred thirty shares in the company to S., & the transfer was left at the office of the co. for registration on Jan. 5, at which time three petitions had been presented for winding up; but the winding up did not actually take place till Feb. 3, when a previous resolution was confirmed by the co. for winding up voluntarily under supervision. The weekly board meeting of the directors took place three days after the transfer was left at the office, but the directors had not registered the transfer when the winding up commenced, & L.'s name was placed on the list of shareholders:—**Held**: there had been improper delay in registration & L.'s name must be taken off the register.—*Re HERCULES INSURANCE CO., LOWE'S CASE* (1870), L. R. 9 Eq. 589; 39 L. J. Ch. 458; 18 W. R. 370.

1365. **Delay in passing transfer—Owing to non-attendance of directors.**—(1) It was the practice of a co. that before registering the name of any transferee as shareholder, a director should weekly examine a book in which the transfers were entered, & seal a new share certificate. Owing to non-attendance on previous occasions, he was unable to examine the whole of the entries:—**Held**: the co. were guilty of unnecessary delay, & a transferor whose name might have been removed from the register but for such delay was entitled to have his name removed from the list of contributories.

(2) In a second case the clerk of the co. did not enter a transfer which had been lodged in such book, because a call had been made, though not due, & not paid on the shares transferred:—

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B. (d) iii.

1360 i. **Transfer not registered at first available meeting—Subsequent winding up.**—*PROPERTY INVESTMENT CO. OF SCOTLAND, LTD. v. DUNCAN* (1887), 14 R. (Ct. of Sess.) 299; 24 Sc. L. R. 221.—SCOT.

p. **No meeting of directors—Before**

winding-up resolutions.—*SHAW v. CITY OF GLASGOW BANK & LIQUIDATORS* (1878), 16 Sc. L. R. 134.—SCOT.

q. — — — — — **A holder of shares in a Ltd. Co. executed a transfer of his shares & forwarded it to the co. with a request that it should be registered. The transfer was received & acknowledged by the co. two days afterwards. On the day on which**

the transfer was dispatched, the co. sent a notice to the transferor intimating that a general meeting of the co. was to be held ten days later for the purpose of considering a resolution that the co. should be wound up in respect that by reason of its liabilities it was unable to continue business. At the general meeting it was resolved that the co. should be wound up, & as the director had not removed the

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(d) *iii., iv., v., vi. & vii.*

Held: there was not unnecessary delay.—*Re JOINT-STOCK DISCOUNT CO., LTD., Ex p. READ* (1867), 36 L. J. Ch. 472; 16 L. T. 111; 15 W. R. 631.

Annotations:—*As to* (1) **Folld.** *Re Joint Stock Discount Co., Sichel's Case* (1867), 36 L. J. Ch. 814 (*see* 3 Ch. App. 119). **Distd.** *Re Joint Stock Discount Co., Shipman's Case* (1868), 37 L. J. Ch. 193.

1366. — Call unpaid.]—Re JOINT-STOCK DISCOUNT CO., LTD., Ex p. READ, No. 1365, ante.
Compare Nos. 1334, 1335, ante.

1367. Power under articles to refuse transfer to irresponsible person—Transferee in fact irresponsible.]—If the arts. of assocn. of a co. provide that the directors may decline to register a transfer in any case where the directors consider the transferee to be an irresponsible person, a transferor cannot claim to have his name removed from the register under 1862 Act, s. 35, on the ground of unnecessary delay, unless the transferee be a responsible person. S. sold certain shares & executed a transfer of them to F. The transfer was deposited for registration with the co. but was not registered. Six weeks afterwards the co. was ordered to be wound up. F. proved to be an irresponsible person:—**Held:** (1) S. must be placed on the list of contributories, although it would have been otherwise if F. had been responsible; (2) it being a condition precedent to the transfer, that the transferee should be a responsible person, undue delay in registering a transfer left for registration was no waiver of such condition.—*Re JOINT STOCK DISCOUNT CO., SHIPMAN'S CASE* (1868), L. R. 5 Eq. 219; 37 L. J. Ch. 193; 16 W. R. 354.

Annotations:—*As to* (1) **Refd.** *Re Hercules Insee., Lowe's Case* (1870), L. R. 9 Eq. 589; *Union Debenture Co. v. Fletcher* (1895), 59 J. P. 708. **Generally, Mentd.** *Re Mercantile Trading Co., Stringer's Case* (1869), 20 L. T. 591.

1368. Blank transfer by way of mortgage subsequently filled in—Shares transferable "in writing"—Refusal of company to register.]—Re TEES BOTTLE CO., LTD., DAVIES' CASE, No. 1328, ante.

1369. Onus of proof that delay caused by company—On transferor.]—Re ANGLO-ITALIAN & COLONIAL, INDUSTRIAL & COMMERCIAL INSTITUTION, LTD., GREY'S CASE (1888), 5 T. L. R. 60, C. A.

1370. Mistake or oversight.]—Re SUSSEX BRICK CO., No. 1333, ante.

Refusal by directors to register transfer.]—See Sect. 23, sub-sect. 5, B. (d), post.

Transfer of shares after winding up begun—Contract for sale before winding up.]—See Sect. 23, sub-sect. 14, post.

Effect of delay by shareholder.]—See Sub-sect. 5, B. (f), post.

iv. Refusal by Directors to Register Transfer.

See, generally, Sect. 23, sub-sect. 5, post.

1371. Form of order—Refusal to prevent full use of voting power—In time for meeting.]—The arts. of assocn. of a co. provided that every member should have one vote for every share up to 100, one for every five shares in the next 100, & one for every ten shares after 200. The directors were empowered to decline to register any transfer of shares made by a member who was indebted to

the co., or, in the case of shares not fully paid up, to a transferee of whom they did not approve. Notices having been issued of a meeting at which would be proposed resolutions for winding up the co. voluntarily, & for the appointment of a liquidator, the largest creditors of the co., who were also the holders of 1,000 fully paid-up shares, in order to secure full voting powers at the meeting, made nine transfers of 100 shares each to as many nominees of their own, & sent them in for registration; but the co. refused to register the transfers. On motion on behalf of the transferors under 1862 Act, s. 25, the co. were ordered to register the transfers in time to enable the transferees to vote at the meeting. Where there is no reason to the contrary under the arts. of assocn. of a co., it is the duty of directors to receive & register transfers at once, & this, although the object of the transfers is to distribute the shares & so to obtain a larger number of votes & command greater influence at a meeting of shareholders already summoned.—*Re STRANTON IRON & STEEL CO.* (1873), L. R. 16 Eq. 559; 43 L. J. Ch. 215.

Annotations:—**Folld.** *Moffatt v. Farquhar* (1878), 7 Ch. D. 591. **Refd.** *Re Bell, Ex p. Hodgson* (1891), 65 L. T. 245.

1372. Onus of proof—That refusal unjustified—On party seeking rectification.]—Where directors refuse to register a transfer an applicant for rectification under 1862 Act, s. 35, must show that there is no just cause for such refusal.—*Re HANNAN'S KING (BROWNING) GOLD MINING CO., LTD.* (1898), 14 T. L. R. 314, C. A.

v. Shares Issued as Fully Paid before Contract filed under Companies Act, 1867 (c. 131), s. 25.

See Sect. 20, sub-sect. 3, C. (d), post.

vi. Fraudulent Transfer of Shares to Avoid Liability.
See Sect. 23, sub-sect. 13, post.

vii. Other Cases.

1373. Wrong entry of nature of shares—Agreement to take paid-up shares—Shares entered as partly paid.]—By a written agreement the directors of a co. agreed to transfer to pltf. 675 fully paid-up shares in the co. as security for moneys advanced by him on their promissory notes. They subsequently registered pltf. as the holder of 675 partly unpaid shares. Pltf. being threatened with an action by judgment-creditors of the co. applied to the ct. to rectify the register, & restrain the judgment-creditors from proceeding against him at law:—**Held:** the co. had no authority to place him on the register in any other capacity than as the holder of fully paid-up shares.—*ASHWORTH v. BRISTOL & NORTH SOMERSET RY. CO.* (1867), 15 L. T. 561.

Annotation:—**Mentd.** *Power v. Hoey* (1871), 19 W. R. 916.

1374. — Shares not entered as paid-up.]—A co. entered into a verbal contract to purchase property from W. It was subsequently arranged that part of the purchase-money should be taken in fully paid-up shares. W., not having transferred the property to them, the co. registered the shares as ordinary shares only, relying on 1867 Act, s. 25, the contract not being "in writing." On a motion on behalf of W. to have the register rectified by inserting his name as a holder of fully paid-up shares:—**Held:** the above sect. was quite inapplicable, & the register must be rectified

shareholder's name from the register, his name was included by the liquidator in the list of contributories.

The shareholders having presented a petition under sect. 32 of the Cos. Act, 1908, for rectification of the register by removal of his name therefrom & also for removal of his

name from the list of contributories. The ct. refused the petition, holding that the directors had not been guilty of default or unnecessary delay in refraining from removing his name from the register.—*DODDS v. COSMOPOLITAN INSURANCE CORPN., LTD.*, [1915] S. C. 992.—SCOT.

PART III. SECT. 13, SUB-SECT. 5.—
B. (d) vii.

r. Misrepresentation as to amount subscribed.]—B., on the faith of a statement in the prospectus issued by a co. to the effect that 20,000 out of 30,000 shares had been subscribed for,

as asked.—*Re FOREIGN & COLONIAL GAS CO., Ex p. WILSON* (1874), 22 W. R. 766.

Compare Nos. 1673–1675, post.

1375. Name entered on register by consent—As trustee for company.]—*Re IMPERIAL MERCANTILE CREDIT ASSOCN., CHAPMAN & BARKER'S CASE*, No. 1246, *ante*.

1376. Shares taken in name of nominee—Owner substituted for nominee in share ledger—Nominee remaining on register of shareholders—Knowledge of company.]—*Re MOSELEY GREEN COAL & COKE CO., LTD., BARRETT'S CASE*, No. 1245, *ante*.

1377. —.]—S., a shareholder in a co., being unable to obtain the allotment of any more shares in his own name, induced his married daughter M. to sign an application for 400 shares. In the form of application it was not stated whether appct. was married or single; & she was described as residing at L., her real residence being with her husband at D. M. had no property to her separate use, & she had no authority from her husband to apply for shares. She alleged that she was ignorant of the nature of the paper which she signed. The shares were allotted to M., & S. paid both the application & the allotment moneys. The notice of allotment, & the scrip certificates were sent to him, & he received the dividends which became payable on the shares. The co. having been wound up, & the name of M. placed on the list of contributories:—*Held*: under the above circumstances, the name of M. must be removed from the list, & the name of S. placed on the list in her stead.—*Re HERCULES INSURANCE CO., PUGH & SHARMAN'S CASE* (1872), L. R. 13 Eq. 566; 41 L. J. Ch. 580; 26 L. T. 274.

Annotations:—Consd. Re National Bank of Wales, Massey & Giffin's Case, [1907] 1 Ch. 582. *Reid. Re Britannia Fire Asscn., Coventry's Case*, [1891] 1 Ch. 202; *Re Central Klondyke Gold Mining & Trading Co., Savigny's Case* (1898), 5 Mans. 336.

1378. Wrongful alteration of register by company—Shares originally held by nominee—Name of beneficial owner inserted—After interest parted with to nominee.]—*Re YSTALYFERA GAS CO.* (1887), 3 T. L. R. 321.

1379. Where articles require transfer to be signed by transferee—Transfer not so signed.]—Where the arts. of assocn. of a co. require transfers of shares to be executed by both parties the ct. has no power, under 1862 Act, ss. 35, 98, to rectify the register by removing the name of a transferor unless the transfer has been executed by the transferee.—*Re OVEREND, GURNEY & CO., MUSGRAVE & HART'S CASE* (1867), L. R. 5 Eq. 193; 37 L. J. Ch. 161; 17 L. T. 313; 16 W. R. 247.

Annotations:—Reid. Re Hercules Insce., Lowe's Case (1870), L. R. 9 Eq. 589; *Re Diamond Rock Boring Co., Ex p. Shaw* (1877), 2 Q. B. D. 463. *Mentd. Re Hydraulic Tube-Drawing & Steel Ordnance Co.* (1868), 16 W. R. 572; *Paine v. Hutchinson* (1868), 3 Ch. App. 388; *Re Heaton Steel & Iron Co., Simpson's Case* (1869), L. R. 9 Eq. 91.

See, also, No. 1345 *ante*, No. 2293, *post*.

1380. On application by director—Equitable ground for refusal—Postponement of call to avoid liability.]—Under 1862 Act, s. 22, the right to transfer his shares is incident to every shareholder; & therefore, a director-shareholder has as much right as any ordinary shareholder to transfer his shares & to have his transfer registered, unless he falls within a provision in the co.'s arts. of assocn. enabling the directors to refuse registration where the shareholder seeking to transfer is "indebted to the co. in respect of calls

or otherwise"; & the ct. will, on an application by the director-shareholder under sect. 35 of the above Act, exercise its power of compelling registration provided there is no equity against him as director, such as having been party to a postponement of a call to enable him to get rid of his shares & so evade a liability.—*Re CAWLEY & CO.* (1889), 42 Ch. D. 209; 61 L. T. 601; *sub nom. Re CAWLEY & CO., LTD., Ex p. HALLETT*, 58 L. J. Ch. 633; 37 W. R. 692; 5 T. L. R. 549; 1 Meg. 251, C. A.

Annotation:—Mentd. Re Ottos Kopje Diamond Mines, [1893] 1 Ch. 618.

1381. Where consent of directors necessary—Failure of company before transfer approved.]—*Re OVEREND, GURNEY & CO., WARD & GARFIT'S CASE*, No. 1330, *ante*.

1382. — Refusal of director to attend to form quorum.]—The arts. of assocn. of a private co. provided that no share should be transferred to any person not already a member without the consent of the directors. There were two directors only, E. & P., E. being the chairman & having in that character a casting vote. The quorum necessary for the transaction of business was two. E., without first having obtained the consent of the board, executed transfers of some of his shares to persons not already members of the co. & sent the transfers to the co. for registration. P. purposely refused to attend board meetings summoned to consider the transfers in order to prevent a quorum being formed. On an application by the transferees under 1908 Act, s. 32:—*Held*: (1) the arts. did not require the directors' consent to be obtained before the execution of the transfers & that the transfers therefore were not inoperative documents, though they had no legal effect till the consent of the directors had been obtained & registration effected; (2) P. could not by wilfully refusing to attend board meetings prevent the transfers from being registered, & the transferees under the circumstances were entitled to an order directing the co. to register the transfers.—*Re COPAL VARNISH CO., LTD.*, [1917] 2 Ch. 349; 87 L. J. Ch. 132; 117 L. T. 508.

Annotation:—As to (2) Reid. Re Keith Prowse, [1918] 1 Ch. 487.

1383. Transfer insufficiently stamped—Company without notice.]—*Re INDO-CHINA STEAM NAVIGATION CO.*, No. 1303, *ante*.

1384. Shares in joint names of trustees for debenture-holders—Holding split to enable both to vote.]—*BURNS v. SIEMENS BROTHERS DYNAMO WORKS*, No. 1320, *ante*.

On rescission of contract to take shares—On ground of non-disclosure in prospectus.]—See Sect. 8, sub-sect. 2, C., *ante*.

— On ground of misrepresentation.]—See Sect. 17, sub-sect. 1, G., *post*.

— In prospectus.]—See Sect. 8, sub-sect. 3, C. (b), *ante*.

— By underwriter.]—See No. 1164, *ante*.

Where allotment invalid.]—See Sect. 17, sub-sect. 3, C., *post*.

Where allotment not binding.]—See Sect. 17, sub-sect. 3, D., *post*.

Validity of transfers.]—See Sect. 23, sub-sect. 3, *post*.

— Forged transfers.]—See Sect. 23, sub-sect. 12, D., *post*.

Shares issued as fully-paid—Before contract filed under 1867 Act, s. 25.]—See Sect. 20, sub-sect. 3 D. (a) ii., *post*.

informed the secretary that he would take 1,000 shares, but, upon afterwards discovering that only about 18,000 had been subscribed, he refused

to become a shareholder. He had not derived any benefit from the shares. On an application for the rectification of the register:—*Held*: appct. was

entitled to have his name deleted.—*BURNARD v. AFRICAN MERCANTILE CO.* (1903), 20 S. C. 379.—S. AF.

Sect. 13.—The register of members: Sub-sect. 5, B.
(e) i., ii., iii., iv. & v.]

(c) *Practice and Procedure.*

i. *Who may Apply.*

1385. Person wrongly put on register—Though name removed by directors.]—*Re* BANK OF HINDUSTAN, CHINA & JAPAN, LTD., *Ex p.* MARTIN, No. 1306, *ante*.

— **On shares being declared forfeited.]—**
See Nos. 1343, 1344, *ante*.

1386. Liquidator.]—On an application under 1862 Act, ss. 35, 98, to rectify the register of shareholders, the ct. will have regard to who is the appct., & where, owing to the default of the co., a transfer has not been registered before the winding up, the ct. will not rectify the register on the application of the official liquidator, whatever may be the right of the transferor to have it rectified, for the official liquidator in such a case represents only the co., to whose default the error is owing, the body of contributories having no interest in the question except through the co., & the creditors having no direct equity against a person whose name has never been held out to them.—*Re* JOINT STOCK DISCOUNT CO., SICHELL'S CASE (1867), 3 Ch. App. 119; 37 L. J. Ch. 373; 17 L. T. 363; 16 W. R. 292, L. J.

*Annotations:—*Re*ld.* *Re* Bank of Hindustan, China & Japan, *Ex p.* Kintrea (1869), 5 Ch. App. 95; *Re* Joint Stock Discount Co., Pyte's Case (1869), 4 Ch. App. 768; *Re* Hercules Insce., Lowe's Case (1870), L. R. 9 Eq. 589; *Re* Hercules Insce., Pugh & Sharman's Cases (1872), L. R. 13 Eq. 566; *Re* Albion Asso. Soc., Winstone's Case (1879), 12 Ch. D. 239; *Trevor v. Whitworth* (1887), 12 App. Cas. 409; *Bellerby v. Rowland & Narwood's S.S. Co.*, [1902] 2 Ch. 14. *Mentd.* *Re* Land Credit of Ireland, Weikersheim's Case (1873), 8 Ch. App. 831; *Re* Shaw, *Ex p.* Piers (1877), 46 L. J. Q. B. 394; *Re* Clayton Mill Manufacturing Co. (1887), 3 T. L. R. 798.

1387. Director shareholder—In same position as any other shareholder.]—*Re* CAWLEY & CO., No. 1380, *ante*.

1388. "Person aggrieved"—Names entered in wrong order—Voting power exercisable by first holder only—Refusal by directors to register transfer ordered by court.]—*Re* MOORE'S ESTATE, FOX v. MOORE, *Re* MOORE (B. A.) & SONS, LTD. (1904), 48 Sol. Jo. 762.

1389. The company—Where any person alleges himself to be aggrieved.]—*Re* INDO-CHINA STEAM NAVIGATION CO., No. 1303, *ante*.

See, also, No. 1351, *ante*.

ii. *The Application.*

1390. How made—Whether on motion—Or by summons in chambers.]—*DUFFIN v. MEXICAN GOLD & SILVER ORE REDUCTION CO.*, [1890] W. N. 116.

*Annotation:—**Dbtd. & N.F.* *Re* Whitefriars Financial Co., *Re* Reeves, [1899] 1 Ch. 184.

1391. ——— Application by shareholder—For rescission on ground of misrepresentation.]—Where a holder of fully paid-up shares in a limited co. applied by motion under 1862 Act, s. 35, to have his name struck off the register of shareholders, on the ground that he had been induced to take the shares through misrepresentation & concealment of material facts in the prospectus, &

his application had been granted in the ct. below, the L.JJ. on appeal declined to dispose of the case, on the grounds that the effect of granting the application would be to entitle the appct. to recover from the co. as of course the money he had paid for his shares, that the question would be more properly heard & determined in an action or suit than in a summary way upon an application of this kind, & that since the appct.'s shares were fully paid up he would be subjected to no liabilities by being retained on the register pending such proceedings.—*Re* RUBY CONSOLIDATED MINING CO., ASKEW'S CASE (1874), 9 Ch. App. 664; 43 L. J. Ch. 633; 31 L. T. 55; 22 W. R. 833, L. JJ. *Annotation:—**Apld.* *Re* Greater Britain Insce. Corp., *Ex p.* Brockdorff (1920), 124 L. T. 194.

1392. ———.]—*Re* BRITISH BURMAH LEAD CO., LTD., *Ex p.* VICKERS, No. 593, *ante*.
— *See, also*, Nos. 1400–1402, *post*.

1393. ——— Ex parte application by company—Form of order.]—*Re* LONDON ELECTROBUS CO., LTD. (1906), 22 T. L. R. 677; 50 Sol. Jo. 593.

1394. Not vacation business—Where not urgent.]—*Re* MICA MANUFACTURING CO., LTD. (1899), 43 Sol. Jo. 778.

1395. Parties—Directors—Acts conducing to application.]—On a motion for rectification of the register directors are not properly joined as resps. although their unjustifiable acts at board meetings may have conduced to the application. Unless joined at their own request the ct. has no jurisdiction to make a punitive order against them for payment of the costs of the motion.—*Re* KEITH PROWSE & CO., LTD., [1918] 1 Ch. 487; 87 L. J. Ch. 290; 118 L. T. 591; 34 T. L. R. 283.

1395a. ——— Application to strike off infant transferee.]—The name of an infant to whom shares have been transferred may be struck off the list of contributories, although his transferor cannot be found, and is accordingly not before the court.—*Re* EUROPEAN ASSURANCE SOCIETY, BENTINCK'S CASE (1873), 18 Sol. Jo. 224.

1396. Whether in name of liquidator or company.]—*Re* BANK OF HINDUSTAN, CHINA & JAPAN, *Ex p.* KINTREA, No. 1356, *ante*.

iii. *Service of Proceedings.*

1397. Winding up ordered before hearing of motion — Service on liquidator.]—A person alleged to be a shareholder in a limited company, served on the co., under 1862 Act, ss. 35, 36, a notice of motion for an order for the rectification of the register of shareholders, by the omission of his name. Before the motion came on for hearing the co. was ordered to be wound up, & an official liquidator appointed:—*Held*: the notice of motion must be served on the official liquidator.—*Re* LISBURN CONSOLS SILVER LEAD MINING CO., *Ex p.* TRENCHARD (1870), 19 W. R. 96.

1398. Third party claiming shares—Service out of jurisdiction—R. S. C., Ord. 16, r. 48.]—*HUTCHINSON v. COLORADO UNITED MINING CO.*, [1884] W. N. 40; Bitt. Rep. in Ch. 225.

1399. Service accepted by solicitors to company—Insufficient.]—A motion was made under 1862 Act, s. 35, to rectify the register of members of a

PART III. SECT. 13, SUB-SECT. 5.—
B. (e) ii.

s. *How made—By bill in equity—Or writ of mandamus.]—*Summary process is not available in respect to banks constituted under Banking Act, 1871, & the remedy so readily provided under the English procedure is attainable only by bill in equity or, perhaps, in some cases by writ of *mandamus*.—*BANK OF NOVA SCOTIA v. SMITH* (1883),

4 R. & G. 146; *Revsd.* 8 S. C. R. 556.—**CAN.**

t. — *Whether by petition.]—**GOWANS v. DUNDEE STEAM NAVIGATION CO., LTD.* (1904), 6 F. (Ct. of Sess.) 613.—**SCOT.**

PART III. SECT. 13, SUB-SECT. 5.—
B. (e) iii.

a. *Service at "last known address or place of abode."]—*The address or residence of a member of a co. entered

in the register of shareholders, although sufficiently ascertained for the purpose of communication from the co., is not ascertained for a service of legal proceedings. For the purpose of such service, care must be taken to find out the last known place of abode of the alleged contributory, & to effect the substituted service there.—*LONDON, BOMBAY & MEDITERANEAN BANK v. GOVIND RAMCHANDRA* (1881), 1 L. R. 5 Bom. 223.—**IND.**

co. by the insertion therein of the name of appct. as the holder of certain shares. Correspondence had passed between the solrs. of the co. & the solrs. of appct. with reference to appct.'s claim to be a shareholder of the co., & the notice of motion had been served on the co.'s solrs., they accepting service on behalf of the co. in the usual manner. At the hearing the co. did not appear:—*Held*: service on the solrs. of the co. was not sufficient; & no order could be made until the co. had itself been served at its registered office, or until it appeared.—*Re* DENVER UNITED BREWERIES, LTD. (1893), 63 L. T. 96.

iv. *The Hearing.*

1400. Application after winding-up order—Referred to chambers—To be dealt with together with list of contributories.]—Sect. 35 of 1862 Act provides for applications to be made to rectify the register of the members of any co. Applications with this object, after an order for winding up has been pronounced, will be referred to chambers to be disposed of when the list of contributories should come on to be settled.—*Re* SCOTTISH UNIVERSAL FINANCE BANK, BRECKENRIDGE'S CASE (1865), 2 Hem. & M. 642; 71 E. R. 613; *sub nom.* *Re* SCOTTISH & UNIVERSAL FINANCE & BANKING ASSOCN., BUCKRIDGE'S CASE, 12 L. T. 796; 13 W. R. 677.

Annotation:—*Consd.* *Re* Sussex Brick Co., [1904] 1 Ch. 598.

1401. — Dispute as to real transferee—Issue directed.]—A shareholder in a co. executed a *bonâ fide* transfer of shares in it to a broker, who did not then disclose the name of the real transferee. A petition was afterwards presented to wind up the co., & the usual advertisements thereon duly issued, after which some question arose between the parties as to who was the real transferee of the shares. A motion was then made on behalf of the transferor of the shares, whose name was on the list of contributories, to remove his name, & to insert thereon the name of the broker instead:—*Held*: the name of the transferor must remain on the list; the question between the parties could only be decided on a suit regularly instituted; & the broker was not entitled to his costs of the motion.—*Re* LONDON & HAMBURG BANK, *Ex p.* WATKINS (1866), 14 L. T. 696; 14 W. R. 817.

1402. Application on ground of fraud—Jury action.]—*Re* MOTION (1896), 40 Sol. Jo. 459.

1403. Application on ground of misrepresentation—May be heard in first instance before witnesses summoned.]—*Re* MOTION (1896), 40 Sol. Jo. 459.

1404. Grounds for application subject-matter of pending trial—Issue directed with reference to pending trial.]—*Re* MOTION (1896), 40 Sol. Jo. 459.

1405. Evidence—Witnesses—Order of cross-examination.]—An application was made by a shareholder, under 1862 Act, s. 35, for the rectification of the register of the co. When the application came on for hearing, the shareholder applied to have the witnesses who had made affidavits on behalf of the co. cross-examined on their affidavits, & an order was made that the witnesses on both sides should attend for cross-examination before an examiner. On attending before the examiner the question was raised whether the shareholders' witnesses or the co.'s witnesses ought to be cross-examined first:—*Held*: under the circumstances of the case, the shareholders' witnesses should be cross-examined first.—*Re* DORÉ GALLERY, LTD. (1890), 62 L. T. 758; 38 W. N. 491.

— **Attendance of—After winding-up order made.]—***See* No. 6075, *post*.

1406. — May be taken by master.]—*Re* MOTION (1896), 40 Sol. Jo. 459.

1407. Form of order—Refusal by directors to register transfers—Registration in time to enable shareholder to vote at meeting.]—*Re* STRANTON IRON & STEEL CO., No. 1371, *ante*.

1408. — Common form.]—The ordinary form of order for rectification is "Let the register be rectified."—*Re* L. L. SYNDICATE, LTD. (1901), 17 T. L. R. 711.

1409. — No one available to comply with order—Rectification within four days.]—*Re* L. L. SYNDICATE, LTD. (1901), 17 T. L. R. 711.

1410. — — Nominee of Public Trustee appointed.]—Shares belonging to an alien enemy were, after the declaration of war, vested in the Public Trustee & were sold by him. A four-day order was obtained in default of appearance directing the co. to rectify the register by registering the transfer, but was not complied with. The co.'s solrs. stated in correspondence that they had the books of the co., but that all the directors & the secretary had resigned. The Public Trustee being unable to proceed moved for an order for the rectification of the register & a consequential order that the solrs. should produce the books & papers of the co.:—*Held*: an order should be made appointing the nominee of the Public Trustee to rectify the register, & though no order would be made on the motion for production of the books the ct. would intimate that nothing ought to be done by the solrs. to obstruct the carrying out of the order actually made.—*Re* MANIHOT RUBBER PLANTATIONS, LTD. (1919), 63 Sol. Jo. 827.

1411. — May fix date from which rectification effective — Though retrospective.]—*Re* SUSSEX BRICK CO., No. 1333, *ante*.

v. *Costs.*

1412. Jurisdiction—To order payment by transferor.]—*Re* BANK OF HINDUSTAN, CHINA & JAPAN, *Ex p.* KINTREA, No. 1356, *ante*.

1413. — — Blank transfer by way of mortgage—Transferor served with notice of proceedings.]—*Re* TEES BOTTLE CO., LTD., DAVIES' CASE, No. 1328, *ante*.

1414. — To order payment by directors—Conduct conducing to application.]—*Re* KEIT Prowse & Co., LTD., No. 1395, *ante*.

1415. What costs allowed—Costs of liquidator — Rectification of list of contributories.]—Upon motion, under 1862 Act, s. 35, for an order to remove appct.'s name from the register of shareholders of a new co. which he had never agreed to join, the ct., holding the conduct of the new co. in putting him on their list wholly unjustifiable, gave him, in addition to the costs of his application, & by way of damages sustained by him, the legal expenses which he had been occasioned by the co.'s conduct; directing a reference to chambers to ascertain the amount.—*Re* NEW QUEBRADA CO., LTD., PONTIFEX'S CASE (1867), 36 L. J. Ch. 903; 15 W. R. 955.

Annotation:—*Reid.* *Re* Scottish Petroleum Co., Anderson's Case (1880), 43 L. T. 723.

— **Costs by way of damages—All legal expenses incurred.]—***See* No. 2213, *post*.

1416. — — Solicitor & client costs.]—*Re* NATIONAL EQUITABLE PROVIDENT SOCIETY, WOOD'S CASE, No. 1354, *ante*.

See, also, No. 2423, *post*.

1417. Deprivation of costs—Delay in application.]—*Re* ALEXANDRA PARK CO., HART'S CASE, No. 1418, *post*.

Proof for in winding up.]—*See* No. 6409, *post*.

Sect. 13.—The register of members: Sub-sect. 5, B. (f) & (g).]

(f) Loss of Right to Rectification.

Claimed on ground of misrepresentation.]—See Sect. 17, sub-sect. 1, G. (d), post.

—In prospectus.]—See Sect. 8, sub-sect. 3, E., ante.

Claimed on ground of departure from prospectus.]—See Sect. 8, sub-sect. 4, C., ante.

Claimed on ground of delay in allotment.]—See No. 1694, post.

Claimed on ground that shares not applied for.]—See No. 1756, post.

1418. Claimed on ground of infancy of shareholder—Delay by shareholder.]—Some shares in a co. had been registered in the name of an infant. She was settled on the list of contributories & then attained 21. She took no steps to be struck off for eighteen months, when a balance order was made against her:—*Held*: she was still entitled to be struck off, but could not have the costs of the application.—*Re ALEXANDRA PARK CO., HART'S CASE* (1868), L. R. 6 Eq. 512; 38 L. J. Ch. 85; 16 W. R. 1033.

1419. — Delay by company.]—In Sept. 1864, P. sold in the market twenty shares in a co. They were purchased by persons who gave the name of S., an infant, & a messenger in a bank, as transferee. S. executed the transfer deed, & his name was placed on the register of members, neither P. nor the co. being then aware of the fact of his infancy. In Oct., 1864, a call was made in respect of the twenty shares upon P., who, in Nov., 1864, was informed that the directors had disallowed the transfer, having discovered that S. was not a person whose means would justify the co. in accepting him as a shareholder. In May, 1865, an action for call moneys was commenced by the co. against S., who, in July, 1865, pleaded infancy, & the action was not prosecuted. Several calls were subsequently made; but P. was not applied to for payment in respect of any of them. In Jan. 1868, a winding-up order was made. At that date S. was still an infant. On application by the official liquidator to have the register & list amended by substituting P.'s name for that of S.:—*Held*: the laches of the co. in permitting S.'s name to remain on the register, &

their omission to inform P. of the fact of S.'s infancy, disentitled the official liquidator to have P.'s name substituted for that of S. on the list of contributories, & application refused.—*Re EUROPEAN CENTRAL RY. CO., PARSONS' CASE* (1869), L. R. 8 Eq. 656; 39 L. J. Ch. 64.

1420. Neglect of transferor to see that transfer registered—Until after winding up begun.]—The registered owner of certain shares in a co. executed a transfer of them to a purchaser two years before the date of the winding-up order; but took no steps to procure the transfer to be registered; a winding-up order having been made:—*Held*: his name could not be removed from the register under 1862 Act, s. 35, or from the list of contributories.—*Re CONTRACT CORPN., HEAD'S CASE, WHITE'S CASE* (1866), L. R. 3 Eq. 84; 36 L. J. Ch. 121; 15 L. T. 262, 309; 15 W. R. 142, 143.

Annotations:—Apprvd. Re London, Hamburg & Continental Exchange Bank, Ward & Henry's Case (1867), 2 Ch. App. 431. *Consd. Re Overend, Gurney, Musgrave & Hart's Case* (1867), L. R. 5 Eq. 193. *Reid. Re Cawley, Ex p. Hallett* (1889), 58 L. J. Ch. 633. *Mentd. Re Peruvian Rys., Ex p. Wallis* (1868), 18 L. T. 676.

1421. —.]—*Re ANGLO-DANUBIAN STEAM NAVIGATION & COLLIERY CO., WALKER'S CASE*, No. 1288, *ante*.

1422. —.]—In Feb. 1883, A., the registered holder of certain shares, executed for value a deed of transfer, the names of the transferee being left in blank, & handed the transfer & the share certificate to the purchaser. Afterwards the transfer & certificate came into the possession of W., who, in Feb. 1884, filled in his own name as transferee & sent the complete transfer with the certificate to the office of the co., requesting that the shares might be registered in his name & a new certificate issued. A. never took any steps to get the transfer registered. Through the default of the co. the transfer never was registered. In Apr. 1884, a winding-up order was made. A. now applied to have W.'s name substituted for his as the holder of the shares:—*Held*: he was entitled to the order asked for.—*Re MANCHESTER & OLDHAM BANK* (1885), 54 L. J. Ch. 926; 1 T. L. R. 644.

Compare No. 2428, post.

1423. Transfer lodged but not registered before liquidation—No delay by transferor or transferee.]—*Re OVEREND, GURNEY & CO., WARD & GARFIT'S CASE*, No. 1330, *ante*.

PART III. SECT. 13, SUB-SECT. 5.— B. (f).

1418 i. Claimed on ground of infancy of shareholder—Delay by shareholder.]—Shares were put into the name of S., an infant, without any application being made by him for the same. S. became of age in Sept., 1913, & in Oct., 1913, he applied to the managing director of the co. who, under the arts. of assocn., had very extensive powers, to have the shares taken out of his name. The latter promised to have this done, but neglected to do so. In June, 1917, at the direction of the managing director, S. executed transfers of the shares standing in his name to D. an infant; S. knew that D. was an infant at the time. The transfers were entered in the transfer journal & approved by the co., but S.'s name was not removed from the register of shareholders. A petition for the winding up of the co. was presented in Aug., 1914, & an order winding up the co. was made on Sept. 8, 1914. On Sept. 16, 1914, S. applied to the co. to have his name removed from the register of shareholders, on the ground that the transfer to D., having been approved by the co., should have been registered by it, & also on the ground that his name had been put on the register, without any application having

been made by him for shares:—*Held*: (1) the co. was justified in not registering the transfer to D. as he was an infant; (2) S. was not precluded from obtaining relief by reason of the fact that he had executed the transfer to D. or by reason of any delay on his part, & in consequence his name should be removed from the register, as he had made no application for the shares allotted to him.—*Re EARLE, HERMANNE, LTD., SPENCE'S CASE*, [1914] 14 S. R. N. S. W. 397.—AUS.

b. Claimed on ground of transfer—Delay not amounting to laches.]—B., a registered holder of shares in a limited co., transferred them to S., but B. being in arrear for some calls, the transfer was not registered. In Aug. 1881, B. obtained an order from the judge, that, on certain payments being made, the co. should take his name off the register & substitute S.'s name. The order was served on the secretary of the co., & payments were made by B. under the order. The register was not rectified in pursuance of the order. In Feb., 1883, the co. having suspended business for over two years, a winding up order was made:—*Held*: there were no laches on the part of B., & his name must be removed from the list of contributories.—*Re ENTERPRISE GOLD &*

SILVER MINING CO., LTD., Ex p. BIBBY (1884), 1 B. C. R. Pt. II. 94.—CAN.

c. Claimed on ground of irregularities in formation & allotment of shares—Delay by company.]—Where a shareholder has been for years a director of a co. & has taken his dividends all the time he cannot get rid of his liability as a shareholder because of anything irregular in the forming of the co. or any irregularity in the allotment of the shares.—*HOOD v. CALDWELL, BLADGEN v. WENTWORTH ORCHARD CO.*, [1923] 2 D. L. R. 1027; 50 O. L. R. 387 (1923), S. C. R. 788.—CAN.

1420 i. Neglect of transferor to see that transfer registered—Until after winding up begun.]—Upon an application by H. to have his name removed from list of contributories:—*Held*: it was duty of H. as transferor to see that his name was removed from register & co. was not bound by act of secretary in sending notices to C. & co. had not accepted C. as a member in respect of these shares & there being no negligence or default on part of C., H. was rightly placed on list of contributories.—*Re CHATSWORTH ESTATE CO., LTD., Re CLARKE, Ex p. HARTNELL* (1892), 18 V. L. R. 442.—AUS.

d. Conduct of shareholder—Divi-

Duties of transferor & transferee, generally, see Sect. 23, sub-sect. 2, C., sub-sect. 8, *post*.

1424. Delay by transferor in applying.]—The exors. of T., who was possessed of shares in the East of England Banking Co., sold his shares by auction to M., who paid his deposit, but before the assent of the directors, which was requisite under the co.'s deed, was obtained, the bank stopped payment. The exors. paid calls by striking the amount off T.'s balance as depositor, & the winding up continued for two years, when the exors. of T. took out a summons to get their names struck off the list of contributories, & M.'s name substituted, but another year elapsed before the summons was brought on:—*Held*: the delay of the exors. disentitled them to that relief which, without doubt, they would have been entitled to if they had applied at once; that M. was originally liable, but that by analogy to the provisions of 1862 Act, s. 124, some steps should have been taken within three weeks.—*Re EAST OF ENGLAND BANKING CO., Exp. TRORY'S EXECUTORS* (1867), 17 L. T. 198.

1425. Delay on part of company—Allottees not entered on register—Subsequent fresh allotment.]—*Re FLORENCE LAND & PUBLIC WORKS CO., NICOL'S CASE, TUFNELL & PONSONBY'S CASE*, No. 1192, *ante*.

See, also, No. 1419, *ante*.

1426. Conduct of shareholder—Dividends received & calls paid—Allegation that shares invalidly issued.]—*Re BRITON MEDICAL & GENERAL LIFE ASSOCN., LTD.* (1889), 5 T. L. R. 502.

1427. — Opposition to winding-up petition.]—*Re BRINSMEAD (THOMAS EDWARD) & SONS, TOMLIN'S CASE*, No. 1526, *post*.

1428. — What delay disentitles to relief.]—*Re CHELTENHAM & SWANSEA RAILWAY CARRIAGE & WAGGON CO., LITTLE'S CASE*, No. 1756, *post*.

divdends received & calls paid—Appointment of proxy.]—Action was brought against deft. as transferee of shares in pltf. bank, for calls. There was no valid transfer of the shares under the Act, but, deft. had paid calls, given a receipt for a dividend, combined with other in appointing a proxy, & being present at the trial, & hearing all this evidence, had not produced any evidence or offered his own testimony in reply:—*Held*: he must be treated as a shareholder.—*BANK OF LIVERPOOL v. BIGELOW* (1878), 3 R. & C. 236.—CAN.

e. — First call paid.]—Subscribers for shares in the stock of a co. who have already paid one call cannot be heard to deny the allotment of their shares.—*MORDEN WOOLLEN MILLS CO. v. HECKELS* (1908), 17 Man. L. R. 557.—CAN.

f. — Acceptance of shares — & sale of them.]—*TWIGG v. THUNDER HILL MINING CO.* (1893), 3 B. C. R. 101.—CAN.

g. — Shares issued of wrong class—Delay by shareholder.]—Where shares carrying a liability are improperly issued instead of shares fully paid the person to whom they are issued must repudiate them as soon as the facts are ascertained, & if he with a knowledge of the facts permits himself to be treated as a shareholder or perform acts of ownership he will be treated as having agreed to take them & be liable to become a contributory in respect of the same.—*Re ROSEMOUNT GOLD MINING SYNDICATE, LTD. (IN LIQUIDATION)* (1905), T. H. 169.—S. AF.

h. — Lapse of time.]—After the issue of letters patent in 1880 incorporating the co. & naming certain persons as shareholders, these persons

stated to certain of the directors of the co. that they would not accept their stock, & would have nothing more to do with the co., but no proceedings were taken by them to relieve themselves from liability; & no proceedings were taken against them until the co. was wound up in 1891:—*Held*: as these persons had not a mere inchoate right to receive shares, but were actually shareholders & members of the co. by virtue of the charter, mere statements of this kind, & the lapse of time, & the failure of the directors to enforce payment of the shares, did not relieve them from their liability as shareholders.—*Re HAGGERT BROTHERS MANUFACTURING CO., PEAKER & RUNIONS' CASE* (1892), 19 A. R. 582.—CAN.

k. Neglect of new company to allot—Sale of one company to another.]—Where a statute which authorised the sale & transfer of the whole of the business rights & property of one co. to another co. provided for the allotment of shares in the new co. to the shareholders of the old co., & also provided that the only rights of the shareholders of the old co. should be the right of each of them, on complying with the procedure prescribed by the statute to a certain number of shares in the new co.:—*Held*: shareholders of the old co. who had not applied for shares in the new co., & to whom no shares therein were allotted, & who were not entered as shareholders on its own share register, should not be placed upon the list of contributories to the new co. on the ground that they were estopped from denying liability, because they had neither acted as its directors, paid calls to the new co. in respect of their shares in the old co., accepted dividends from

1429. Delay by director-shareholder—Non-compliance with condition—Application after winding up begun.]—*Re YSTALYFERA CO., LTD.* (1886), 2 T. L. R. 900.

1430. Delay by liquidator—Many years after winding up begun.]—A winding-up order having been made in 1851, the official manager in 1863 applied to review the list of contributories by inserting the name of H., a former shareholder, who had transferred his shares in 1848, on the ground that the alleged transfer was not *bond fide*. H. having refused to be examined as to the circumstances under which the transfer was made, insisting that it was too late to go into the transaction:—*Held*: having regard to the lapse of time, the official manager must show that he had reasonable grounds for examining into the transaction, & that he had recently acquired his information, but if this were shown H. must submit to be examined.—*Re CAMERON COALBROOK CO., HUNT'S CASE* (1863), 32 Beav. 387; 2 New Rep. 50; 8 L. T. 377; 9 Jur. N. S. 998; 11 W. R. 655; 55 E. R. 152.

1431. Re-allotment followed by winding up.]—*Re FLORENCE LAND & PUBLIC WORKS CO., NICOL'S CASE, TUFNELL & PONSONBY'S CASE*, No. 1192, *ante*.

Acquiescence in allotment.]—See, generally, Sect. 17, sub-sect. 3, F., *post*.

(g) Effect of Winding up.

1432. Made on same day—As consent order for rectification.]—In Mar. 1871, W., a creditor & contributory of a limited co., the directors of which had power to accept surrenders of shares, presented a petition for a winding-up order, & on May 29, 1871, on the hearing of the petition, an order was made, as on a motion to rectify the register, by consent of the parties, rectifying the

the new co. or attended its meetings in person or by proxy.—*DOMINION TRUST CO. v. ALLEN*, [1917] 3 W. W. R. 483.—CAN.

l. Delay on part of company.]—A mining co. purchased some of its own shares from certain shareholders whose names were taken off the co.'s register. Three months afterwards a call was made upon the shares, which then stood in the name of the co. The co. took no steps to have the register rectified until the lapse of more than three weeks from the date of the call.

Upon an application on behalf of the co. to have the names of the shareholders inserted upon the register in respect of the shares transferred by them to the co.:—*Held*: the purchase of the shares was illegal, but, as the shares would have been forfeited for non-payment of calls if the shareholders' names had remained on the register, & as the co. had done nothing to protect itself from having them forfeited, the names could not be reinstated on the register, & they were not liable for the call.—*Re EUROPEAN GOLD-MINING CO., (LTD.)* (1898) 16 N. Z. L. R. 238.—N.Z.

m. Delay by sequestrator—Many years after sequestration begun.]—*MORRISON (MERRETT'S TRUSTEE) v. HARRISON FORTH & JUNCTION CLYDE RY. CO.* (1876), 3 R. (Ct. of Sess.) 406; 13 Sc. L. R. 273.—SCOT.

PART III. SECT. 13. SUB-SECT. 5.—B. (g).

n. Trustee of shares on transferring them entitled to have his name removed from register.]—M. an accountant in the Real Estate Bank took a transfer of shares in the Chatsworth Estate Co., & became registered as a holder in respect of such shares. A deed was

Sect. 13.—The register of members: Sub-sect. 5, B. (g). Sect. 14.]

register by removing the names of W. & others. On the same day other petitions were presented for a winding up, & on the hearing on July 8, 1871, an order was made for that purpose. A summons by the liquidator to settle the name of W. (a representative case) on the list of contributories was, in consequence of the consent order, dismissed:—An *ex p.* application on behalf of another contributory for leave to take proceedings to discharge the consent order was refused.—*Re LONDON SUBURBAN BANK* (1872), L. R. 15 Eq. 274; *sub nom. Re LONDON SUBURBAN BANK, WALMESLEY'S CASE*, 27 L. T. 814; 21 W. R. 220.

On jurisdiction of court.]—See Nos. 1330, 1333, ante.

—Transfers executed after winding up begun.]—See Nos. 1331, 1332, ante.

On exercise of jurisdiction—Transfer lodged before winding up.]—See Nos. 1359–1363, ante.

—Transfer executed after winding up begun.]—See No. 1331, ante.

—Shareholder a trustee.]—See No. 1252, ante.

—Application on ground of misrepresentation.]—See Sect. 17, sub-sect. 1, G., post.

—In prospectus.]—See Sect. 8, sub-sect. 3, ante.

—Application on ground of departure from prospectus.]—See Sect. 8, sub-sect. 4, ante.

—Winding up following on re-allotment.]—See No. 1192, ante.

See, further, Sect. 23, sub-sect. 14, post.

SECT. 14.—SHARES GENERALLY.

1433. Nature—Distinguished from sum of money.]—Provisions in a co.'s arts. of assocn. compelling a shareholder at any time during the continuance of the co. to transfer his shares to particular persons at a particular price are not void as being repugnant to absolute ownership or as tending to perpetuity.

There is nothing obnoxious to the bkpcy. law in arts. which *bond fide* provide that a shareholder shall, in the event of his bkpcy., sell his shares to particular persons at a particular price, which is fixed for all persons alike, & is not shown to be less than the fair price which might otherwise be obtained.

A share in a co. cannot properly be likened to a sum of money settled upon & subject to executory limitations to arise in the future; it is rather to be regarded as the interest of the shareholder in the co., measured, for the purposes of liability & dividend, by a sum of money, but consisting of a series of mutual covenants entered into by all the shareholders *inter se* in accordance with 1862 Act, s. 16, & made up of various rights & liabilities contained in the contract, including the right to a certain sum of money.—*BORLAND'S TRUSTEE v. STEEL BROTHERS & Co., LTD.*, [1901] 1 Ch. 279; 70 L. J. Ch. 51; 47 W. R. 120; 17 T. L. R. 45.

Annotations:—*Mentd. S. E. Ry. v. Associated Portland Cement Manufacturers* (1900), Ltd., [1910] 1 Ch. 12; *Hickman v. Kent or Romney Sheep-Breeders' Assocn.* (1915), 84 L. J. Ch. 688; *Brown v. British Abrasive Wheel Co.*, [1919] 1 Ch. 290.

1434. —Whether chose in action.]—Shares in a co. are not an interest in land, nor "goods,

executed between M. & the Real Estate Bank, whereby it was declared that M. should hold the shares subject to the bank's direction, & should transfer them as required by the bank, & until such transfer should stand possessed of the shares, in trust for the bank; the bank undertook to indemnify M. against all losses. Subsequently, after the execution of the deed, M. transferred the shares at the bank's direction to some nominee of the bank, whose name did not appear. The Chatsworth Estate Co. went into liquidation. M. then applied to have the co.'s register rectified by removing his name & substituting the name of the bank therefore:—*Held*: as soon as the shares had been transferred to M. at the request of the bank, his duties as trustee ceased, & he was entitled to have the register rectified.—*Re CHATSWORTH ESTATE CO., Ex p. MARRIOTT* (1892), 18 V. L. R. 400.—AUS.

c. Transfer made before winding up—Alteration not effected in register.]—In 1893, B. was the registered holder of 600 shares in a co., which shares he held as trustee for S., as was well known to the directors & officers of the co. On Sept. 11, 1893, B. transferred the shares to S. & the transfer was lodged for registration the same day, & was approved at the meeting of directors, though calls were due on the shares, which had since been paid. S. was chairman of the meeting & informed B. that the transfer had been approved by the Board & that it was "all right." No alteration in the register of shareholders was, however, made. From that time up to 1900, calls were made, but B. received no notice of the calls in respect of these shares, though he did receive notices in respect of other shares held by him. In 1900, B. learnt for the first time, from a letter from the manager of the co., that his name was still on the co.'s register, & he wrote protesting. No other action was

taken by him, & no action was taken by the co. until 1904, when the co. went into voluntary liquidation, & the liquidator placed B. on the list of contributories. The letter from the manager stated as a reason for the transfer not having been registered that no transfer had or could have been registered since May, 1897, because of a scheme of arrangement sanctioned at that date. B. applied to have his name removed from the register & the list of contributories:—*Held*: B.'s name should have been removed from the register on Sept. 11, 1893, & must now be removed from the list of contributories & from the register as from that date; B. was not precluded from this relief by reason of the scheme of arrangement or by any delay on his part.—*Re COLONIAL FINANCE, ETC., CORPN.* (1905), 5 S. R. N. S. W. 506.—AUS.

p. Rescission before winding up—Shareholder entitled to have his name removed from list of contributories.]—A distinct unequivocal repudiation of a subscription by a subscriber who is entitled to repudiate conveyed to the directors of a co. so that it becomes the duty of the latter to remove the former's name from the list of shareholders is sufficient, if made before the commencement of winding-up proceedings, to entitle the subscriber to have his name removed from the list of contributories without the necessity for the further step of initiating proceedings before the commencement of winding-up proceedings.—*Re WESTERN CANADIAN FIRE INSURANCE CO., COWPER'S CASE* (1915), 30 W. L. R. 648; 7 W. W. R. 1365; 8 Alta. L. R. 346.—CAN.

q. Acquiescence before winding up.]—C. purchased shares in a co. in 1878, but the papers required to make a formal transfer to him in the books of the co. were not furnished to the co. till Dec. 20, 1881. On Feb. 11, 1882, C.'s name was entered on the list of shareholders, but there was no

formal approval of the transfer by the board of directors until May 19, 1883. Before this, however, on Nov. 15, 1882, C. was notified of a call on the shares for which he was sued, & defended the action, but the action, for some reason not explained, was not proceeded with. This was the first intimation C. received that the papers furnished by him had been acted upon, but he appeared to have made no inquiries from the co. subsequently to Dec. 20, 1881. The co. ceased to do business on May 13, 1883, & the winding-up order was made on Oct. 9, 1883. It did not appear that C. had taken any steps to repudiate his position as a shareholder before these winding-up proceedings; nor did he show any prejudice resulting to him from the failure of the co. to notify him that the transfer to his name had been actually consummated on the books of the co.:—*Held*: C. was rightly placed on the list of contributories in the winding-up proceedings.—*Re COLE & CANADA FIRE & MARINE INSURANCE CO., CLOSE'S CASE* (1884), 8 O. R. 92.—CAN.

r. Impossibility of rescission—After winding up begun—Extends only to contribution.]—The impossibility of rescission of a contract for shares after liquidation begun does not extend to cases where the contest is purely between co. & shareholder & no question of contribution has arisen.—*FITZHERBERT v. DOMINION BED MANUFACTURING CO.* (1915), 8 W. W. R. 743; 23 D. L. R. 125; 21 B. C. R. 226, 241.—CAN.

PART III. SECT. 14.

a. Nature—Defined portion of capital.]—A share in a co. signifies a definite portion of its capital, & does not necessarily mean the right of a person whose name is then actually on a register of shareholders.—*PARBHUDAS PRANJIVANDAS v. RAMLAL BHAGIRATH* (1866), 3 Bom. O. C. 69.—IND.

wares, & merchandize," within Stat. Frauds, s. 17, & therefore a contract for the sale of such shares is not required to be by note in writing, etc., as provided in cases within the said sect.

Semble: there is a distinction between these words of Stat. Frauds, & the words "goods & chattels," used in Bkpts. Act, 1825 (c. 16).

Contracts for shares are choses in action (DENMAN, C.J.).—HUMBLE v. MITCHELL (1839), 11 Ad. & El. 205; 2 Ry. & Can. Cas. 70; 3 Per. & Dav. 141; 9 L. J. Q. B. 29; 3 Jur. 1188; 113 E. R. 392.

Annotations:—*Apld.* Knight v. Barber (1846), 16 M. & W. 66. *Refd.* Bowlby v. Bell (1846), 3 C. B. 284; Walker v. Bartlett (1856), 18 C. B. 845; Colonial Bank v. Whinney (1886), 11 App. Cas. 426. *Mentd.* Phene v. Gillon (1845), 15 L. J. Ch. 65.

1435. ——— **Right of assignee to sue.**—A share in such a co. as a manufacturing co. carrying on its business in United States of America, resembles a chose in action in this respect, but in this respect only, that it is assignable, & the assignee would be entitled to sue upon it to obtain his appropriate share of the net profits just as the original holders would be (LORD ATKINSON).—SINGER v. WILLIAMS, [1921] 1 A. C. 41; 89 L. J. K. B. 1218; 123 L. T. 625; 36 T. L. R. 659; 64 Sol. Jo. 569; 7 Tax Cas. 419, H. L.

Annotations:—*Mentd.* Bradbury Inspector of Taxes v. English Sewing Cotton Co., [1923] A. C. 744; R. v. Income Tax Special Comrs., *Ex p.* Shaftesbury Homes & Arethusa Training Ship, [1923] 1 K. B. 393.

——— **Within Bankruptcy Acts.**—*See* BANKRUPTCY & INSOLVENCY, Vol. V., p. 749, Nos. 6463, 6464.

1436. ——— **Whether land—Within Statute of Frauds, s. 5.**—The shares in the Chelsea Waterworks Co. are personal property, & will therefore pass by a will not executed according to the provisions of sect. 5 of the above Act. Real property, held for the purposes of a trading co., is, in equity, to be deemed in the nature of personal estate, although the co. is a corp., & the shares are assignable, & one shareholder is not answerable for the acts of another in relation to the partnership concern.—BLIGH v. BRENT (1837), 2 Y. & C. Ex. 268; 6 L. J. Ex. Eq. 58; 160 E. R. 397.

Annotations:—*Consd.* Bradley v. Holdsworth (1838), 3 M. & W. 422. *Distd.* Baxter v. Newman (1845), Bar. & Arn. 493. *Consd.* Watson v. Spratley (1854), 10 Exch. 222; Hayter v. Tucker (1858), 4 K. & J. 243; Bulmer v. Norris (1860), 9 C. B. N. S. 19. *Refd.* Birkenhead, Lancashire & Cheshire Junction Ry. v. Pilcher (1851), 6 Ry. & Can. Cas. 622; *Re* Langham's Will (1853), 1 Eq. Rep. 118; Thornton v. Kempson (1854), Kay, 592; Bennett v. Blain (1863), 15 C. B. N. S. 518. *Mentd.* Newry & Enniskillen Ry. v. Coombe (1849), 3 Exch. 565; L. & N. W. Ry. v. McMichael (1851), 6 Ry. & Can. Cas. 618; Adair v. New River Co. & Metropolitan Water Board (1908), 25 T. L. R. 193.

——— **Whether interests in land—Within Mortmain Acts.**—*See* CHARITIES, Vol. VIII., p. 270, Nos. 356 *et seq.*

1437. ——— **Within Statute of Frauds, s. 4.**—HUMBLE v. MITCHELL, No. 1434, *ante*.

1438. ——— ———.]—DUNCUFT v. ALBRECHT, No. 2256, *post*.

1439. ——— **Whether goods, wares, & merchandise—Within Statute of Frauds, s. 17.**—HUMBLE v. MITCHELL, No. 1434, *ante*.

1446 i. "Securities"—*Whether shares included.*—CLARKE v. PRESTON (1895), 3 Terr. L. R. 329.—CAN.

1447 i. *Subdivision of shares—Whether authorised.*—*Re* MCGILL CHAIR CO.; MUNRO'S CASE (1912), 21 O. W. R. 921; 3 O. W. N. 1074; 26 O. L. R. 254; 5 D. L. R. 75.—CAN.

b. *Estimate of value of shares—For purpose of estate duty.*—For the purpose of estate duty the value of shares is not that fixed by an article

providing for pre-emption but the principal value of shares ought to be estimated at the price which in the opinion of the Comrs. of Inland Revenue they would fetch if sold in the open market on the terms that the purchaser should be entitled to be registered & should be registered as holder of the shares & should take & hold them subject to the arts. of assocn. including the arts. relating to the alienation & transfer of the shares of the co.—A. G. v. JAMESON, [1905]

2 I. R. 218.—IR.

c. "Terminating shares"—*Effect of agreement of sale.*—The E. loan co. were empowered to raise a fund or stock by means of "terminating shares." A number of such shares were in 1901 and 1902 issued by the co. to pltf., or had been assigned to him, called "prepaid terminating shares," on each of which he paid \$50, and on which he was to receive a semi-annual dividend, not exceeding

1440. ——— ———.] — DUNCUFT v. ALBRECHT, No. 2256, *post*.

1441. ——— ———.]—BOWLBY v. BELL, No. 2210, *post*.

1442. ——— ———.]—HESELTINE v. SIGGERS, No. 2211, *post*.

——— **Within Stamp Act, 1815 (s. 184).**—*See* No. 2280, *post*.

1443. ——— **Within Ord. 50, r. 2.**—Shares in a limited co. come within the words of Ord. 50, rule 2: "Any goods, wares, or merchandise . . . which for any just & sufficient reason it may be desirable to have sold at once."—EVANS v. DAVIES, [1893] 2 Ch. 216; 62 L. J. Ch. 661; 68 L. T. 244; 41 W. R. 687; 3 R. 360.

1444. ——— **Whether chattels—Within Ord. 57, r. 1.**—Shares are chattels within the meaning of Ord. 57, r. 1, & therefore an interpleader issue can be directed in respect of them.—ROBINSON v. JENKINS (1890), 24 Q. B. D. 275; 59 L. J. Q. B. 147; 62 L. T. 439; 38 W. R. 360; 6 T. L. R. 158, C. A.

Annotations:—*Mentd.* Rogers v. Lambert, [1891] 1 Q. B. 318; *Ex p.* Morsey Docks & Harbour Board, [1899] 1 Q. B. 546.

1445. "Shares"—**Whether includes scrip receipts—In indictment for forgery.**—If persons conspire to fabricate shares in addition to the limited number of which a joint-stock co., according to its rules, consists, in order to sell them as good shares, they may be indicted for it, notwithstanding any imperfection in the original formation of the co. *Qu.*: whether scrip receipts given by the bankers of such a co. in return for sums paid as deposits, can be properly described as shares in the indictment.

The receipts had not become shares, but were only things which might be made shares (ABBOTT, C.J.).—R. v. MOTT (1827), 2 C. & P. 521, N. P.

1446. "Securities"—**Whether shares included.**—*Qu.*: whether at the present day the word "securities" in a legal document, in the absence of context, includes stocks & shares as well as mtges. on land or other property.—*Re* RAYNER, RAYNER v. RAYNER, [1904] 1 Ch. 176; 73 L. J. Ch. 111; 89 L. T. 681; 52 W. R. 273; 48 Sol. Jo. 178, C. A.

Annotations:—*Consd.* *Re* Hutchinson, Crispin v. Hadden (1919), 88 L. J. Ch. 352. *Refd.* *Re* Gent & Eason's Contract, [1905] 1 Ch. 386; Singer v. Williams, [1921] 1 A. C. 41. *Mentd.* Wilmott v. London Road Car Co. (1910), 103 L. T. 447.

Bequest of shares—What words operate as.—*See* WILLS.

——— **Whether general or specific.**—*See* WILLS.

——— **Whether legatee or estate liable for calls.**—*See* EXECUTORS & ADMINISTRATORS.

——— **Whether money paid in advance of calls passes.**—*See* EXECUTORS & ADMINISTRATORS.

Charging order on—Whether execution with Bankruptcy Act, 1883 (c. 52), s. 45.—*See* BANKRUPTCY & INSOLVENCY, Vol. V., p. 808, No. 6902.

1447. **Subdivision of shares—Whether authorised.**—(1) The memorandum of assocn. of a co. provided that the capital should be £3,000,000, divided into 30,000 shares of £100 each, "subject to be increased or modified," & the arts. gave the

Sect. 14.—Shares generally. Sect. 15: Sub-sect. 1.]

board of directors power to divide the shares into shares of smaller amount. The directors exercised this power & converted each £100 share into £20 shares:—*Held*: such conversion was unauthorised & void; for that, under 1862 Act, s. 12, the memorandum can only be altered in certain particulars, of which this was not one.

An express power in the memorandum to reduce the nominal amounts of the shares would be ineffectual (LORD CAIRNS, L.J.).

(2) After the attempted conversion, F. transferred to R. fifty of the new £20 shares. These shares could be identified in the books of the co. as being the shares into which ten of the original £100 shares had been divided:—*Held*: the transfer was effectual to pass the ten £100 shares, & that R., & not F., must be on the list of contributories.

(3) K. at the time of the attempted conversion was a holder of £100 shares, the certificates of which he never exchanged. The directors, after the conversion, made a call on the £20 shares, & K. not paying it, they forfeited his shares in Jan. 1865, in a way which, if the conversion had been legal, would have been quite regular. K. wrote a letter asking a remission of the forfeiture, treating the shares as £20 shares, & making no objection to the regularity of the proceedings. No notice was taken of the letter, & he never afterwards claimed to be a member. In May, 1866, a winding-up order was made:—*Held*: the forfeiture must be treated as valid, & K. was not a contributory.—*Re FINANCIAL CORPN., FEILING'S & RIMINGTON'S CASE, KING'S CASE, HOLMES'S, PRITCHARD'S & ADAMS'S CASES* (1867), 2 Ch. App. 714; 36 L. J. Ch. 695; 16 L. T. 684; 15 W. R. 948, L. J.J.

Annotations:—As to (1) *Reid. Re Ebbw Vale Steel, Iron & Coal Co.* (1877), 4 Ch. D. 827. As to (2) & (3) *Reid. Re New Zealand Banking Co., Sewell's Case* (1867), 16 L. T. 836.

See, now, 1908 Act, s. 41.

1448. Conversion into stock—Whether authorised.]—The original capital of a co. consisted of preference & ordinary shares, the preference shares having a fixed dividend but no priority as to capital. The co. having power to convert its paid-up shares into stock converted its ordinary shares into ordinary stock at face value, but in converting its preference shares into preference stock bearing a lower rate of interest it gave the holders extra bonus stock to maintain their former dividends. The co. also made direct issues of fully-paid preference & ordinary stock for cash without going through the formality of first issuing fully-paid shares & converting them. The co. also made direct issues of partly-paid ordinary

shares & partly-paid ordinary stock for cash. All the holders were placed on the register & received dividends. Many years after these issues were made the co. was wound up voluntarily, & after paying all the creditors the liquidator had a balance of surplus assets for distribution among the members:—*Held*: (1) having regard to the lapse of time, the irregularity in the direct issues of the fully-paid preference & ordinary stock must be treated as waived, & the holders were entitled to rank for the full amount of their holding; (2) the original holders & transferees of preference stock converted from fully-paid preference shares could only rank for the amount representing conversion at face value & not for the bonus stock, which was wholly *ultra vires* & must be treated as non-existent; (3) the holders of partly-paid shares were entitled to rank for the amount paid & were subject to a call for equalisation; (4) the original holders & transferees of partly-paid ordinary stock were not entitled to rank at all, as their stock was wholly *ultra vires* & must be treated as non-existent; (5) that no call could be made on the holders of the bonus or partly-paid stock.—*Re HOME & FOREIGN INVESTMENT & AGENCY CO., LTD.*, [1912] 1 Ch. 72; 81 L. J. Ch. 364; 106 L. T. 259; 56 Sol. Jo. 124; 19 Mans. 188.

See, now, 1908 Act, s. 41.

SECT. 15.—CLASSES OF SHARES.**SUB-SECT. 1.—CREATION OF DIFFERENT CLASSES.**

1449. Whether power under articles—Right of member to dispute power.]—A subscriber for shares in a co. on terms of receiving £8 per cent. on his subscribed capital in lieu of profits, having received a dividend on that footing, cannot effectually resist being placed on the list of contributories under the Joint Stock Co.'s Winding up Act, 1848 (c. 45), on the ground that the deed of settlement did not authorise the issue of such preference shares.—*Re VALE OF NEATH & SOUTH WALES BREWERY CO., HITCHCOCK'S CASE* (1849), 3 De G. & Sm. 92; 13 L. T. O. S. 420; 13 Jur. 1023; 64 E. R. 394.

Annotation:—*Reid. Re Universal Provident Life Assocn., Ex p. Bell* (1856), 26 L. J. Ch. 137.

1450. — Power to increase capital by issue of new shares—Creation of preference shares.]—By the arts. of assocn. of a joint-stock co. limited, authority was given to borrow money on such terms as they might think fit; & also, by the resolution of a special meeting to be convened by not less than fourteen days' notice, to increase the capital of the co. by the issue of new shares; &

6 per cent., out of the profits available therefor, & the balance of the profits after payment of expenses was to be applied on the stock until the maturity value thereof was reached, as stated in the report, the owners of such stock having the right of withdrawal after 3 years by giving 30 days' notice in writing to the co., on the conditions mentioned in the report. Pltf. was also the holder of dividend-bearing terminating stock certificates fully paid, issued under by-laws of the E. Co., which were by certificates repayable at a date subsequent to the agreement for sale of the assets of the E. Co. In 1903 the E. Co. entered into an agreement with the S. Co. for sale to latter co. of all its assets, subject to ratification by the shareholders of the respective cos., which was subsequently procured, the agreement being filed with the corpn.'s registrar,

but no schedule of names of shareholders of the E. Co. was attached to agreement. Permanent stock was then issued by the S. Co. in lieu of stock held by shareholders of the E. Co. Pltf., on being notified of the meeting of shareholders of the E. Co. wrote protesting against sale, stating that he would withdraw his money from the co. before the merging took place, & subsequently he again wrote that he positively refused to allow his certificates to be delivered up in exchange for the substituted stock. Two dividend cheques on the new stock were sent & received by pltf., one of which he cashed. Pltf. alleged that the transaction between him & the E. Co. was, in fact, a loan; & he brought an action to have it declared that he was a creditor of the E. Co. & entitled to be repaid the amount so paid by him, &, before commencing

the action, he tendered back to the co. the amount of the cashed dividend cheque together with the unused one:—*Held*: in the circumstances, the sale was valid & binding, & was not affected by the fact that the schedule was not attached to agreement, & pltf. was a shareholder in the E. Co., & not a creditor in respect of either class of shares, & was bound by the terms of the agreement of sale.—*LENNON v. EMPIRE LOAN & SAVINGS CO.* (1906), 12 O. L. R. 560; 8 O. W. R. 162.—CAN.

PART III. SECT. 15, SUB-SECT. 1.

1450 i. Whether power under articles—Power to increase capital by issue of new shares—Creation of preference shares.]—The memorandum of a co. registered under Cos. Act, 1862, & limited by shares, provided that the

also, by resolution passed by three-fourths of the shareholders at an extraordinary meeting, to alter or to make new provisions. A resolution was passed at a special meeting to issue preference shares:—*Held*: there was not power under the arts. of assocn. to create or issue preference shares.—*MOSS v. SYERS* (1) (1863), 32 L. J. Ch. 711; 9 L. T. 252; 11 W. R. 1046.

1451. — — — — —.]—A co., on increasing its capital, either under the provisions of the memorandum or under 1862 Act, ss. 8 & 12, may issue preference shares; & a provision in the arts. of assocn. authorising the increase of capital by the issue of preference shares, being a matter merely of internal regulation, is not inconsistent with a memorandum which is silent as to the mode of issue of the new shares, & therefore is not *ultra vires*.

An attempt to alter the rights of the holders of the original capital, which is one of the things required by the Act to be inserted in the memorandum, is *ultra vires*.—*Re SOUTH DURHAM BREWERY Co.* (1885), 31 Ch. D. 261; 55 L. J. Ch. 179; 53 L. T. 928; 34 W. R. 126; 2 T. L. R. 146, C. A.

Annotations:—*Expld.* *Andrews v. Gas Meter Co.*, [1897] 1 Ch. 361. *Refd.* *Re Barrow Hæmatite Steel Co.* (1888), 39 Ch. D. 582; *Re Bridgewater Navigation Co.* (1888), 39 Ch. D. 1; *British & American Trustee & Finance Corpn. v. Couper* (1894), 70 L. T. 882; *McIlquham v. Taylor*, [1895] 1 Ch. 53. *Mentd.* *Re Welsbach Incandescent Gas Light Co.*, [1904] 1 Ch. 87; *Rainford v. Keith & Blackman Co.*, [1905] 2 Ch. 147.

1452. — — — — — Subject to conditions to be determined—Shares originally divided into ordinary & preference shares—Power to create second preference shares.]—The memorandum of assocn. of a joint-stock co., provided that the capital of the co. should consist of a certain number of ordinary & a certain number of preference shares. One of the arts. of assocn. provided that the capital might, with the sanction of a special resolution, be increased by the issue of new shares of such nominal amount, & on such conditions as the resolution might determine. At a general meeting of the co. a special resolution was passed that the capital of the co. should be increased by a certain sum to be divided into shares, & that the directors should be authorised to issue any of such new shares as second preference shares. Demurrer to a bill by a shareholder against the directors of the co. praying for a declaration that the special resolution was *ultra vires*, & for an injunction overruled.—*MELIADO v. HAMILTON* (1873), 29 L. T. 364; 21 W. R. 874, L. J.

Annotation:—*Refd.* *Re Bangor & Portmadoc Slate & Slab Co.* (1875), L. R. 20 Eq. 59.

1453. — — — — — Power to create preference shares.]—(1) If the memorandum & arts. of assocn. of a co. are silent on the subject, it is an implied condition that the shareholders are entitled to rank equally as regards dividend, without preference or priority between themselves; but such implication will be rebutted if the arts. of assocn., contemporaneous with the memorandum, contain clear provisions as to the preference or priority of

classes of shares. The memorandum of assocn. of a co. incorporated under 1862 Act, declared that the capital was £2,700,000, divided into 135,000 shares of £20 each. It was provided by the arts. of assocn. that the directors might, with the sanction of a special resolution of the co. previously given in general meeting, increase the capital by the issue of new shares, such increase of capital to be made in such manner, to such amount, & to be with & subject to such rules, regulations, privileges, & conditions as the co. in general meeting should think fit:—*Held*: special resolutions authorising an increase of the capital by the issuing of preferred shares were not in excess of the powers of the company.

(2) The object of issuing the preference shares was to satisfy creditors who were willing to take them in payment for their debts:—*Held*: the object was a proper one.—*HARRISON v. MEXICAN RY. Co.* (1875), L. R. 19 Eq. 358; 44 L. J. Ch. 403; 32 L. T. 82; 23 W. R. 403.

Annotations:—*As to* (1) *Expld.* *Bangor & Portmadoc Slate & Slab Co.* (1875), 32 L. T. 389. *Consd.* *Guinness v. Land Corpn. of Ireland* (1882), 22 Ch. D. 349. *Apprvd.* & *Foll.* *Re South Durham Brewery Co.* (1885), 31 Ch. D. 261. *Consd.* *Andrews v. Gas Meter Co.*, [1897] 1 Ch. 361. *Refd.* *British & American Trustee Finance Corpn. v. Couper*, [1894] A. C. 399; *McIlquham v. Taylor*, [1895] 1 Ch. 53. *Generally, Mentd.* *Re Pyle Works* (1890), 44 Ch. D. 534; *Jackson v. Rainford Coal Co.*, [1896] 2 Ch. 340; *Re Welsbach Incandescent Gas Light Co.*, [1904] 1 Ch. 87; *Rainford v. Keith & Blackman Co.*, [1905] 2 Ch. 147.

1454. — — — — — Including power to defer existing capital—Power to issue additional preference shares ranking *pari passu*.]—The memorandum of assocn. of a co. divided its capital into preference & ordinary shares & provided as follows: "Such preference shares shall confer a right to a fixed cumulative preferential dividend at the rate of £7 per cent. per ann. Any shares of the present or any increased capital of the co. may be guaranteed or have any special privilege or advantage, or may be deferred, & may be issued on such special conditions as to priority or postponement, either for dividends or repayment of principal, or as to voting power, & generally in such terms as the co. may from time to time determine":—*Held*: the co. could on increasing its capital issue further preference shares ranking *pari passu* with the original preference shares.—*UNDERWOOD v. LONDON MUSIC HALL, LTD.*, [1901] 2 Ch. 309; 70 L. J. Ch. 743; 84 L. T. 759; 49 W. R. 509; 17 T. L. R. 517; 45 Sol. Jo. 521; 8 Mans. 396.

Annotation:—*Mentd.* *Re Welsbach Incandescent Gas Light Co.*, [1904] 1 Ch. 87.

1455. — — — — — Power to declare dividend in proportion to shares—Proposed issue of balance of sole class of unissued shares with preferential rights—*Ultra vires*.]—By the memorandum of assocn. of a joint stock co. the amount of capital was fixed at £120,000 in 12,000 shares of £10 each, & by the arts. of assocn. the directors were empowered, with the sanction of the co. in general meeting, to declare a dividend to be paid to the shareholders in proportion to their shares. About half the

capital of the co. should be £1,000,000 divided into 100,000 shares of £10 each. The arts. of assocn. provided that the co. might, by special resolution, increase the capital & determine the conditions on which such increase should be made, the number & amount of the shares into which such increased capital should be divided, & the time, mode, & terms, at & according to which such last mentioned shares should be issued:—*Held*: a special resolution of the co. to increase the capital of the co. by the creation of

preference shares was *ultra vires*.—*RAMSBOTTOM v. SCOTTISH AMERICAN INVESTMENT Co., LTD.* (1891), 18 R. (Ct. of Sess.) 558; 28 Sc. L. R. 419.—*SCOT.*

d. Memorandum & articles of association silent as to preference shares—Alteration taking power to create preference shares—Proposed issue of unissued shares.]—Where such course is not inconsistent with its memorandum of assocn. a co. has power, upon making the necessary alterations

in its arts. of assocn., to issue as preference shares unissued shares, forming part of its original capital.—*TURNBULL & JONES, LTD. v. TURNBULL* (1913), 32 N. Z. L. R. 760.—*N.Z.*

e. — — — — — Intra vires.]—A co., capital of which is divided into ordinary shares, has power under Cos. Act, 1892 (No. 25), s. 109, to amend its arts. of assocn. by dividing such shares into preference & ordinary shares without any necessity for the confirmation of the ct. It has this power whether

Sect. 15.—Classes of shares: Sub-sects. 1, 2 & 3.]

shares only were allotted, & at an extraordinary general meeting of the co. duly convened, it was resolved that the directors might, if they should think fit, issue the remaining shares with a preferential dividend:—*Held*: the proposed issue was contrary to the arts. of assocn. & *ultra vires*.

Semble: the proposed issue was opposed to the memorandum of assocn., constituting the basis of the co., & therefore could not have been rendered legal by any exercise of the power conferred by 1862 Act, s. 50, to alter the regulations contained in the arts. of assocn.—**HUTTON v. SCARBOROUGH CLIFF HOTEL CO., LTD.** (1865), 4 De G. J. & Sm. 672; 6 New Rep. 10; 34 L. J. Ch. 643; 12 L. T. 289; 11 Jur. N. S. 551; 13 W. R. 631; 46 E. R. 1079, L. C.

Annotations:—**Consd.** *Melhado v. Hamilton* (1873), 28 L. T. 578; *Ashbury v. Watson* (1885), 30 Ch. D. 376. **Distd.** *Re South Durham Brewery Co.* (1885), 31 Ch. D. 261. **Consd.** *Re Barrow Haematite Steel Co.* (1888), 39 Ch. D. 582; *McIlquham v. Taylor* (1894), 63 L. J. Ch. 758; *Welton v. Saffery*, [1897] A. C. 299. **Refd.** *Hutton v. Berry* (1865), 6 New Rep. 376; *Re London Permanent Benefit Bldg. Soc.* (1869), 17 W. R. 513; *Re Bangor & Portmadoc Slate & Slab Co.* (1875), L. R. 20 Eq. 59; *Harrison v. Mexican Ry.* (1875), L. R. 19 Eq. 358; *Re Hyderabad (Deccan) Co.* (1896), 75 L. T. 23; *Andrews v. Gas Meter Co.*, [1897] 1 Ch. 361; *Sidebottom v. Kershaw, Leese*, [1920] 1 Ch. 154.

1456. Memorandum & articles silent as to preference shares.]—Under an ordinary memorandum of assocn., according to which the capital of a co. is divided into shares of equal amount, the interests of the shareholders must be equal in all respects. *Qu.*: whether a co. so constituted can issue preference shares. In consideration of the assignment of the lease of a mine by pltf. to deft., deft. covenanted that he would within twelve months pay £1,000 to, or hand over to or otherwise transfer into the names of pltf. £1,000 worth of fully paid-up shares in a co. to be formed by deft. for working the mine, the capital of such co. not to exceed £12,000:—*Held*: there being no express stipulation to the contrary, the shares which deft. was to hand over under the agreement were shares in a co. having its capital divided into shares, all of which were to stand on an equal footing; & the deft. having, by forming the co. with its capital divided into preference & ordinary shares, put it out of his power to perform that part of the covenant, he was bound to perform the other alternative, & pay pltf. £1,000.—**McILQUHAM v. TAYLOR**, [1895] 1 Ch. 53; 64 L. J. Ch. 296; 71 L. T. 679; 43 W. R. 297; 8 R. 740, C. A.

Annotation:—**Mentd.** *Andrews v. Gas Meter Co.* (1896), 75 L. T. 267.

1457. — Alteration taking power to create preference shares—Proposed issue of unissued balance of sole class of shares with preferential rights—Ultra vires.]—**HUTTON v. SCARBOROUGH CLIFF HOTEL CO., LTD.**, No. 1455, *ante*.

1458. — New shares—Ultra vires.]—

the shares are still to be issued or have been already issued.—*Ex p.* **HUGUENOT CARRIAGE WORKS & TIMBER MILLS, LTD.**, [1921] C. P. D. 491.—S. AF.

f. Issue of shares with preferential rights—When precluded by articles of association.]—**WAVERLEY HYDROPATHIC CO., LTD. v. BARROWMAN** (1895), 23 R. (Ct. of Sess.) 136; 33 Sc. L. R. 131; 3 S. L. T. 161.—SCOT.

g. What constitutes preference shares.]—Whether preference in regard to dividends is essential to constitute preference shares.—**DUNSMUIR v. COLONIST PRINTING & PUBLISHING**

Co. (1902), 9 B. C. R. 275; 32 S. C. R. 679.—CAN.

PART III. SECT. 15, SUB-SECT. 2.

h. Extension of powers of class—Not alteration of objects of company.]—A special resolution passed by a limited co. for the alteration of its memorandum of assocn. by enlarging the class of permitted shareholders, as defined therein, is not a resolution for the alteration of the objects of the co. within Cos. Act, 1915, s. 11, & the ct. has therefore no jurisdiction to confirm it.—*Re GIPPSLAND & NORTHERN CO-OPERATIVE SELLING & INSURANCE*

HUTTON v. SCARBOROUGH CLIFF HOTEL CO., LTD., No. 1455, *ante*.

1459. — Intra vires.]—A limited co., having no authority under its memorandum or arts. of assocn. to create any preference between different classes of shares, may by special resolution alter its arts. so as to authorise the directors to issue preference shares by way of increase of capital.—**ANDREWS v. GAS METER CO.**, [1897] 1 Ch. 361; 66 L. J. Ch. 246; 76 L. T. 732; 45 W. R. 321; 13 T. L. R. 199; 41 Sol. Jo. 255, C. A.

Annotations:—**Consd.** *Re Welsbach Incandescent Gas Light Co.*, [1904] 1 Ch. 87; *Sidebottom v. Kershaw, Leese*, [1920] 1 Ch. 154. **Refd.** *Re Colmer*, [1897] 1 Ch. 524; *Welton v. Saffery* (1897), 66 L. J. Ch. 362; *Allen v. Gold Reefs of West Africa, Same v. Same*, [1900] 1 Ch. 656.

Effect of definition of class rights—On creation of class.]—*See* No. 1461, *post*.

Construction of memorandum & articles.]—*See, generally*, Sect. 7, sub-sect. 3, *ante*.

Alteration of articles.]—*See, generally*, Sect. 30, sub-sect. 2, C., *post*.

SUB-SECT. 2.—DEFINITION OF CLASS RIGHTS.

1460. By memorandum.]—By the memorandum of assocn. of a co. limited by shares it was stated that the objects of the co. were, the cultivation of lands in Ireland, & other similar purposes there specified, & to do all such other things as the co. might deem incidental or conducive to the attainment of any of those objects, & that the capital of the co. was £1,050,000, divided into 140,000 A shares of £5 each, & 3,500 B shares of £100 each. By Art. 8 of the contemporaneous arts. of assocn. it was provided that the capital produced by the issue of B shares should be invested, & that the income, & so far as necessary the capital, should be applied so as to make good to the holders of A shares a preferential dividend of £5 per cent. on the amounts paid up on the A shares. Subject to this, the B fund was to belong to the owners of B shares. The profits of the co., after paying the £5 per cent. dividend to the A shareholders, were to be applied in payment of a non-cumulative dividend of £5 per cent. to the B shareholders, & the surplus was to be divided rateably between the A shareholders & B shareholders according to the amounts paid up on their respective shares:—*Held*: art. 8 was invalid, as it purported to make the B capital applicable to purposes not within the objects of the co. as defined by the memorandum of assocn., & in a way not incidental or conducive to the attainment of those objects, & that the directors must be restrained from acting upon it.

The arts. of assocn. of a co. cannot, except in the cases provided for by sect. 12 of the 1862 Act, modify the memorandum of assocn. in any of the particulars required by the Act to be stated in the memorandum.—**GUINNESS v. LAND CORPN. OF**

Co., LTD., [1918] V. L. R. 451.—AUS.

k. Power to modify rights by extraordinary resolution—Provision in articles of association.]—The preference shareholders in a co. limited by shares were entitled to receive out of the profits a fixed cumulative preferential dividend of 5 per cent. *per annum*. By art. 46 of arts. of assocn. it was provided that all or any of the rights & privileges attached to any class of shares might be modified by an extraordinary resolution of the holders of that class. By a resolution duly passed in terms of art. 46, on Feb. 9, 1903, at which date the dividends due on the preference shares were 2 years

IRELAND (1882), 22 Ch. D. 349; 52 L. J. Ch. 177; 47 L. T. 517; 31 W. R. 341, C. A.

Annotations:—**Consd.** *Re South Durham Brewery Co.* (1885), 31 Ch. D. 261. **Refd.** *Trevor v. Whitworth* (1887), 12 App. Cas. 409; *Re Bridgewater Navigation Co.* (1888), 39 Ch. D. 1; *Lee v. Neuchatel Asphalte Co.* (1889), 41 Ch. D. 1. **Mentd.** *Re Barrow Hæmatite Steel Co.* (1888), 39 Ch. D. 582; *Re Pyle Works* (1890), 44 Ch. D. 534; *British & American Trustee & Finance Corp. v. Couper*, [1894] A. C. 399; *Verner v. General & Commercial Investment Trust*, [1894] 2 Ch. 239; *McIlquham v. Taylor*, [1895] 1 Ch. 53; *Andrews v. Gas Meter Co.*, [1897] 1 Ch. 361.

— **How far articles can modify.**—See Sect. 7, sub-sect. 3, *ante*.

— **Alteration of memorandum.**—See Sect. 7, sub-sect. 4, *ante*.

1461. Defined on creation of class—Prima facie definition of whole rights.—The express gift or attachment to preference shares, on their creation, of preferential rights, whether in respect of dividend or return of capital, is *prima facie* a definition of the whole of their rights in these respects, & negatives any further or other right to which, but for the specified rights, they would have been entitled.—*Re NATIONAL TELEPHONE CO.*, [1914] 1 Ch. 755; 83 L. J. Ch. 552; 109 L. T. 389; 29 T. L. R. 682; 58 Sol. Jo. 12; 21 Mans. 217.

Annotations:—**N.F.** *Re Fraser & Chalmers*, [1919] 2 Ch. 114; *Anglo-French Music Co. v. Nicoll*, [1921] 1 Ch. 386.

SUB-SECT. 3.—ALTERATION OF CLASS RIGHTS.

1462. What is—Destruction of rights is not—Construction of trust deed.—*DICKINSON v. HOLT* (1903), 19 T. L. R. 667, C. A.

1463. Under power reserved in memorandum.—(1) Where by its memorandum of assocn. the capital of a co. was divided into preference, ordinary, & deferred shares, the rights to be attached to the several classes of shares *inter se* being declared, & it was provided that the rights for the time being attached to the several classes of shares respectively might be modified or dealt with in the manner mentioned in the accompanying arts. of assocn., but not otherwise:—**Held:** there was nothing invalid in a provision in the memorandum of assocn. of a co. whereby a condition therein as to the rights & privileges conferred upon the different classes of shareholders *inter se* should be varied; & the declaration of those rights in the memorandum in the present case did not constitute a condition which could not be altered; but that the provision as to modification thereof was perfectly valid.

(2) Meaning of “lost capital or any capital unrepresented by available assets” in Cos. Act, 1877 (c. 26), s. 3, discussed (*see* No. 857, *ante*).—*Re WELSBACH INCANDESCENT GAS LIGHT CO., LTD.*, [1904] 1 Ch. 87; 73 L. J. Ch. 104; 89 L. T. 645; 52 W. R. 327; 20 T. L. R. 122; 11 Mans. 47, C. A.

Annotation:—*As to* (1) **Refd.** *Re Mackenzie*, [1916] 2 Ch. 540.

1464. Power of general meeting—On reconstruction.—At a general meeting of a limited co., having its capital divided into preferred & deferred shares, resolutions were passed by the statutory majority for a voluntary liquidation & transfer of the business to a new co. in consideration of shares in the new co. being allotted to the two classes of shareholders in the old co., so as to give to the preferred shareholders a different proportion of the capital of the new co. from that which they were entitled to in the old co.:—**Held:** 1862 Act,

s. 161, only enables the general meeting to decide on the nature of the consideration to be accepted, & not on the mode of its distribution.

Semble: the only proper mode in which such consideration could be divided among the members of a co. would be, under sect. 133 of the Act, according to their rights & interests in the co.—*GRIFFITH v. PAGET* (1877), 5 Ch. D. 894; 46 L. J. Ch. 493; 25 W. R. 523; *subsequent proceedings*, 6 Ch. D. 511.

Annotations:—**Refd.** *Sheppard v. Scinde, Punjaub, & Delhi Ry. & Abbott* (1887), 56 L. J. Ch. 558; *Postlethwaite v. Port Phillip & Colonial Gold Mining Co.* (1889), 43 Ch. D. 452; *Simpson v. Palace Theatre* (1893), 69 L. T. 70; *Re Beeston Pneumatic Tyre Co.* (1898), 14 T. L. R. 338; *Wall v. London & Northern Assets Corp.*, [1898] 2 Ch. 489; *Burdett-Coutts v. True Blue (Hannan's) Gold Mine* (1899), 81 L. T. 29; *Allen v. Gold Reefs of West Africa*, *Allen v. Gold Reefs of West Africa*, [1900] 1 Ch. 656; *Re Guardian Assce.*, [1917] 1 Ch. 431; *Re Anglo-Continental Supply Co.*, [1922] 2 Ch. 723.

1465. With consent of class meeting—Necessity for specified quorum—Construction of articles.—The arts. of a limited co. whose capital was divided into different classes of shares provided, art. 13, that any agreement modifying the rights attached to each class must be confirmed by an extraordinary resolution passed at a separate general meeting of the holders of shares of that class, & “all the provisions hereinafter contained as to general meetings shall, *mutatis mutandis*, apply to every such meeting, but so that the quorum thereof shall be members holding or representing three-fourths of the nominal amount of the issued shares of the class.” The subsequent provisions as to general meetings provided, *inter alia*, art. 66, that the quorum thereat should be members personally present, not being less than three in number, holding or representing one-tenth of the issued capital of the co.; & art. 68, that if at an adjourned meeting a quorum was not present those members who were present should be a quorum. These arts. were said to be in the common form:—**Held:** although the provisions as to general meetings were to apply, *mutatis mutandis*, to class meetings, they must be so applied subject to the provision above quoted, which was inserted in art. 13 for the purpose of protecting the rights of the privileged class of shareholders; & accordingly at all class meetings, whether adjourned or not, the quorum must be three-fourths of the members of the class required by art. 13.—*HEMANS v. HOTCHKISS ORDNANCE CO.*, [1899] 1 Ch. 115; 68 L. J. Ch. 99; 79 L. T. 681; 47 W. R. 276; 43 Sol. Jo. 151; 6 Mans. 52, C. A.

1466. — Meeting—Sole shareholder of class.—Where the memorandum & arts. of a co. provided that no new shares should be issued so as to rank equally with 10,000 original preference shares unless such issue was sanctioned by an extraordinary resolution of the holders, & all the preference shares passed at a separate “meeting” of such holders, & that a modification or variation of the rights of any class of shares might be effected when sanctioned by an extraordinary resolution of the holders of the shares of such class passed at a separate “meeting” of such holders, & all the preference shares were held by one person:—**Held:** on the true construction of the memorandum & arts. the sole preference shareholder could constitute a “meeting” to consent to a modification of the rights of preference

in arrear, a meeting of the preference shareholders agreed to a scheme for reduction of capital proposed by the directors under which these arrears were cancelled & the future profits

distributable as dividend were appropriated in order of priority to payment. In a petition by the co. the ct. confirmed the scheme, holding that it was not *ultra vires* to cancel arrears

of preference dividend in the manner proposed.—*Re OBAN & AULTMORE, GLENLIVET DISTILLERIES, LTD.* (1903), 5 F. (Ct. of Sess.) 1141.—**SCOT.**

Sect. 15.—Classes of shares: Sub-sects. 3, 4, 5 & 6.
Sects. 16 & 17: Sub-sect. 1, A. (a).]

shareholders.—*EAST v. BENNETT BROTHERS, LTD.*, [1911] 1 Ch. 163; 80 L. J. Ch. 123; 103 L. T. 826; 27 T. L. R. 103; 55 Sol. Jo. 92; 18 Mans. 145.

Annotation:—Reid. Re Fireproof Doors, Umney v. Fireproof Doors (1916), 60 Sol. Jo. 513.

— **Jurisdiction of court to restrain.]—See** No. 3899, *post*.

Alteration involving alteration of memorandum.]
 —See Sect. 7, sub-sect. 4, A., *ante*.

SUB-SECT. 4.—CLASS RIGHTS IN REGARD TO DIVIDENDS.

See Sect. 30, sub-sect. 7, E. (a) & (b), *post*.

SUB-SECT. 5.—CLASS RIGHTS IN WINDING UP.

See Sect. 36, sub-sect. 12, D.; & Sect. 37, sub-sect. 9, D., *post*.

SUB-SECT. 6.—CLASS RIGHTS ON REDUCTION OF CAPITAL.

See Sect. 10, sub-sect. 3, F. (d), *ante*.

SECT. 16.—OPTION TO TAKE SHARES.

1467. Whether legal—Option to take further shares at par—In consideration of taking shares—Option exercised when shares at a premium.]—It is not illegal for a co. to agree in consideration of a person's taking or underwriting shares to issue at par further shares to such person at a future date or within a prescribed period.

To raise working capital a co. offered shares at par to the applt. & some other persons with an option to take further shares at par within a certain time. The applt. subscribed for shares, & the market price having risen to a premium, desired to take up the further shares:—*Held*: this was not an application of shares or capital money directly or indirectly in payment of commission, discount, or allowance within Cos. Act, 1900, s. 8, sub-s. 2, & the transaction being otherwise unobjectionable, the applt. was entitled to exercise the option.—*HILDER v. DEXTER*, [1902] A. C. 474; 71 L. J. Ch. 781; 87 L. T. 311; 51 W. R. 225; 18 T. L. R. 800; 7 Com. Cas. 258; 9 Mans. 378, H. L.; *revsq.* S. C. *sub nom.* *DEXTER v. UNITED GOLD COAST MINING PROPERTIES, LTD.*, 17 T. L. R. 708, C. A.

Annotations:—Reid. Shorto v. Colwill (1909), 101 L. T. 598; *Hong Kong & China Gas Co. v. Glen*, [1914] 1 Ch. 527. *Mentd.* *A.-G. v. Hastings Corp.* (1902), 1 L. G. R. 41; *De La Cour v. Clinton*, *Trechmann v. Calthorpe* (1904), 90 L. T. 615.

— **Underwriting commission.]—See** Nos. 1134, 1136, *ante*.

1468. — Agreement to allot to vendor on increase of capital.]—A contract by a newly-formed co. to allot to the vendor to the co. or his nominees, in fully-paid shares, one-fifth of each increase of share capital in the co. is not wholly invalid & bad altogether, but merely imposes an obligation on

the co. to allot such shares, if demanded, on the vendor paying for them. The co. cannot be compelled under such a contract to allot such shares as fully paid without further consideration, & the vendor to the co. or his nominee so demanding such shares under the contract must accordingly pay the nominal price of such share capital if he wishes to take it up.—*HONG KONG & CHINA GAS CO., LTD. v. GLEN*, [1914] 1 Ch. 527; 83 L. J. Ch. 561; 110 L. T. 859; 30 T. L. R. 339; 58 Sol. Jo. 380; 21 Mans. 242.

1469. Construction of contract—Issue of shares fully-paid.]—HONG KONG & CHINA GAS CO., LTD. v. GLEN, No. 1468, *ante*.

1470. Effect of option—On exercise of company's powers.]—The fact that a co. has given to any person the option of taking its unissued shares at a future date at an agreed price does not fetter the co. in any way in the conduct of its business in the interval, & it may exercise all the powers conferred upon it by the memorandum or arts. of assocn., & either dispose of its business to another co. or agree to a voluntary liquidation. After liquidation proceedings have commenced a person holding an option of taking shares is entitled, if he chooses to exercise his option, to have shares issued to him & to be put on the list of contributories, & if the liquidators refuse to do so, the measure of his damages is his share in the existing assets of the co. after deducting the price he had agreed to pay for the shares.—*HIRSCH & Co. v. BURNS* (1897), 77 L. T. 377, H. L.; *affg.* S. C. *sub nom.* *Re SOUTH AFRICAN TRUST & FINANCE CO., LTD.*, *Ex p.* *HIRSCH & Co.* (1896), 74 L. T. 769, C. A.

1471. Effect of winding up—Option not put an end to.]—HIRSCH & Co. v. BURNS, No. 1470, *ante*.

1472. Exercise of option—Whether specific performance decreed—All shares already allotted.]—Pltf. advanced money to a co. upon the faith of a resolution that, when the time for which the loan was made expired, he should be entitled to be repaid in money with interest, or by an allotment of shares to the amount of his advance. He elected to accept shares in payment, but the co. refused to allot him any, & he filed a bill for specific performance of the agreement, & for damages for the breach thereof against the directors & the co. At that time there were no shares remaining unallotted, & the pltf. was aware of the fact:—*Held*: under such circumstances he could not maintain a bill for specific performance; & that as at the time when the bill was filed the pltf. had no title to the equitable relief sought, the ct. could not under 21 & 22 Vict. c. 27, award him damages; for that Act was never intended to transfer the jurisdiction of a ct. of law to a ct. of equity, but to enable a ct. of equity to do complete justice between the parties in matters actually within its own jurisdiction.—*FERGUSON v. WILSON* (1866), 2 Ch. App. 77; 15 L. T. 230; 30 J. P. 788; 12 Jur. N. S. 912; 15 W. R. 80, L. JJ.

Annotations:—Reid. Wilson v. Bury (1880), 5 Q. B. D. 518; *Elmore v. Pirrie* (1887), 57 L. T. 333. *Mentd.* *Lewers v. Shaftesbury* (1867), 16 L. T. 135; *Hilton v. Tipper* (1868), 16 W. R. 888; *Turner v. Moy* (1875), 32 L. T. 56; *Daimler Co. v. Continental Tyre & Rubber Co. (Great Britain)*, [1916] 2 A. C. 307; *Slack v. Leeds Industrial Co-Operative Soc.*, [1923] 1 Ch. 431.

1473. — Damages for non-performance—Power of court to award.]—FERGUSON v. WILSON, No. 1472, *ante*.

PART III. SECT. 16.

1. Exercise of option—Within what time.]—Where the directors of a co. gave a mining engineer the option of taking 10,000 of the co.'s re-

served shares within a fortnight at a price below par, & the shares went from considerably below par to a high premium, whereupon the engineer exercised his option & made a large

profit:—Held: a fortnight was not an unreasonable time to allow for the exercise of an option.—ORANGE RIVER LAND & ASBESTOS CO.'S, TRUSTEES v. HIRSCH (1892), 6 H. C. 71.—S. AF.

1474. — Measure of damages.]—HIRSCH & Co. v. BURNS, No. 1470, ante.

1475. — Within what time—Under reconstruction scheme.]—A syndicate in which M. held an eighth interest, sold certain gold mines to co. No. 1, receiving in part payment certain fully paid-up shares in the co. Z. & others became the owners of M.'s interest, but it was not ascertained how much of M.'s interest Z. & the others individually acquired. Neither M. nor Z. ever was registered as a member of the co. No. 1. This co. about two years later than the purchase from the syndicate, went into voluntary liquidation & sold its assets to co. No. 2, & as consideration for the sale, each holder of a certain number of fully-paid shares in co. No. 1 was to be entitled to require to be allotted to him a certain number of shares in co. No. 2, on which he would, on allotment, have to pay 2s. per share, which would then leave 1s. per share unpaid. No time was named within which this option was to be exercised. The sale was duly carried out & co. No. 1 was dissolved. About a year after this purchase co. No. 2 went into voluntary liquidation & sold its assets to co. No. 3, which paid for them by allotment of its shares to shareholders in co. No. 2. During the whole year of the latter co.'s existence A. made no claim to have any shares in that co. allotted to him, but a year after the sale by the second to the third co. the shares in this last rose to a premium & then Z. claimed an allotment of shares in the second co. under the option given by that co. to shareholders in the first co.:—*Held*: the option to shareholders of co. No. 1, to take shares in co. No. 2 was one which required to be exercised within a reasonable time, & the delay which had occurred was fatal to Z.'s claim; also, his claim being practically one for specific performance he could not have obtained this owing to his share of M.'s interest in the syndicate not being determined.—**ZUCCANI v. NACUPAI GOLD MINING Co. (1889), 61 L. T. 176; 5 T. L. R. 454; 1 Meg. 230, C. A.**

Annotation:—*Reid. Postlethwaite v. Port Phillip & Colonial Gold Mining Co. (1889), 43 Ch. D. 452.*

1476. —]—A shareholder in a co. which had by special resolution resolved that the co. should be wound up, & its assets transferred to a new co. to be formed, had notice of resolutions which gave her the option of exchanging within a limited time her shares for shares in the new co. at a fixed rate. She also had notice of an agreement between the liquidator of the old co. & new co., in which no date was fixed for exercising the option, & of a deed-poll by which the co. covenanted to perform the agreement. She did not exercise the option, & protested against the proposed arrangement, & took proceedings unsuccessfully to prevent it from being carried out. Some months afterwards when the shares in the new co. had risen considerably in value, she applied for an allotment of shares, & on being refused, brought the present action claiming an allotment of shares or damages:—*Held*: the action could not be maintained.—**WESTON v.**

NEW GUSTON Co. (1891), 64 L. T. 815, H. L.; affg. (1889), 62 L. T. 275, C. A.

Annotations:—*Reid. Postlethwaite v. Port Phillip Colonial Gold Mining Co. (1889), 43 Ch. D. 452; Burdett-Coutts v. True Blue (Hannan's) Gold Mine, [1899] 2 Ch. 616.*

SECT. 17.—THE CONTRACT TO TAKE SHARES.

SUB-SECT. 1.—THE CONTRACT GENERALLY.

A. What constitutes.

(a) In General.

1477. General rule.]—F., with a view of qualifying himself as a director of a co., applied for shares in it *simpliciter*, without annexing any condition to his application, & paid the deposit money upon such shares. At a board meeting, at which he was present, a resolution was passed "that the shares in the co. now applied for be allotted & letters of allotment issued forthwith"; & he afterwards attended meetings of the board as a director. Subsequently, upon his request, the directors cancelled the allotment to him, & repaid to him his deposit. There was no evidence of there ever having been any express notice to him of the allotment:—*Held*: the contract was complete & binding, & the directors had no power to cancel the allotment.

Three things are required to establish a complete contract to take shares: (1) application for shares; (2) allotment; (3) that the allotment should be communicated to & acquiesced in by the shareholder.—*Re SALOON STEAM PACKET Co., Ex p. FLETCHER (1867), 37 L. J. Ch. 49; 17 L. T. 136; 16 W. R. 75.*

1478. — Application—Persons applying on behalf of others.]—The rule that, to make a binding contract to take shares, there must be application, allotment by the co., & communication to the allottee of that allotment, applies as strongly to a person who applies as trustee for a third person, as to one who applies simply on his own behalf. R. applied for shares in A. co. at the instigation of the managing director of B. co., who gave him a letter on behalf of B. co., indemnifying him against all responsibility. R. sent in the application himself from his own address, & paid the deposit by a cheque on his own banker, although the money was supplied by B. co. The shares were allotted to R., & his name was placed on the register; no notice of allotment was sent to him, but the notice was sent to the office of the B. co. Co. A. was afterwards wound up:—*Held*: there was no contract to take the shares, & R.'s name must be removed from the list of contributors.—*Re PERUVIAN RYS. Co., CRAWLEY'S CASE, ROBINSON'S CASE (1869), 4 Ch. App. 322; 20 L. T. 96; 17 W. R. 454, L. J.J.*

Annotations:—*Consd. Re Land Shipping Colliery Co., Ex p. Harwood, Gull, Geary, & Stafford (1869), 20 L. T. 736. Reid. Re British & American Steam Navigation Co., Ward's Case (1870), L. R. 10 Eq. 659; Re International Contract Co., Levita's Case (1870), 39 L. J. Ch. 673. Mentd. Re Disdèri (1870), 23 L. T. 694.*

Application for shares.]—See Sub-sect. 2, post.

PART III. SECT. 17, SUB-SECT. 1.— A. (a).

1477 i. General rule.]—To constitute a binding contract to take shares in a co., when such contract is constituted by application & allotment, there must be an application by the intending shareholder, an allotment by the directors of the co. of the shares applied for, & a communication by the directors to the appct. of the fact of the allotment having been made.—**HODGINS v.**

O'HARA, 22 C. L. T. 29, 133.—CAN.

1478 i. — Application—Persons applying on behalf of others.]—A person who applies for shares in a co. registered under the Cos. Acts & authorises his name to be placed on the register of members, becomes, on allotment of the shares & registration of his name in terms of his authority, a shareholder of the co.; & is not entitled to have his name removed from the register by showing that he did not become a

shareholder on his own account but merely that he might by agreement with the directors place the shares among such persons as he found willing to take them.—**MILN v. NORTH BRITISH FRESH FISH SUPPLY Co (1887), 15 R. (Ct. of Sess.) 21; 25 Sc. L. R. 36.—SCOT.**

m. —]—Upon a document headed "An appeal to Trades Unionists to assist strikers who are locked out." appct. signed his name

Sect. 17.—The contract to take shares: Sub-sect. 1, A. (a).]

1479. — & payment of deposit—By partner in pursuance of contract by firm—No allotment or entry in register.]—A firm of T. & Co. were appointed agents of a co. on condition of taking 250 shares in the co. D., a member of the firm, applied for fifty shares, & paid thereon a deposit of £1 per share, but no notice of allotment was sent to him, nor was he entered on the register of shareholders. T., another member of the firm, applied for 200 shares & paid the deposit thereon:—*Held*: D. was liable in respect of the fifty shares, & must remain on the list of contributories.—*Re VALPARAISO WATER WORKS CO., DAVIES' CASE* (1872), 41 L. J. Ch. 659; 26 L. T. 650; 20 W. R. 518, L. J.J.

Annotations:—Consd. Re Monarch Insce., Gorrissen's Case (1873), 8 Ch. App. 511, n.; *Re Universal Non-Tariff Fire Insce., Ritso's Case* (1877), 4 Ch. D. 774. *Refd. Re Basye Consolidated Silver Mining Co., Dyett & Louttit's Case* (1880), 43 L. T. 85.

Allotment.]—See Sub-sect. 3, post.

Communication of & acquiescence in allotment.]

—*See Sub-sect. 3, E., F., post.*

Acceptance of office by director.]—See Sect. 28, sub-sect. 2, C., post.

1480. "Agreement to take"—Agreement to place—Whether evidence of.]—An agreement to place shares in a co. is not equivalent to an agreement to take shares, & the person making it is not liable to be placed on the register as a member, although he may be liable to an action for damages if he fails to perform his contract.

G. agreed with the directors of a co. that he would place 1,000 shares in consideration of his

being appointed their agent at Hamburg. The directors placed his name on the register of shareholders for 1,000 shares; but did not inform him of it, & sent him no letter of allotment. It was afterwards proposed that there should be a second issue of shares, & in Oct. 1869, G. wrote a letter to the manager promising to keep for himself the 1,000 shares which he had undertaken to place, & to pay for them out of his commission on the second issue. The second issue of shares was never made, by reason of the failing credit of the co. In Feb. 1870, G. was called upon by the directors to pay the calls on 1,000 shares, & in reply he repudiated the shares on the ground that no second issue had been made, but took no measures to have his name removed from the register. About a month afterwards the co. was wound up:—*Held*: (1) G. could not be put on the list of contributories in respect of his undertaking to place the 1,000 shares; (2) his subsequent agreement to keep the shares for himself was conditional on the second issue of shares being made, & as the condition failed through no fault of his, he was not bound to take the shares; (3) he was guilty of no laches in not applying to have his name removed from the register before the co. was wound up.—*Re MONARCH INSURANCE CO., GORRISSEN'S CASE* (1873), 8 Ch. App. 507; 42 L. J. Ch. 864; 28 L. T. 611; 21 W. R. 536; L. C. & L. J.

Annotation:—Generally, Refd. Re Licensed Victuallers' Mutual Trading Assocn., Ex p. Audain (1889), 42 Ch. D. 1.

1481. Instructions to agent.]—In May, 1865, F. sent P., the manager of the O. Bank, £800, requesting him to invest it in the bank. In Mar. 1866, P. sent F. certificates of 160 shares in the bank of £20 each, £5 only being paid on each

as being desirous of taking twenty shares in a co. about to be formed. The co. was subsequently formed, & twenty shares were allotted to appct. by resolution of the board. No formal application for shares was signed by appct., no notice of allotment was given to him, & no payment had been made by him, either on application or allotment. Subsequently the co. was placed under liquidation, a list of contributories upon which appct.'s name appeared was attached to the liquidator's report, & after notice in the public press, was confirmed by the ct. Upon application by H., who had been unaware that his name was on the list of contributories:—*Held*: appct. could not be regarded as a member of the society, & was entitled to have his name erased from the list of contributories.—*HEDDERWICK v. SOUTH AFRICAN GENERAL WORKERS' UNION CO-OPERATIVE SOCIETY, LTD.* (1908), 25 S. C. 5.—S. AF.

n. "Agreement to take"—Payment on account.]—Deft. signed the following memorandum, which was written upon a page of a book, kept as a minute book of the meetings of various persons who intended forming a co. "We, the undersigned, do hereby agree to pay for the amount of stock after our respective names, & we further agree & bind ourselves to abide by the bye-laws, rules, & regulations of the assocn." Deft. did not sign the petition for letters patent, nor any memorandum of assocn., but paid \$10 on account of his subscription for a share. In an action by pltf., a creditor of the co., for unpaid calls:—*Held*: deft. was not liable.—*ALLAN v. GORDON* (1884), 1 Man. L. R. 132.—CAN.

o. — Payment not made.]—On an application by G., a shareholder of an incorporated co., in his own name, & that of the co., for an order directing the removal of the name of

B. from the register of shareholders:—*Held*: B. was, by agreement with the co., bound to pay at least par for the shares which stood in his name, & he was not the less a shareholder, because he had not yet paid, the price to be paid not having been settled.—*Re GRAMM MOTOR TRUCK CO. OF CANADA & BENNETT* (1915), 9 O. W. N. 321; 35 O. L. R. 224.—CAN.

p. — Before company formed.]—An agreement made with persons calling themselves provisional directors of a proposed co., to take shares in the co. when formed, cannot be ratified by the co., & is not enforceable by it.—*Re KATAPOI GLASS CO., HOLLIER'S CASE* (1887), 5 N. Z. L. R. 287.—N.Z.

q. Whether implied—By acceptance of scrip—& retention of shares.]—Pltf. was induced by L. to take one share in a co. which he was forming to buy land, to consist of 100 shares of £1,000 each. L. found a co. but it consisted of 110,000 shares of £1 each, & 5,500 shares, paid up to 4s. each, were allotted to pltf. In an action by pltf.:—*Held*: pltf. never antecedently agreed to become a member of the co. formed, but having accepted scrip in it without objection, & retained the shares without any attempt until this action to repudiate them, he must, as between himself & the co., be deemed to have assented to take such shares.—*CURWEN v. YAR YEAN LAND CO.* (1891), 17 V. L. R. 64, 745.—AUS.

r. Verbal application—Signature of acceptances.]—H. applied verbally to the M. & Co. Ltd. for thirty shares offering to pay by two bills at three & four months. The co. accepted the offer. H. accepted the two bills for the price & left the shares as security. Scrip were filled in but not signed or issued. H. signed no application & did not sign the deed or the register but his name was entered on the register as a member. The directors made calls & sued H. for

them pending the currency of his bills which they had negotiated:—*Held*: H.'s signature of the acceptances only was evidence of his consent to be a member if such consent were necessary.—*McIVOR HYDRAULIC SLUICING & GOLD MINING CO. v. HUGHES* (1867), 4 W. W. & A.B. 111.—AUS.

s. Authority to secretary to subscribe.]—Deft. had taken shares in a road co., for which he subscribed his name, & the secretary called to solicit a further subscription. Deft. told him he would take another £100, & the secretary afterwards, in deft.'s absence, put down his name for these shares:—*Held*: not sufficient to charge deft.—*INGERSOLL & THAMESFORD GRAVEL ROAD CO. v. MCCARTHY* (1858), 16 U. C. R. 162.—CAN.

t. Substitution of applicant.]—Defts. were an incorporated co., the capital of which was \$30,000, in 100 shares of \$300 each, ninety of which had been subscribed for, & paid up in full by duly made calls thereon. Defts. employed pltf. to take charge of their business, & he was appointed president, at a salary of \$1,200. He subscribed for seven shares of the unallotted stock, debited himself with the amount thereof, \$2,100, in the co.'s books, & afterwards paid this sum. Afterwards, desiring to obtain control of the co., he arranged with four of the stockholders for the transfer to him of their stock, but one of them, M., to enable him to remain a director, was to, & he did, subscribe for the three remaining shares unallotted. Pltf. wished to withdraw from this arrangement, & the parties agreed to cancel it; but M. was to be relieved of the three shares, & M.'s name was accordingly erased, & pltf.'s inserted as subscriber for these shares, the substitution being made either by pltf. himself or by the book keeper by his direction. It was also arranged between pltf. & the other directors, that this stock should be entered in

share, & at the same time sent him a cheque for the amount of the dividend due upon the shares. In July, 1866, the bank was ordered to be wound up, & F.'s name appearing on the register of shareholders, he was settled on the list of contributories in respect of 160 shares. Calls having been made which F. was unable to pay, he proposed a compromise, which was, however, refused. In Aug. 1870, F. took out a summons to have his name removed from the list of contributories:—*Held*: (1) F., having agreed to take shares in the bank, & his name appearing in the registry of shareholders, he was rightly settled on the list of contributories; (2) P., for the purposes of this transaction, was the agent of F. & also of the bank.—*Re ORIENTAL COMMERCIAL BANK, Ex p. FRASER* (1871), 24 L. T. 746; 19 W. R. 844.

1482. Whether implied—By acceptance of shares not applied for.—A co. was formed for acquiring the business of two persons who were manufacturers of medicated food & wine. It was agreed that the purchase-money should be paid partly in cash & partly in fully paid-up ordinary shares of £1 each; & in addition to this forty fully paid-up "founders' shares" of £25 each were to be allotted to the vendors or their nominees. This agreement was never registered. The promoters of the co. & the co. after its incorporation entered into negotiations with various medical men to induce them to recommend to their patients & others the goods sold by the co., promising them each one of the founders' fully paid-up £25 shares. As soon as the co. was incorporated the directors signed certificates for the "founders' shares" with the names in blank. These the secretary filled up & sent one to each of the medical men who had con-

sented to accept shares. It did not appear on the certificates that the shares were paid-up, but the secretary in his correspondence with the recipients told them expressly that the shares would be fully paid-up & would involve no liability. The recipients acknowledged the receipt of the certificates without any condition or qualification. None of the recipients were placed on the register of shareholders, nor was any agreement with them registered. A few months afterwards the co. held a meeting & passed a resolution for a voluntary winding up; & in contemplation of the meeting the secretary wrote to all the medical men who had received the certificates of "founders' shares" asking for a return of the certificates on the ground that the shares had never been allotted. The certificates were accordingly returned. The liquidator placed the recipients of the certificates on the list of contributories; & they applied to have their names removed:—*Held*: (1) though the acceptance of the certificates might have amounted to an implied contract to take the shares & an authority to the secretary to place resps.' names on the register, such contract & authority were, while they existed, subject to the condition that there should be no liability for calls, & ceased to exist when the certificates were returned; (2) resps. could not be made contributories in the winding up of the co.

Are these gentlemen members according to the definition in [1862 Act], s. 23? Clearly & plainly they are not. In order to be members they must be registered as shareholders, & they are not. Then can they be regarded as members by estoppel? Now they are certainly not estopped by any plea put forward by themselves. If

the stock book as paid up in full, but pltf. was to be debited with the \$900, to be paid out of his salary as president. Pltf., with his knowledge & assent, was so debited, & from time to time, as his salary became payable, it was set off against the debt, & a balance afterwards struck in the books on this basis. There was no bye-law regulating calls or transfers of stock, & no calls were made on pltf. for either amounts subscribed by him, & no transfer from M. to pltf., except in the manner stated:—*Held*: no transfer was necessary, as pltf.'s subscription must be held to be an original one, nor were any calls required, for pltf. by his conduct had impliedly agreed that none need be made, & both he & the co. were estopped from denying his ownership of the shares.—*SMART v. BOWMANVILLE MACHINE & IMPLEMENT CO.* (1875), 25 C. P. 503.—CAN.

a. Subscription without allotment.—In winding-up proceedings, the master placed the subscribers to the stock book upon the list of contributories. The contributories appealed upon the ground that although they were subscribers for stock still no stock had been allotted to them by the directors:—*Held*: the master was right; the contract signed was an unqualified taking of shares.—*Re QUEEN CITY REFINING CO. OF TORONTO* (1886), 10 O. R. 264.—CAN.

b. Subscription before incorporation.—P. signed an instrument purporting to be a subscription for shares in a co. proposed to be incorporated, in which he agreed with the co. & the signatories thereto, to take the number of shares set opposite to his name. B. signed an instrument purporting to be an agreement to accept shares in a co., not at the time incorporated. P. & B. were not incorporators named in the letters patent, & no shares were in fact ever allotted to them, but they were entered in the books as

shareholders, & notices of meetings & demands for payment of calls were sent to them, & in winding-up proceedings they were placed on the list of contributories:—*Held*: there being no co. in existence when the instruments in question were signed, they did not constitute binding contracts to take shares so as, without more, to make P. & B. liable as contributories.—*Re LONDON SPEAKER PRINTING CO., PEARCE'S CASE, Re SPEIGHT MANUFACTURING CO., BOULTREE'S CASE* (1889), 16 A. R. 508.—CAN.

c. Subscriber not receiving copy of prospectus.—Subscribers for shares in a co., who have not received copies of the prospectus, there being no prospectus, have thereby a good answer to a motion to place their names on the list of contributories in the winding up of the co., apart from the possible effect of acquiescence or waiver.—*Re RETAIL MERCHANTS' ASSOCN., LTD.* (1914), 27 W. L. R. 50.—CAN.

d. One application by two persons — Allotment to one only.—A. & B. applied for shares in a co. in the following terms "I hereby subscribe for & require & request you to allot me five shares of stock" etc. both signing the one application. The minute book of the co. showed that the directors allotted five shares to B. only, although five shares were entered in the share ledger to A. & B. jointly, & a share certificate for five shares was issued to them jointly, but never delivered, being held by the co. pending payment, for the shares in full. The co. went into liquidation, & A. & B. were both placed upon the list of contributories by the registrar, whose report was affirmed by the ct.:—*Held*: there was no allotment of shares to A.; there was not a concluded contract between A. & the co. & A.'s name must be removed from the list of contributories.—*Re FEDERAL MORTGAGE CORPN., LTD.*

& *KIPP* (1917), 24 B. C. R. 12.—CAN.

e. Direct application — Allotment of shares transferred from other shareholders.—Where an application is made direct to a co. for shares in the capital stock thereof but the share certificates issued to the appct. are for shares transferred from other shareholders there is no contract between the co. & the appct., & the appct. is entitled on a motion made after the co. goes into liquidation to have his name removed from the list of contributories, even though he has assigned his shares in pursuance of an abortive attempt to reorganise the co.—*WESTERN UNION FIRE INSURANCE CO. v. ALEXANDER*, [1918] 2 W. W. R. 546; 39 D. L. R. 632.—CAN.

f. Signing duplicate of memorandum — Before registration of company.—When a person signs a duplicate of the memorandum of assocn. after the registration of the original memorandum, he does not thereby become a subscriber. Such signature is equivalent to a proposal to the co. to take shares, & if such a proposal is accepted, the person signing is a person who has agreed with the co. to become a member, & is liable to calls if entered on the register.—*BOMBAY NATIONAL MANUFACTURING CO., LTD. v. AHMED BIN ESSA KHALIFFA* (1890), 1 L. R. 14 Bom. 196.—IND.

g. Signing prospectus.—*TODD* (LIQUIDATOR OF MILLEN & SOMMERVILLE, LTD.) v. *MILLEN* (1910), 47 Sc. L. R. 695.—SCOT.

h. Signing articles — Part-payment — No allotment.—A shareholder who has signed arts. of assocn. & partially paid for his shares is not entitled to repudiate liability for call on the ground that the shares have not been allotted to him.—*OTTOSHOOR PROPRIETARY MINES, LTD. (IN LIQUIDATION) v. REEVES*, [1907] T. H. 76.—S. AF.

k. Amalgamation with another com-

Sect. 17.—The contract to take shares: Sub-sect. 1, A. (a) & (b) & B. (a) i.]

estopped it must be by conduct of their own, so as to induce people to act on the faith that they were members (LINDLEY, L.J.).—*Re MACDONALD, SONS & Co.*, [1894] 1 Ch. 89; 63 L. J. Q. B. 193; 69 L. T. 567; 10 T. L. R. 43; 38 Sol. Jo. 25; 1 Mans. 319; 7 R. 322; *sub nom. Re MACDONALD, SONS & Co., LTD.*, *Ex p. PHILLIPS*, 69 L. T. 567, C. A.

Annotation:—Generally, Re Building Estates Brickfields Co., Parbury's Case, [1896] 1 Ch. 100.

Entry on register—As essential of membership.]

—*See No. 1192, ante.*

By signature of memorandum.]—See Sect. 7, sub-sect. 6, ante.

1483. Whether question for judge or jury—Contract not depending entirely upon written instruments.]—In an action for money had & received by an allottee of railway scrip, for the recovery of his deposit on the abandonment of the scheme, the letter of allotment was offered in evidence by pltf., who called upon deft. to produce the letter of application, which he refused to do. The deposit was paid into one of the banks mentioned in the prospectus of the co., on account of the co., & to their credit, deft. being a member of the managing & also of the provisional committee; & upon application by pltf. for a return of his deposit, he received from the attorney of the co. an answer, to the effect that arrangements for that purpose were being made:—*Held*: (1) the letter of allotment was receivable in evidence without a stamp, as there was no presumption that the two letters were *ad idem*, & the contract depended upon them alone; (2) there was evidence that the money was had & received by deft.; (3) as the evidence in the case did not depend altogether upon written instruments, but upon other matters of fact, it was a question for the jury, & not for the judge what was the contract between the parties.—*MOORE v. GARWOOD* (1849), 4 Exch. 681; 19 L. J. Ex. 15; 14 L. T. O. S. 224; 154 E. R. 1388, Ex. Ch.

Annotations:—As to (1) Consd. Ward v. Londresborough (1852), 12 C. B. 252. *Generally, Mentd. Hudspeth v. Yarnold* (1850), 9 C. B. 625; *Foster v. Mentor Life Assce.*

*pany — Compromise.]—*An agreement was made between two cos., A. & B., for the amalgamation of A. Co. with B. Co. on the terms that B. Co. should take over the whole assets & business of A. Co., & give in exchange to the shareholders of A. Co. a certain number of partly paid-up shares in B. Co., or pay them a certain sum in lieu thereof, at their election. This agreement was admittedly *ultra vires* & void. The assets & business of the amalgamated co. were taken over, but disputes arose as to the further carrying out of the agreement. An action was brought by A. Co. against B. Co. for breach of this agreement, which was defended by B. Co. on the specific ground that the agreement was *ultra vires*. On the eve of the trial the action was compromised by the two cos. on the terms that B. Co. should give to A. Co. for distribution among the shareholders of the latter a somewhat less number of shares than was originally arranged for:—*Held*: the first agreement being void, the compromise entered into was equally void, & a shareholder in A. Co. who had applied for & taken shares in B. Co. under the compromise was entitled to have his name removed from the register of the latter co.—*Re NEW ZEALAND NATIVE LAND SETTLEMENT CO. (LTD.)*, *Ex p. JACKSON* (1888), 6 N. Z. L. R. 549.—N.Z.

1. Application for shares—Before

*company formed—No conduct amounting to acceptance.]—*Where application is made to "directors" of a proposed co. for shares in the co. to be accepted subject to the rules thereof, & at the date of the allocation of shares the co. is not constituted, & has neither directors nor rules, & the appct. after formation of the co. does nothing to commit him to the acceptance of the shares standing in his name, he is entitled to have his name removed from the register of shareholders.—*Re WAREATEA GOLD-MINING CO. (LTD.)*, *Ex p. NAIR* (1889), 7 N. Z. L. R. 89.—N.Z.

m. Variance between prospectus & articles—Articles constituting contract.]—A prospectus stated as one of the terms on which shares were being issued that calls would be made at intervals of not less than a month, but the arts. of assocn. authorised the directors to make calls as they should think fit, & the form of application signed by deft. was for shares in the co. upon the terms in the memorandum & arts. The memorandum & arts. were before deft., together with the prospectus, when he made his application:—*Held*: the arts. & not the prospectus constituted the contract between the co. & deft., & the fact that a call had been made less than one month after another was no defence to an action against deft. for the call

(1854), 3 E. & B. 48; *Hegarty v. Milne* (1854), 14 C. B. 627.

See, generally, CONTRACT, Vol. XII., pp. 51 *et seq.*

(b) On Offer of Specified Shares by Company.

1484. Allotment as offer.]—Pltf. applied to the committee of management of a railway co. for shares, & undertook to accept the same or any number that might be allotted to him, & to pay the deposit of £2 2s. per share, & to execute the subscriber's agreement, as might be required. The letter of allotment, allotting to him 100 shares, was headed "Not transferable," & indorsed on it was a memorandum that the committee of management, being of opinion that it would be an accommodation to the subscribers if they were allowed the option of either paying the whole or a portion of their respective deposits at present & the remainder at a future day, & considering it unnecessary to lock up the large sum of money over & above what any expenses could require, informed him that the bankers were authorised to receive, in part of his deposit, 10s. per share before Nov. 17. This pltf. duly paid. In an action to recover back this deposit, the scheme having been abandoned:—*Held*: (1) the contract to subscribe arose from the offer contained in the letter of allotment, & the acceptance of it by pltf.'s complying with its terms & paying the deposit; & the entire contract, not being in writing, could not be stamped; (2) the deposit was paid for defraying the preliminary expenses, & being so applied, pltf. could not recover any part of it back.

Semle: 7 & 8 Vict., c. 110, s. 23, does not forbid the receipt of more than for preliminary expenses.—*WILLEY v. PARRATT* (1848), 3 Exch. 211; 6 Ry. & Can. Cas. 32; 18 L. J. Ex. 82; 13 L. T. O. S. 141; 12 J. P. Jo. 56; 154 E. R. 819.

Annotations:—As to (1) Apld. Ward v. Londresborough (1852), 12 C. B. 252. *Re Moore v. Garwood* (1849), 4 Exch. 681. *Generally, Mentd. Re Direct London Portsmouth, & Chichester, & Direct Portsmouth & Chatham Ry.*, *Ex p. Goldsmith* (1850), 14 Jur. 734; *Hegarty v. Milne* (1854), 14 C. B. 627.

1485. What constitutes acceptance—Payment of deposit.]—*WILLEY v. PARRATT*, No. 1484, *ante*.

1486. — Shares apportioned to provisional

so made.—*LYELL HYDRAULIC SLUICING CO., LTD. v. HARCOURT* (1904), 23 N. Z. L. R. 168.—N.Z.

PART III. SECT. 17, SUB-SECT. 1.—A. (b).

1484 i. Allotment as offer.]—Pltf. co. was about being organised, & deft. was asked to take stock in it, & subscribe his name to a paper prepared for that purpose, agreeing to take ten shares:—*Held*: this was an offer made by the co. on the one side, & accepted by deft. on the other, & a complete contract was formed which made him liable as a stockholder to assessments.—*EUROPEAN & NORTH AMERICAN RY. Co. v. MCLEOD* (1875), 3 N. B. R. (Pug.) 3.—CAN.

1484 ii. —.]—Where in an action against an appct. for shares in a co., for specific performance of the contract for their purchase, it appeared that the co. had set aside certain shares for the appct. to be issued to him on payment of the balance of the purchase price, & that these shares had been previously allotted to a former appct., which allotment was later declared forfeited by the co., the question of whether or not the co. properly forfeited the shares has no bearing on the question before the ct.—*GRAHAM ISLAND COLLIERIES v. MCLEOD* (1913), 19 B. C. R. 114.—CAN.

committeeman—Request to have shares reserved.]—The secretary to a co. wrote to A., a member of the provisional committee, informing him that the managing committee had apportioned 100 shares to each member of the provisional committee, & requesting to be informed on or before a certain day whether A. would take that or any less number of shares, otherwise the committee would consider that he declined taking any. A., in answer, requested that 100 shares might be reserved for him. The ct. directed an issue to try whether A. had accepted the shares.—*Re DIRECT BIRMINGHAM, OXFORD, READING & BRIGHTON RY. CO., ONIONS'S CASE (1851), 1 Sim. N. S. 394; 17 L. T. O. S. 138; 61 E. R. 153.*

Annotation:—Consd. Re Eastern Counties Junction & Southend Ry., Mainwaring's Case (1852), 2 De G. M. & G. 66.

1487. — — — — —.]—A provisional committeeman of a provisionally registered railway co., on Oct. 9, 1845, wrote to the secretary in answer to an inquiry made by the latter, as follows: "I should wish to have 100 shares reserved for me." Nothing further took place till Nov. 21, when the secretary wrote to the committeeman as follows: "The committee of management are of opinion that the payment of the deposit should be no longer delayed; they therefore request that you will be so good as to pay the deposit on the 100 shares accepted by you." On Nov. 27 the committeeman replied thus: "Inform me whether a sufficient amount of deposits has been paid up to enable the co. to go to Parliament this session, & if all the provisional committee have paid their deposits. Should that be the case, I shall not hesitate to pay also, that is, upon being clearly satisfied on these points":—*Held*: this was a conditional acceptance only, & the condition not having been performed, the committeeman was not a contributory.—*Re EASTERN COUNTIES JUNCTION & SOUTHEND RY. CO., MAINWARING'S CASE (1852), 2 De G. M. & G. 66; 21 L. J. Ch. 416; 19 L. T. O. S. 42; 16 Jur. 392; 42 E. R. 795, L. JJ.*

1488. — Offer to executors—Acceptance in own name by representative of survivor—Entered in names of executors.]—Directors of a banking co. empowered to allot shares to existing shareholders, offered certain shares to exors. of M. The offer was sent to P. who was not one of M.'s exors., but who had been conducting the affairs of the survivor of them, & was accepted by him on his own account, but entered in the books in the names of the exors.:—*Held*: (1) P.'s acceptance did not constitute a valid & completed contract between P. & the co.; (2) P.'s name must be removed from the list of contributories.—*Re LEEDS BANKING CO., MALLORIE'S CASE (1866), 2 Ch. App. 181; 36 L. J. Ch. 141; 15 L. T. 458; 15 W. R. 270, L. JJ.*

Annotation:—Generally, Mentd. Re Leeds Banking Co. Ex p. Matthewman (1866), 12 Jur. N. S. 982.

1489. — Application for shares unaccompanied by payment—Company may refuse.]—*Re INTERNATIONAL MINING SYNDICATE, LTD., Ex p. SMITH, Re INTERNATIONAL MINING SYNDICATE, LTD., Ex p. SIMPSON (1892), 36 Sol. Jo. 609.*

1490. Whether acceptance conditional—Inquiry

as to amount of deposit paid up.]—*Re EASTERN COUNTIES JUNCTION & SOUTHEND RY. CO., MAINWARING'S CASE, No. 1487, ante.*

1491. Time for acceptance—Offer sent to deceased member's registered address.]—Pltf. was the extrix. of a member of a co. who was living at the date of a special resolution increasing the capital, & was, therefore, by virtue of art. 27 of Table A, entitled to the offer of a proportion of the new shares, but who died before the actual issue of the shares pursuant to the special resolution passed in Apr. 1893. On May 11, 1893, circular letters were addressed to the shareholders calling upon them to state within ten days whether they wished to take the new shares to which they were entitled. One of these letters was addressed to "the executor" of the deceased member at an address which was not the registered address of the deceased member, & the letter never reached pltf.

In May, 1894, pltf. became aware of the allotment of the new shares, & applied for the allotment to her of the shares to which the deceased member would have been entitled. The disposal of these shares had been deferred, & they were still in the hands of the co. The deceased member's name was still on the register of shareholders:—*Held*: pltf. was entitled to allotment of the deceased member's portion of the new shares.

Qu.: as to the title of the legal personal representative to the shares, if, as was not the case, the co. had sent by post a letter containing the offer directed to him at the registered address of deceased member, or directed to the place of abode or business of the representative or his solr., & not having received an answer applying for the shares within the time limited by the letter, had proceeded to dispose of them otherwise.—*JAMES v. BUENA VENTURA NITRATE GROUNDS SYNDICATE, LTD., [1896] 1 Ch. 456; 65 L. J. Ch. 284; 74 L. T. 1; 44 W. R. 372; 12 T. L. R. 176; 40 Sol. Jo. 238, C. A.*

Annotations:—Refd. Llewellyn v. Kasintoe Rubber Estates, [1914] 2 Ch. 670. Mentd. Allen v. Gold Reefs of West Africa, Same v. Same, [1900] 1 Ch. 656.

1492. — Offer not sent to deceased member's registered address.]—*JAMES v. BUENA VENTURA NITRATE GROUNDS SYNDICATE, LTD., No. 1491, ante.*

B. Contract subject to Condition.

(a) *Applications for or Agreements to Take Shares subject to Conditions.*

i. *What Applications or Agreements are Conditional.*

See, generally, CONTRACT, Vol. XII., pp. 409 et seq.

1493. Condition relating to appointment to office—Stipulation by applicant for appointment.]—C., being the holder of shares in the D. co. in 1857, the directors of the B.P. society resolved that S., their managing director, should be authorised to sell to the shareholders in the first mentioned co. shares in the B.P. society at a certain price, & it was agreed between C. & the managing director that, in consideration of the former transferring to the latter the shares he held in the D. co., & paying £100, he should receive 300 shares in the

PART III. SECT. 17, SUB-SECT. 1.— **B. (a) i.**

n. Condition relating to appointment to office—Stipulation by applicant for appointment—As director—Condition precedent.]—T. signed a power of attorney to C. to subscribe for twenty shares of stock, & delivered it to him on the understanding that it was not to be used unless he became a director

of the co. C. directed the accountant to enter B.'s name in the stock-ledger as a shareholder, which was done. Blotting pads were issued, & an advertisement published in a newspaper, & a return made to the Govt., with T.'s name inserted as a director in the two former, & as a member in the latter; but no board was ever formed with T. as a director. T. swore that

he never saw the pads, advertisement, or returns, & that he did not know his name was in any of them; & on receipt of a notice claiming a 5 per cent call, he at once repudiated all liability:—*Held*: the stipulation that he was to be a director was a condition precedent to his becoming liable as a shareholder, & T.'s name must be removed from the list of contributories.—*Re STAN-*

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B.P. society, & be appointed the medical officer of the society for a particular district. The managing director in the same year induced C. to execute the deed of settlement in respect of the 300 shares, but before execution C. again stipulated, not only that he should be appointed medical officer, but also that he should not be removed from that office except for misconduct, a condition which was assented to by the managing director, who, however, subsequently desired to retire from the engagement, & an angry correspondence having ensued, C. insisted that his subscription of the deed of settlement should be cancelled, & the managing director engaged by letter to treat the shares as forfeited & his signature to the deed as a nullity. No entry of the transaction was, however, made in the books of the co. C. was never required to make any payment in respect of deposit or otherwise, nor was any scrip allotted to him. The co. was wound up in the year 1861:—*Held*: the legal status or character of a shareholder was not complete in C. at the time of the winding up, & his name was therefore removed from the list of contributories. If there be an equity to avoid a contract to take shares in a co. on the ground of misrepresentation by a director or agent of a co., which contract has been legally completed & no proceeding taken to set it aside before the winding-up order, it is not available to the shareholder as a defence against being made a contributory.—*Re BRITISH PROVIDENT, ETC., ASSURANCE SOCIETY, COLEMAN'S CASE* (1863), 1 De G. J. & Sm. 495; 8 L. T. 292; 9 Jur. N. S. 813; 46 E. R. 196, L. C.

1494. ———.]—A. signed an application for shares in a co. upon condition that he should be appointed secretary, & his acceptance of the office was to be subject to further inquiries, which he had caused to be made respecting the position of the co. The shares were allotted the next day, but A., in consequence of information he received, declined the appointment, & required that the allotment should be cancelled. The co. was wound up voluntarily, & A.'s name was placed on the list of contributories:—*Held*: the application for shares was conditional, & the condition not having been fulfilled, A.'s name must be removed from the register & list of contributories, & as he had been placed there without any justification, he must receive costs as between solicitor & client by

way of damages, under 1862 Act, s. 35, for the extra expenses incurred by him.—*Re NATIONAL EQUITABLE PROVIDENT SOCIETY, WOOD'S CASE* (1873), 15 L. R. Eq. 236; 42 L. J. Ch. 403; 21 W. R. 645.

Annotation:—*Reid. Re Scottish Petroleum Co., Anderson's Case* (1881), 43 L. T. 723.

1495. ——— **As director—Condition subsequent.**]—*Re YSTALYFERA CO., LTD.* (1886), 2 T. L. R. 900.

1496. ——— **As agents & brokers—Agreement with directors—Condition collateral.**]—*MARE, HOLMWOOD & CO. v. ANGLO-INDIAN S.S. CO., LTD.* (1886), 3 T. L. R. 142, C. A.

1497. ——— **Condition imposed by company—Application condition precedent to appointment.**]—(1) R. being desirous of being appointed local manager for a joint-stock banking co., was informed by the agent of the co. that it would be a condition of his appointment that he should take 100 shares. He accordingly filled up an application for 100 shares in the usual form, which the agent forwarded to the directors with a letter from himself stating that the application was made on condition of R.'s being appointed local manager. The shares were allotted to him, but in consequence of his not being able to pay the deposit the directors refused to give him the appointment:—*Held*: R.'s application for shares was conditional, & he did not become a shareholder in the co.

(2) H. being desirous of a similar appointment, made an application in the usual form for fifty shares, through the co.'s agent, but no letter was sent to the directors stating that the application was conditional on H. obtaining the appointment. The shares were allotted unconditionally to H., who afterwards declined the appointment, but did not formally repudiate the shares:—*Held*: the application for shares was unconditional, & he became a shareholder in the co.—*Re UNIVERSAL BANKING CO., ROGER'S CASE, HARRISON'S CASE* (1868), 3 Ch. App. 633; 18 L. T. 779; 16 W. R. 881, L. JJ.

Annotations:—*As to (2) Distd. Re London & Provincial Provident Asscn., Re Mogridge* (1888), 57 L. J. Ch. 932. *Reid. Re General Provident Assco., Bridger's Case* (1869), L. R. 9 Eq. 74; *Richards v. Home Assce. Asscn.* (1871), L. R. 6 C. P. 591.

1498. ———.]—M. having applied for the post of district manager to the P. co., the secretary on Apr. 15, 1887, sent to him a synopsis of terms, which required candidates to take shares in the co. On Apr. 21, the secretary wrote to M. that he had been selected for the post,

DARD FIRE INSURANCE CO., TURNER'S CASE (1884), 7 O. R. 448.—**CAN.**

o. ——— **As "mine doctor & director" — Appointment as "mine doctor" — Condition precedent.**]—L. was employed by defts., an incorporated co., to canvass for subscriptions for their capital stock, & obtained from pltf. an application for 10 shares at \$100 a share. L. sent the application to defts.' manager with a memorandum attached, signed by L., to the effect that the subscription was conditional upon the appointment of pltf. as "mine doctor & director." Pltf. was appointed "mine doctor," but was not elected a director, defts.' solr. advising that it would be illegal to appoint him. He acted as "mine doctor," & received pay therefor. No special allotment of shares was made to him, but he paid \$200 to defts. on account of his subscription. He claimed further remuneration for his services as physician & a return of the \$200, as having been paid upon a condition unfulfilled:—*Held*: the appointment of pltf. as "mine doctor" & his appointment as director were

conditions precedent to the contract to take shares.—*GILLESPIE v. CLOVER BAR COAL CO.* (1911), 16 W. L. R. 534; 3 Alta. L. R. 238.—**CAN.**

p. ——— **As medical referee—Condition precedent.**]—Previously to the incorporation of the G. Co., B., a physician, was approached by the promoters of the proposed co., & agreed to take certain shares in the co. subject to a condition that he should be appointed chief medical referee of the co. He signed an application in the ordinary form & paid a deposit of \$250, & gave his demand note for the balance upon the understanding that the note was not to be demanded until he received his appointment, & that, in the event of his not being appointed, the promoters would cancel his application & return his money. The co. was subsequently incorporated, but B. received no notice of allotment of his stock. Before commencing business, the co. went into liquidation. On an application by the liquidator to have B. placed upon the list of contributories, & upon B. applying for the return of the moneys paid by

him:—*Held*: the condition that B. should be appointed chief medical referee of the co. not having been fulfilled, he was entitled to have his name removed from the list of contributories.—*Re GREAT NORTHERN ASSURANCE CO., BLACK'S CASE* (1915), 32 W. L. R. 524; 9 W. W. R. 240; 25 D. L. R. 703; 25 Man. L. R. 670.—**CAN.**

q. ——— **Condition subsequent.**]—An agreement to take shares was made upon the condition that M. should be appointed to some local office in management of the bank & that his account should be taken over by the bank:—*Held*: assuming the condition to have been proved & the undertaking to have been that of the agent, the condition was a condition subsequent, & so no defence to a claim for payment for the shares, & M. was properly made a contributory.—*Re MONARCH BANK OF CANADA, MURPHY'S CASE* (1919), 45 O. L. R. 412.—**CAN.**

r. ——— **Collateral agreement.**]—Where a person was sued on a promissory note made by him for the price of shares in pltf. co., he set

& enclosed a share application, which was in form unconditional. On Apr. 27, M. returned the application signed, together with a cheque for the price of the shares, & he duly received notice of allotment of the shares, but he never received any share certificates. On Apr. 29, M. read something in a newspaper which made him unwilling to become a shareholder, & stopped his cheque. On Apr. 30, he received from the secretary for signature a document called the official appointment, containing onerous conditions which did not appear in the synopsis. He declined to sign the official appointment, & on May 3 he repudiated all connection with the co. On May 25 the co. went into voluntary liquidation. The liquidator sought to make M. liable as a contributory:—*Held*: the application for shares was conditional upon the appointment being obtained: the negotiations between M. & the secretary were binding on the co.; M. was entitled to reject the appointment; & his name ought to be struck off the list of contributories.—*Re LONDON & PROVINCIAL PROVIDENT ASSOCN., LTD., Re MOGRIDGE* (1888), 57 L. J. Ch. 932; 58 L. T. 801.

1499. Condition relating to retention of office—Secretary—Resignation before shares all taken up.]—The directors of a limited co., who were authorised by their arts. "to enter into, alter, rescind, or abandon contracts, in such manner as they should think fit," & also, by another clause in their arts., with the previous sanction of a general meeting, to purchase the co.'s shares, or reduce or cancel unissued or forfeited shares, accepted an offer from T., their paid secretary, to take 1,000 shares in order to raise money for the purposes of the co. After T. had taken & paid for 850 of the shares, he resigned his secretaryship, & the directors, in consideration of his resignation, resolved to relieve him from further payments in respect of such shares as he had agreed to take. The co. was subsequently wound up:—*Held*: the directors had not acted *ultra vires* in relieving T. from his obligation, & that T. was not a contributory.—*Re NANTEOS CONSOLS CO., THOMAS' CASE* (1872), 13 L. R. Eq. 437; 41 L. J. Ch. 365; 26 L. T. 386; 30 W. R. 479.

Annotation:—*Mentd. Re County Palatine Loan & Discount Co., Teasdale's Case* (1873), 29 L. T. 707.

1500. Condition relating to payment for shares—Calls to be set off against goods—Application absolute—Condition collateral.]—In July, 1863,

E. applied for 150 £10 shares in a co. on the faith of an agreement with a promoter, subsequently ratified, that he should only pay 30s. per share in cash, & that the further calls should be set off against goods. E. paid a deposit of 10s. per share, & the shares were allotted to him in Aug., when he paid the further sum of 20s. per share. He received the certificates & was entered on the register. No goods were ordered, & the co. having been ordered to be wound up:—*Held*: E. must be on the list of contributories.

Qu.: whether he could not sustain a claim against the co. to be indemnified against the calls, under the collateral contract to take shares only in payment for goods supplied.

The real points for determination in this case may be said to be this, did Messrs. E. intend & agree to become members & shareholders *in praesenti*, with a collateral agreement as to what was to be the effect of their becoming shareholders? Or on the other hand, did Messrs. E. agree that if & when a certain preliminary condition should be performed, & not otherwise, they would become members & shareholders. . . . It appears to me that it would be impossible to do otherwise than answer the first of these questions in the affirmative (LORD CAIRNS, L.J.).—*Re RICHMOND HILL HOTEL CO., ELKINGTON'S CASE* (1867), 2 Ch. App. 511; 36 L. J. Ch. 593; 16 L. T. 301; 15 W. R. 665, L. JJ.

Annotations:—*Distd. Re Richmond Hill Hotel Co., Pellatt's Case* (1867), 2 Ch. App. 527. *Consd. Re Saloon Steam Packet Co., Ex p. Fletcher* (1867), 37 L. J. Ch. 49. *Appld. Aberaman Ironworks v. Wickens* (1868), 18 L. T. 305. *Distd. Re Aldborough Hotel Co., Simpson's Case* (1869), 4 Ch. App. 184. *Consd. Re General Provident Assoc., Bridger's Case* (1870), 5 Ch. App. 305. *Refd. Re Anglo-Danish & Baltic Steam Navigation Co., Ex p. Sahlgreen & Carrall* (1867), 16 W. R. 121; *Ilfracombe Ry. v. Nash* (1870), 22 L. T. 209; *Re Metropolitan Public Carriage & Repository Co., Cleland's Case* (1872), L. R. 14 Eq. 387; *Paraguassu Steam Tramroad Co., Black's Case* (1872), 8 Ch. App. 254; *Re Harmony & Montague Tin & Copper Mining Co., Spargo's Case* (1873), 8 Ch. App. 407; *Re Limehouse Works Co., Coates' Case* (1873), L. R. 17 Eq. 169; *Re Church & Empire Fire Insee., Pagin & Gill's Case* (1877), 6 Ch. D. 681; *Re Johannesburg Hotel Co., Ex p. Zoutpansberg Prospecting Co., [1891]* 1 Ch. 119. *Mentd. Bailey v. Bowen* (1868), 37 L. J. Q. B. 61; *Re Oriental Commercial Bank, Barge's Case* (1868), L. R. 5 Eq. 420; *Ooregum Gold Mining Co. of India v. Roper, Wallroth v. Roper, [1892]* A. C. 125; *Re Wragg* (1897), 66 L. J. Ch. 419.

1501. — Calls to be paid out of commission—Application absolute—Condition collateral.]—A person employed by a newly established co. as a

up as a defence that pltf. had promised to place him in charge of certain of its operations:—*Held*: that was not a representation but a condition subsequent, or collateral agreement, which would not avail deft. for rescission of the principal agreement.—*PRINCESS COPPER MINES, LTD. v. TRELLE, [1922]* 3 W. W. R. 59; 65 D. L. R. 53.—CAN.

s. — — — — —.]—T. subscribed for ten shares in a co. & paid half the price in two instalments. He was employed by the co. for a short time with an understanding that his salary would enable him to pay for his shares; he was discharged after he had made the second payment. He asserted his subscription was conditional upon his employment:—*Held*: the agreement to employ T. was collateral to his subscription for the shares & he could not escape liability as a contributory.—*Re MANCHESTER STORES, LTD. (1922)*, 69 D. L. R. 669; 51 O. L. R. 637; 2 C. B. R. 365.—CAN.

t. — — — — — *As surveyor—Condition subsequent.*]—A. applied for shares in a co., his letter of application containing the following condition:

"This application is made on the distinct understanding that my firm is appointed surveyors to this co. over an average radius of thirty miles from Edinburgh & that my firm is also appointed advisory surveyors to the Advisory Board for Scotland at fees to be adjusted." He paid the amount due on application. His firm obtained the appointment as surveyors for the Edinburgh district, but were never made advisory surveyors to the Board for Scotland, the co. having gone into liquidation before that board was constituted:—*Held*: the application was one for an immediate allotment of shares provided the co. agreed to the conditions specified, & the condition as to the advisory surveyorship was not a condition precedent but subsequent & collateral to the contract, & meant that his firm should obtain the appointment when the board was constituted.—*NATIONAL HOUSE PROPERTY INVESTMENT CO., LTD. v. WATSON, [1908]* S. C. 888; 45 Sc. L. R. 712; 16 S. L. T. 96.—SCOT.

1500 i. Condition relating to payment for shares—Calls to be set off against goods—Application absolute—Condition collateral.]—Defts. subscribed under

seal for certain shares in the capital stock of pltf. co., promising & agreeing with each other & with pltf. to pay the full amount of the shares as & when payable:—*Held*: the evidence, set out in the report, showed only a collateral agreement or representation by the president of the provisional board that payment would be accepted in goods, & not a subscription conditional on such acceptance.—*KINGSTON STREET RY. CO. v. FOSTER* (1879), 44 U. C. R. 552.—CAN.

a. — — — — —.]—On motion by a trustee in bkpy. of an insolvent co. against persons liable as contributories in respect of their subscriptions for shares in the co.:—*Held*: the members of a partnership who had subscribed for ten shares of \$100 & with whom there was an agreement that the co. would purchase goods from the partnership & allow the first \$1,000 of goods to be applied in payment of the stock, were not relieved from payment by reason of goods not having been purchased to the full amount; the purchase was not a condition precedent to the subscription; the application of moneys owing for goods purchased upon the

Sect. 17.—The contract to take shares: Sub-sect. 1, B. (a) i.]

local agent to induce persons to take shares, applied for shares in the co., on an understanding that he was to pay the calls out of the commission he received on shares disposed of by him, & was not to be otherwise liable for calls. His application was made for the avowed purpose of giving the co. credit in his neighbourhood through his holding a considerable number of shares. He applied for shares by a letter in the usual form, accompanied by a letter referring to the conditions as to payment. Shares were allotted to him, & he was entered on the register:—*Held*: this was not a case of a conditional contract to take shares, but of an absolute contract coupled with a collateral agreement, & appct. was a contributory.—*Re GENERAL PROVIDENT ASSURANCE CO., BRIDGER'S CASE* (1870), 5 Ch. App. 305; 39 L. J. Ch. 478; 22 L. T. 737; 18 W. R. 412, L. J.

1502. — Shares to be kept & paid for out of commission on placing further issue—*Agreement to keep conditional on further issue.*—*Re MONARCH INSURANCE CO., GORRISSEN'S CASE*, No. 1480, *ante*.

1503. — Credit to be given out of specified fund—*Condition subsequent.*—A new co. was constituted to take over the liabilities & assets & carry on the business of an old co. R., a shareholder in the old co., declined to take shares in the new co., but was willing to pay a sum of money on condition that he was relieved from certain liabilities which he had incurred in respect of the old co. within two years. F. applied for shares in the co. on the condition of being credited with £1 per share paid into a fund by R. The shares applied for by F. were allotted to him, & his name was placed on the register, with the word "conditional" marked against it. F. transferred some of the shares for value to S. The co. went into liquidation. R. had never paid the fund into ct. not having been relieved from his liabilities, & the co., therefore, were not entitled to it, & the

condition attached to F.'s application was consequently not performed:—*Held*: the condition mentioned in F.'s application was a condition subsequent, which, after liquidation of the co., could not be enforced, & F. was therefore a member of the co. within 1862 Act, s. 23, & ought to be placed on the list of contributories, & S., his transferee, ought also to be placed on the list of contributories.—*Re SOUTHPORT & WEST LANCASHIRE BANKING CO., FISHER'S CASE, SHERINGTON'S CASE* (1885), 31 Ch. D. 120; 55 L. J. Ch. 497; 53 L. T. 832; 34 W. R. 49, 335; 2 T. L. R. 49, C. A.

Annotations:—*Mentd. Postlethwaite v. Port Phillip & Colonial Gold Mining Co.* (1889), 43 Ch. D. 452; *Re Macdonald*, [1894] 1 Ch. 89.

See, also, No. 6426, *post*.

1504. Condition of obtaining contract for work.]

—S., a builder, wrote a letter to the directors of a hotel co., stating that in consideration of the contract for making the alterations at the hotel being secured to him, he agreed to subscribe for 300 shares, & pay the deposit, as soon as he was satisfied that 1,500 shares, including his, had been subscribed for, & that the directors had passed a resolution that he should have the contract for the alterations. The calls on the shares were to be set off against the amount due on the contract. The directors accepted the application on the terms of his letter, & passed a resolution to the effect required. They then sent an unconditional notice of allotment of 300 shares to S., & entered his name for that amount on the register. S. did not return the notice of allotment; but, having ascertained that the resolution had been passed & 1,500 shares taken up, sent in a formal application & paid the deposit. No further allotment was made to S.; the certificates were not delivered to him, nor was he called upon to pay any calls. He afterwards attended two meetings of shareholders for the purpose of seeing that the contract was secured to him. No contract for alterations was ever prepared, & shortly afterwards the co. was wound up voluntarily:—*Held*: (1) the

price of the shares was merely a method of paying the price.—*Re MANCHESTER STORES, LTD.* (1922), 69 D. L. R. 669; 51 O. L. R. 637; 2 C. B. R. 365.—CAN.

b. — *Certain percentage to be paid before valid—Condition precedent.*—The act of incorporation of A. Co. provided that no subscription to stock should be legal or valid until 10 per cent should have been actually & *bona fide* paid thereon. This co. was amalgamated with B. Co., & when the latter was wound up, applts. were placed upon the list of contributories:—*Held*: applts., who had subscribed for stock but paid nothing thereon, were improperly made contributories.—*Re STANDARD FIRE INSURANCE CO., KELLY'S CASE, BARBER'S CASE, COPP, CLARK & CO.'S CASE, OASTON'S CASE* (1885), 12 A. R. 486; 12 S. C. R. 644.—CAN.

c. — *Shares to be kept & paid for when able.*—*NELSON v. FRASER* (1906), 14 S. L. T. 513.—SCOT.

1504 i. Condition of obtaining contract for work.]—Pltf., as a creditor of the co., sued deft., as a shareholder, for the amount remaining due on his shares. Deft. pleaded that it was agreed between deft. & the co. that if he would sign an agreement to take the shares the co. would give him a contract for the construction of the railway then to be constructed, & that unless & until the contract should be so given deft. should not be bound by the agreement or become thereby a shareholder; & in pursuance of said agree-

ment, & not otherwise, deft. signed the agreement. Deft. alleged that without any default on his part, the co. refused to give him the contract, & gave it to another; & that, except as aforesaid, he never subscribed for or became the owner of the shares. In another plea deft. alleged that he did subscribe for the shares on the same agreement; & that until the contract should be given to him he was not to be bound by such subscription; that the contract was given to another, as in the former plea; & that deft. had never paid, nor been asked to pay, anything on the shares, nor had he been recognised or treated, or done any act, as a shareholder in respect of said shares; & that, other than as aforesaid, he never subscribed for or became the owner of said shares:—*Held*: both pleas were good, as showing that deft. never became a shareholder so as to be liable to creditors.—*BULLIVANT v. MANNING* (1877), 41 U. C. R. 517.—CAN.

1504 ii. —Pltf., a creditor of a railway co., sued deft., as a shareholder for the amount unpaid on the shares. It appeared that deft. had signed the stock book of the co. for forty shares, but he alleged that this was done upon the faith of an oral agreement with L., a provisional director & chief promoter of the co., that deft. & another should receive the contract for building the road. Deft. had not received any formal notice of the allotment of the shares, but he paid 10 per cent thereon, because, as he alleged, L. told him

that he would not get the contract unless he paid it. He also attended a meeting of the shareholders, & seconded a resolution granting an allowance to the directors:—*Held*: the payment of the 10 per cent made him a shareholder, & he could not repudiate his liability on the ground that he had not been awarded the contract, for L. had no power to bind the co. by annexing such an agreement to his subscription.—*WILSON v. GINTY* (1878), 3 A. R. 124.—CAN.

1504 iii. —Pltf., a creditor of a railway co., sued deft., as a shareholder therein, for unpaid stock. Deft. had signed the stock-book which was headed with an agreement by the subscribers to become stockholders for the amount set opposite their respective names, & upon allotment by the co., "of my or our said respective shares," they covenanted to pay the co. 10 per cent of the amount of said shares & all further calls. A resolution was subsequently passed by the co. instructing their secretary to issue allotment certificates to each shareholder for the shares held by him. The secretary accordingly prepared such certificates, the one for deft. representing that the co. "in accordance with your application for fifty shares," etc., "have allotted you shares amounting to \$5,000." These certificates were not sent to the shareholders, but were handed to the co.'s brokers for delivery to them. The brokers published a notice in a daily paper that these certificates were lying at their office, but did not send written

contract to take the shares was conditional on S. having the contract to make the alterations; (2) the condition was not performed by the mere passing of the resolution that S. should have the contract; (3) S. had not waived the condition by not returning the notice of allotment, or by attending the meetings of shareholders; (4) S. was, therefore, not a contributory of the co. —*Re ALDBOROUGH HOTEL CO., SIMPSON'S CASE* (1869), 4 Ch. App. 184; 39 L. J. Ch. 121; 17 W. R. 424, L. JJ.

Annotation:—As to (3) Rejd. Re Tavarone Mining Co., Pritchard's Case (1873), 28 L. T. 625.

1505. —.]—Messrs. R., contractors, made an offer to the H. co. to execute certain works contemplated by the co. on certain terms, & to take paid-up shares in the co. to the extent of one-fourth of the contract. Their offer was accepted with certain modifications, & an agreement was accordingly executed in July, 1865, between Messrs. R. & the co., whereby it was agreed that Messrs. R. should take 2,000 £10 shares in the co., on which they were to pay £3 per share, & that the co. should give them possession of the land required for the works within six weeks from the date of the agreement, or as soon thereafter as might be practicable. The co. did not get possession of the land till Mar. 1866, & were consequently unable to fulfil their part of the agreement. Messrs. R. in Dec. 1865, threatened to file a bill to set aside the contract, but they did not do so till Apr. 1867, having in the meantime negotiated with the co. with a view to having the contract price raised:—*Held*: time was of the essence of the contract, & the agreement to take the shares was conditional on Messrs. R. having the contract, but the delay made by them in filing their bill was fatal.—*RANKIN v. HOP & MALT EXCHANGE CO.* (1869), 20 L. T. 207.

1506. Agreements to take shares on amalgamation of companies—Conditional on amalgamation being carried out.—A contract was entered into between co. H. & co. L., that the former co. should

purchase the business & property of the latter co. The contract contained a proviso that if by July 1, 1869, there should not be allotted & registered in the books of co. H., in the names of responsible parties, at least 2,500 shares, either co. might, within ten days, rescind the contract. £6,000 part of the purchase-money, was to be paid at once, & the balance partly in shares of the H. co., which were to be allotted to such of the shareholders in the L. co. as should agree to accept them in lieu of their shares in the L. co., & paid-up to the same extent. S., the chairman of the L. co., signed an undertaking to the H. co. that if certain specified shareholders in the L. co. did not apply for shares in the H. co., he himself would apply for & take an allotment of such shares. The £6,000 deposit was paid by the H. co. to the L. co. & was by them handed over to S. in discharge of some liabilities which he had incurred for them. The requisite number of shares in the H. co. was not allotted by July 1, 1869, & within ten days the L. co. rescinded the contract. The H. co. put S. on their register for the shares referred to in his undertaking:—*Held*: the undertaking signed by S. was only an agreement to take shares, conditionally upon the contract for purchase being carried out, & therefore, he was entitled to have his name removed from the register of co. H.—*SIMPSON v. HEATON'S STEEL & IRON CO., LTD.* (1871), 25 L. T. 179; 19 W. R. 614, L. JJ.

Annotation:—Mentd. Re Tees Bottle Co., Davies' Case (1875), 33 L. T. 834.

1507. — — —.]—The S. insurance co., which was a Scotch co., was empowered by its arts. of assocn. to sell & dispose of its business to any other co., but the arts. contained no express power to amalgamate with another co. By an agreement between the S. co. & the E. co. the S. co. agreed to transfer its business to the E. co. on the terms that the shareholders in the S. co. should receive shares in the E. co. in exchange for their shares in the S. co. The agreement was approved by the shareholders of the S. co. at a general meeting, &

notices to the subscribers. Deft. never called for or received his certificates of allotment & never paid the 10 per cent. He swore that he signed upon a verbal agreement with one L., a promoter & a provisional director of the co., that he & another should receive the contract for building the road, which was never awarded to them; & that he never had any notice of the allotment having been made to him:—*Held*: deft. was not liable, as the evidence was not sufficient to prove notice of allotment to him; & if he had received notice of allotment, the fact that the contract was not awarded, as promised, would have formed no defence, as L. had no power to bind the co. by annexing such an agreement to his subscription.—*NASMITH v. MANING* (1881), 5 S. C. R. 417.—CAN.

d. Application for shares — Subsequent compromise.—C. subscribed for 160 shares in the H. Co., the subscription list being headed: "We subscribe for & agree to take the number of shares of the capital stock of the H. Co. set opposite our signatures, & to pay on account thereof 50 per cent to the secretary-treasurer of the co. in quarterly payments of 12½ per cent each of the amounts subscribed for by us respectively, the first of such payments to be made on Feb. 1, 1882." One of the by-laws of the co. provided for the calling of the second 50 per cent of the stock subscribed at any time after Nov. 1, 1882, on thirty days' notice. In Aug., 1883, the president of the co. arranged with C. that he should sign for eighty shares on the terms of a new stock-book which had

been opened, & that C.'s original stock was to be treated as cancelled. C. accordingly signed the new book. This arrangement with C. was never communicated to the shareholders of the co. In Jan., 1884, a winding-up order was made, & C. was subsequently declared a contributory to the amount of 160 shares. C. appealed, claiming to be a contributory only to the amount of eighty shares, on the ground that the arrangement of Aug. 1883, was a valid compromise, entered into with him because he subscribed originally on the understanding that the co. was not to go into operation before all the stock was subscribed for, & that only 50 per cent of his subscription would have to be paid:—*Held*: the subscription was unconditional, & though expressly providing for payment of 50 per cent, it was not inconsistent with the balance being paid when required.—*FUCHES v. HAMILTON TRIBUNE PRINTING & PUBLISHING CO., COPP'S CASE*, (1885), 10 O. R. 497.—CAN.

e. Conditional acceptance of shares —Condition not carried out—Collateral agreement.—An agent for promoters of co. about to be formed told persons residing at S. that if they took shares in the proposed co. the whole of the money paid for shares taken up at S. would be applied in building a butter factory which would then become their own property, & if the factory was not erected the money would be returned intact. In some cases this was stated on receipts for money subscribed. Shares were allotted to applicants, notices of meeting & calls sent to them, & they

paid calls. Before the factory was erected the co. went into liquidation:—*Held*: there was a contract *in presenti* to take shares containing agreement that something should be done after membership was completed & those persons must be on list of contributories.—*Re AUSTRALIAN PRODUCERS & TRADERS, LTD.*, [1906] V. L. R. 511.—AUS.

f. — — —.]—A. agreed with B., as agent for a proposed co., to sell to him certain land, to be paid for partly in cash & partly on terms. The contract contained an undertaking by A. to apply for shares in the co. to be paid for by A. The contract was assigned by B. to the co. when formed & A. became the registered holder of the shares. The co. failed to complete the contract of sale. The co. having gone into liquidation A. applied for removal of his name from the list of contributories:—*Held*: the agreement to take the shares being collateral & unqualified, & not conditional on payment for the land being made by the co., the application must fail.—*Re SARRA* (1919), V. L. R. 667.—AUS.

g. — — — *Condition precedent.*—Upon a sale of shares of the capital stock of an incorporated co., the agreement of sale contained a covenant by the vendee, deft., to pay the purchase-money; a clause (2) by which the vendors, plaintiffs, guaranteed that the assets of the co. consisted of the property set forth in a schedule; & a clause (6) by which plaintiffs guaranteed that the assets of the co., over & above

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a deed of transfer was executed by the co. & sent to the E. co., but before its execution by the E. co. had been completed according to the formalities of the Scotch law a petition was presented under which the E. co. was wound up. D., a shareholder & director of the S. co., sent in his share certificates to the secretary of his co. to be exchanged, & certificates of shares in the E. co. were forwarded to him in exchange, but he did not answer the letter or sign the receipt for the shares, & after the petition for winding up the E. co. had been presented he returned the certificates & refused to accept the shares:—*Held*: (1) the amalgamation was *ultra vires*, not being a sale within the powers of the S. co.; (2) if it had been *intra vires* it was never completed; (3) although D. had taken a prominent part in the negotiations, his sending in his certificates was conditional on the amalgamation being valid & finally completed; & having entered into no personal negotiation with the E. co., he was not bound to be a shareholder in that co. His name, therefore, was removed from the list of contributories.

A power given to a special general meeting of a co. "to sell, dispose or otherwise deal with" the business, etc., of the co., does not authorise a transfer of the business to another co. upon the terms of an exchange by the members of the transferring co. of their shares in that co. for shares in the transferee co.—*Re EMPIRE ASSURANCE CORPN., DOUGAN'S CASE* (1873), 8 Ch. App. 540; 42 L. J. Ch. 460; 28 L. T. 649; 21 W. R. 495, L. JJ.

Annotation:—*Generally, Mentd. Re United Ports & General Insee., Beck's Case* (1874), 30 L. T. 346.

certain specified ones, were correctly set forth in the schedule, & provided that if, upon investigation & examination, it turned out that the assets or any of them were not forthcoming & could not be delivered, the value of the deficiency should be estimated by arbitrators & the amount of their award deducted from the purchase money. Deft. alleged a deficiency in timber lands set forth in the schedule, & an arbitration was held & an award made finding the extent of the deficiency of the timber & the value thereof. The award was set aside, by an order of the ct., not appealed from, on the ground that the arbitrators had no power to decide upon the extent of the deficiency, but only upon the value, after the extent had been otherwise ascertained. Pltfs. having brought this action for the balance of the price of the shares, deft. alleged a deficiency in the timber, but did not counterclaim in respect thereof:—*Held*: the covenant to pay the purchase money was independent of the covenants contained in clauses 2 & 6; & assuming that clause 2 was independent of 6, it was open to deft. to counterclaim under 2, & to prove the deficiency, if any, & the value of it, & in this way obtain the fulfilment by pltfs. of the guaranty; but deft. had not done this; & he should not, upon appeal from a judgment in favour of pltfs., be allowed to amend.—*CUDDY v. CAMERON* (1911), 19 W. L. R. 282; 1 W. W. R. 35.—CAN.

h. — On new shares being allotted—Condition precedent.]—On T.'s application the ct. ordered his name to be removed from the register of members in respect of his shares on the ground that his application for shares was, upon its terms, conditional on 7,500 shares of the new issue being allotted.—MURRAY v. LEONARD HEAT ELECTRIC CO., LTD. (IN LIQUIDATION), [1922] V. L. R. 728.—AUS.

*k. — Subsequent agreement.]—Application by liquidator to place J. & M. on the list of contributories in the winding up of a co. The J. & M. Co. of T., who had purchased the business of the H. Co. of W., & had carried on business for some time under the latter name petitioned in Aug. 1905, for incorporation as a joint-stock co. under the name of the J. & M. Co. of M. On this petition J., one of petitioners, subscribed \$7,000 stock. After incorporation J. & M. each subscribed shares to the value of \$20,000, which they agreed to pay up as & when demanded by the co. These were duly allotted to them. In Sept. an agreement between J. & M. & the co. was executed by which the co., for the consideration therein expressed, agreed to issue fully paid-up & non-assessable shares to them, being those for which they had already subscribed, & it was in consequence of this agreement that J. & M. sought to escape liability:—*Held*: the original agreement under which J. & M. subscribed for the shares was separate from the later agreement of Sept., the former not being conditional on the terms of the latter. J. & M. were not applying for shares conditionally & were each liable to the extent of \$20,000.—*Re JONES & MOORE ELECTRIC CO. OF MANITOBA* (1908), 7 W. L. R. 527.—CAN.*

*l. Agreement to take shares on reorganisation of company—Conditional on reorganisation being carried out.]—Pltf., suing as assignee of an appeal bond given by dofts. to G. & M. on an appeal, which was dismissed, by S. & the H. Co. from a judgment recovered by G. & M., claimed the amount of the judgment with costs & interest, less a sum realised by the sheriff on G. & M.'s *fl. fa.* goods by the sale to pltf. of a mill & fixtures erected by the H. Co., on Crown lands, which the co. occupied under a letter*

1508. — — —.]—Re LOVIBOND & SONS (1900), LTD. (1901), 17 T. L. R. 315.

See, also, Nos. 1510, 1667, 1673, 1674, 1717, 2319, post.

1509. Conditional appointment of specified director.]—Re LONDON & HAMBURG BANK, Ex p. PRESTON & HENRY, No. 1528, post.

Compare Nos. 783, 784, ante.

*1510. Application for shares in company "if limited"—Applicant with notice that company unlimited—Application not conditional.]—A shareholder in a limited co. A., which was being amalgamated with an unlimited co. B., received a printed form of application for shares in B. co., which he filled up with an application for ten shares, inserting, in writing, after the word "co.," the words "if limited." The answer he received in May, 1869, was, that the directors of B. co., had considered his application & had allotted him ten shares "in pursuance thereof," & had entered his name in the register. On June 1, 1869, he wrote, "Send me certificate for my ten shares in exchange for this allotment letter." The certificates were sent. Nothing more was done until Nov. 6, 1869, when the co. was ordered to be wound up. In the form of application for shares, & in the allotment letter, the A. co. was always properly described as "limited," & the B. co. was properly described without that word. The appct. upon being settled on the list of contributories, sought to be relieved, on the ground that what he had contracted for were shares in a limited co.:—*Held*: (1) the absence of the word "limited" was sufficient notice to the appct., especially to a shareholder in a limited co., that the co. for shares in which he was applying was unlimited; & the insertion by him of the words "if limited" into*

of license from the commr. of Crown lands. Dofts. were shareholders in the co., & after the sheriff's sale they & pltf. agreed to take steps to reorganise the co., pltf. to accept shares in satisfaction of his claim. This agreement, which pltf. had refused to carry out, was relied on as a defence to this action. At the trial the judge held that the agreement was too vague for specific performance, & was therefore no defence; & being of opinion that nothing passed by the sheriff's sale to pltf., he gave judgment for the whole amount of the original judgment of G. & M. with costs & interest, against the wish of pltf., who claimed only the reduced amount. Dofts. moved against the judgment respecting the agreement, & a div. ct. of two judges, while agreeing that it was too vague for specific performance, differed as to its affording a defence to the action. Pltf. also moved to reduce his judgment by deducting the amount of his bid at the sheriff's sale; but that order, by reason of the judges disagreeing, was not granted:—*Held*: the agreement was only to accept shares in case the co. was reorganised, & such agreement afforded no defence to this action; & the judgment could properly be varied by entering it for the reduced amount.—*BRUNDAGE v. HOWARD* (1885), 13 A. R. 337.—CAN.

m. Application for shares—Conditional on no further calls being made thereon.]—Deft. applied for shares on condition that no further calls would be made thereon, & the shares were allotted him on said condition. He gave his cheque in payment, & proxy to vote on said shares, but objection was raised as to his right to vote on the shares, as they had been sold at a very large discount. When deft. was informed of the objection being raised he at once stopped payment of his cheque & informed the president that he would have nothing to do

the form of application was not effectual in imposing a condition upon the contract; (2) he had lost any right to relief against the co. which he might otherwise have had, by delay & acquiescence.—*Re UNITED PORTS INSURANCE CO., PERRETT'S CASE* (1873), 15 L. R. Eq. 250; 42 L. J. Ch. 305; 28 L. T. 255; 21 W. R. 401.

1511. Subscription of total capital.]—*GALVANIZED IRON CO. v. WESTOBY*, No. 1189, *ante*.

1512. Joint applicant for shares—Each applicant to take specified number—Conditional on each taking shares.]—*Re INTERNATIONAL MINING SYNDICATE, LTD., Ex p. SMITH, Re INTERNATIONAL MINING SYNDICATE, LTD., Ex p. SIMPSON*, No. 1489, *ante*.

See, further, cases in Sub-sect. 3, D. (b) ii., *post*.

Conditional acceptance of shares offered by company.]—See No. 1487, *ante*.

Condition not disclosed to company—Known to agent of promoter—Underwriting agreement.]—See No. 1174, *ante*.

ii. Effect of Conditional Applications or Agreements.

1513. Illegal condition—No defence to statutable liability for calls.]—By an agreement, dated July, 1847, A. agreed with an incorporated railway co. to take certain shares & to pay £4 per share in respect thereof on or before Aug. 15, 1847, & that so soon as £15 per share should have been paid on the shares, & the co. was in a position legally to do so, they should deliver to A. mtge. debentures of the railway co., bearing interest, for the sum of £24,675 being at the rate of £5 per share. This agreement was duly confirmed by the co. & A.'s name was in consequence of it, & without any other authority, entered in the register of shareholders, & he had notice of such entry & register on such authority, & confirmed & ratified the same & assented thereto. A. was elected & acted as a director of the co. after the making the agreement, & his name remained on the register as the person entitled to these shares, until a call was, in Dec. 1847, duly made upon them, of which he had due notice. In an action against A. to recover the call, the register of shareholders, duly authenticated & containing an entry of A.'s name as a shareholder, was produced at the trial:—*Held*: (1) A. was liable as a registered shareholder to the call; (2) assuming the stipulation as to the delivery of the mtge. debentures to be illegal, it would be no defence to an action brought, not upon an executory contract, but on the statutable liability to pay calls; (3) but, the

stipulation being merely that the co. would deliver the mtge. debentures when they were in a position legally to do so, was not illegal, & would not vitiate the contract on the part of A., & therefore an action for the call made in Dec. 1847, might be maintained without proof that A. had paid the £4 per share.—*WEST CORNWALL RY. CO. v. MOWATT* (1850), 15 Q. B. 521; 19 L. J. Q. B. 478; 15 L. T. O. S. 247; 15 Jur. 101; 117 E. R. 556.

Annotation:—*Generally, Mentd. Brighton Arcade Co. v. Dowling* (1868), 37 L. J. C. P. 125.

1514. Condition must be intra vires the company.]—In July, 1863, P. applied for fifty £10 shares in a co. on the faith of an agreement with a director that he should receive orders for goods to the extent of at least £1,000, that he should only pay 30s. per share in cash, & that the calls for the rest should be set off against the goods. He paid, on application, a deposit of 10s. per share. The agreement was, with an additional term, ratified by the board of directors in Nov. 1863. In Dec. 1863, P. wrote to the co., declining to proceed further in the matter. In July, 1864, the secretary wrote to P., requiring him to pay £3 10s. per share for calls. No letter of allotment had ever been sent to P., but he had been put on the register. In Nov. 1866, an order was made for winding-up the co.:—*Held*: (1) P. was not a contributory, for he had only agreed to take shares upon the conditions of the special agreement as to set-off, which, if *ultra vires* of the directors, was not binding on the co., & therefore, for want of mutuality, not binding on P.: & if *intra vires*, was still not enforceable against P., because the stipulations on the part of the co. had become incapable of being performed. An agreement that the calls payable by a tradesman who is a shareholder in a co. shall not be payable in cash, but only by set-off against goods supplied by him, is in general *ultra vires*; (2) where a person applies for shares in a co., there is in general no binding contract to take shares until the co. have communicated to him an allotment of shares.—*Re RICHMOND HILL HOTEL CO., PELLATT'S CASE* (1867), 2 Ch. App. 527; 36 L. J. Ch. 613; 16 L. T. 442; 15 W. R. 726, L.JJ.

Annotations:—As to (1) *Appld. Re Aldborough Hotel Co., Simpson's Case* (1869), 4 Ch. App. 184. *Distd. Re Patent Paper Manufacturing Co., Addison's Case* (1869), 21 L. T. 654. *Consd. Gardner v. Iredale*, [1912] 1 Ch. 700. *Reid. Re Oriental Commercial Bank, Barge's Case* (1868), 18 L. T. 227; *Re General Provident Assce., Bridger's Case* (1869), L. R. 9 Eq. 74; *Re Nanteos Consols Mining Co., Thomas's Case* (1872), 20 W. R. 479; *Paraguassu Steam Tramroad Co., Black's Case* (1872), 8 Ch. App. 254; *Re Harmony & Montague Tin & Copper Mining Co., Spargo's*

with the shares:—*Held*: deft.'s name should be removed from the list of contributories.—*Re LAKE ONTARIO NAVIGATION CO.* (1910), 15 O. W. R. 23; 20 O. L. R. 191.—CAN.

n. Sub-underwriter applying for shares—Sub-underwriting contract not known to company.]—An offer to underwrite a specified number of shares was made on a printed form of letter by a sub-underwriter who forwarded the complete letter to the underwriter, along with an application addressed to the co. issuing the shares for the specified number of shares & a cheque in their favour for the amount payable on application. The letter bore that the sub-underwriting contract & the application should be irrevocable. The underwriter signed a docquet of acceptance printed on the letter & retained the letter, but made no intimation of his acceptance to the sub-underwriter. The sub-underwriter's application for shares & his cheque were afterwards forwarded by the underwriter to the co., but no men-

tion was made to the co. of the sub-underwriting contract. The sub-underwriter received an allotment of shares to the number applied for, & his cheque was cashed by the co. Thereafter he refused to pay instalments on the ground that the underwriter having failed to intimate acceptance of his offer, had no authority to transmit his application to the co. In an action at the instance of the co. against the subunderwriter:—*Held*: the application to the co. for the shares was a firm application, but was not conditioned by the terms of the sub-underwriting letter; & accordingly the allotment to the sub-underwriter was valid.—*PREMIER BRIQUETTE CO. v. GRAY*, [1922] S. C. 329.—SCOT.

PART III. SECT. 17, SUB-SECT. 1.—B. (a) ii.

1514 i. Condition must be intra vires the company.]—Shares were issued by a railway co. under a private Act which gave them power to issue shares

under conditions or terms. The shares so issued were to be redeemable at the option of the shareholders. The question was whether such a term or condition was one which could be validly attached to the issue of shares under the Act & whether, if not, the company could repudiate such terms & conditions as being *ultra vires*.—*Held*: such term as to redemption was contrary to public policy & *ultra vires*, & the shareholders became shareholders & must remain as such.—*POTT & MURRAY v. DUBLIN, WICKLOW & WEXFORD RY. CO.* (1869), 1 R. 3 C. L. 421.—IR.

1514 ii. —.]—A. applied for shares in a co., & paid the amount due on application, on the express condition that the firm of which he was a member should be appointed to a certain office, & that he should be at liberty to pay up the balance due upon his shares by fees to be earned by the firm. Before the balance had been paid, the co. went into liquidation. The co. & its liquidator sued A. for the amount

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Case (1873), 8 Ch. App. 407; *Re Limehouse Works Co.*, Coates Case (1873), L. R. 17 Eq. 169; *Re Church & Empire Fire Insce.*, Pagin & Gill's Case (1877), 6 Ch. D. 681; *Re Johannesburg Hotel Co.*, *Ex p.* Zoutspansberg Prospecting Co., [1891] 1 Ch. 119; Ooregum Gold Mining Co. of India v. Roper, Wallroth v. Roper, [1892] A. C. 125; *Re Wragg*, [1897] 1 Ch. 796. As to (2) *Consd. Re International Contract Co.*, Levita's Case (1867), 3 Ch. App. 36; *Re Saloon Steam Packet Co.*, *Ex p.* Fletcher (1867), 37 L. J. Ch. 49. *Fold.* British & American Telegraph Co. v. Colson (1871), L. R. 6 Exch. 108. *Reid.* *Re Universal Banking Corp.*, Gunn's Case (1867), 3 Ch. App. 40; *Re Peruvian Rys.*, *Ex p.* Wallis (1868), 18 L. T. 676; *Re Universal Banking Co.*, Rogers' Case, Harrison's Case (1868), 3 Ch. App. 633; *Re Cheltenham & Swansea Ry. Carriage & Waggon Co.*, Little's Case (1869), 20 L. T. 162; *Ilfracombe Ry. v. Nash* (1870), 22 L. T. 209; *Re Home Assoe. Assocn.*, *Ex p.* Richards (1871), 40 L. J. C. P. 290; *Richards v. Home Assoe. Assocn.* (1871), L. R. 6 C. P. 591; *Re United Ports Co.*, Adams' Case (1872), L. R. 13 Eq. 474; *Re Northern Electric Wire & Cable Manufacturing Co.*, *Ex p.* Hall (1890), 63 L. T. 369. *Generally, Mentd.* *Re Bowron*, Bailly, Bailly's Case (1868), L. R. 5 Eq. 428.

1515. ——In 1858 A. applied for a hundred shares in a co., on the faith of a resolution by which the directors were authorised to enter into negotiations with parties for the investment of capital in the shares of the co. on condition of such shares being cancelled, & the amounts so invested therein being returned to the parties on their giving one month's notice within a limited period. The shares were duly allotted to A., & registered in his name, & he paid £500, in respect of them. He afterwards, in 1859, gave notice in accordance with the condition; the £500 was thereupon repaid to him, & he transferred the shares to a nominee of the directors, & his name thenceforth ceased to appear on the register. The winding up of the co. commenced in 1868:—*Held*: the condition subject to which A. took the shares was *ultra vires* & void, & his name must be fixed on the list of contributories, notwithstanding the lapse of time during which his name had not appeared on the register.—*Re PATENT PAPER MANUFACTURING CO.*, ADDISON'S CASE (1869), 21 L. T. 654; *affd.* on other grounds (1870), 5 Ch. App. 294, L. J.

Annotation:—Mentd. *Re Veuve Monnier*, *Ex p.* Bloomenthal (1896), 44 W. R. 577.

1516. Condition must be accepted by company.]—The deed of settlement of a co. provided that the directors should allot shares not subscribed for in such manner as they should deem best. Three directors formed a quorum. A delegation of the power to two of their number & the manager was held to be invalid. A. in reply to a circular offering him some reserved shares, accepted them upon a condition. The directors had not their attention called to the condition, & passed no resolution in reference to it; they resolved, however, that shares remaining undistributed

unpaid upon his shares:—*Held*: it was *ultra vires* of the directors to agree to the stipulation as to payment for the shares, & defender was not a shareholder & was entitled to absolver.—*NATIONAL HOUSE PROPERTY INVESTMENT CO., LTD. v. WATSON*, [1908] S. C. 888; 54 Sc. L. R. 712; 16 S. L. T. 96.—SCOT.

o. Condition must be fulfilled.]—Where an application for shares in a co. is conditional on a certain event happening, the appct. cannot be placed on the list of contributories where that event has not happened.—*Re GAMBRINUS LAGER BEER BREWERY CO., LTD.* (1886), 12 V. L. R. 446.—AUS.

p. ——Where a conditional agreement to take shares in a co. is broken the shareholder is freed from liability on such shares. Where the

agreement is collateral the shareholder is liable on such shares, but has a right of action for indemnity or damages against such co.—*CLARKE v. UNION FIRE INSURANCE CO.*, CASTON'S CASE (1884), 10 P. R. 339.—CAN.

q. — Agreement conditioned on vesting of property.]—Appls. agreed to sell land to the co. for the price of \$5,000 in cash & 6,500 fully paid-up shares, to be allotted & issued upon the vesting in the co. of the title to the land. Appls. failed to make title to the land, & a new arrangement was entered into, by which the shares were at once allotted, & a bond was taken in a penal sum, conditioned upon the making of title. In the winding up of the co., the liquidator sought to make appls. liable as contributories in respect of part of the block of

should be allotted by two of their number & the manager; & shortly afterwards the manager wrote to A., saying that the shares accepted by him had been allotted to him. Upon the co. being wound up:—*Held*: A.'s name must be removed from the list of contributories in respect of the shares in question, there having been no acceptance of his conditional offer, & there being no mutuality, inasmuch as the shares, if considered as allotted under the resolution, had been improperly allotted.—*Re LEEDS BANKING CO.*, HOWARD'S CASE (1866), 1 Ch. App. 561; 36 L. J. Ch. 42; 14 L. T. 747; 12 Jur. N. S. 655; 14 W. R. 942, L. JJ.

Annotations:—Reid. *Re Imperial Land Co. of Marseilles*, Harris' Case (1872), 7 Ch. App. 589, n.; *New Sombrero Phosphate Co. v. Erlanger* (1877), 5 Ch. D. 73.

1517. — Application not acknowledged—Applicant put on register of shareholders.]—S., a railway carriage builder, had an interview with the secretary of a co. which had just been formed for dealing in carriages, as to S. taking shares, & paying the calls in rolling stock. He then sent in an application requesting the directors to allot him 2,000 shares, all future calls to be paid "in rolling stock, as arranged." The directors returned no answer, but put his name on the register of shareholders for 2,000 shares. He never received notices, nor was treated as a shareholder:—*Held*: there was no concluded contract by S. to take shares, & he was not a contributory.—*Re ROLLING STOCK CO. OF IRELAND*, SHACKLEFORD'S CASE (1866), 1 Ch. App. 567; 35 L. J. Ch. 818; 15 L. T. 129; 12 Jur. N. S. 695; 14 W. R. 1001, L. JJ.

Annotations:—Reid. *Re Universal Banking Co.*, Rogers' Case, Harrison's Case (1868), 3 Ch. App. 633; *Re General Provident Assoe.*, Bridger's Case (1869), L. R. 9 Eq. 74.

1518. Necessity for fulfilment of condition—Agreement conditioned on raising of specified capital—Business begun before whole capital raised.]—A prospectus was issued for the formation of a co., with a certain capital to be raised by a certain number of shares. The directors commenced operations & entered into contracts relating to them, but the whole of the proposed capital was not raised, & only a small number of the shares were taken:—*Held*: a subscriber was not liable upon such contracts of the directors, without proof that he knew & assented to their proceeding on the smaller capital.—*PITCHFORD v. DAVIS* (1839), 5 M. & W. 2; 2 Horn & H. 9; 8 L. J. Ex. 157; 3 J. P. 325; 3 Jur. 408; 151 E. R. 1.

Annotations:—Apld. *Galvanized Iron Co. v. Westoby* (1852), 8 Exch. 17. *Reid.* *Hawken v. Bourne* (1841), 8 M. & W. 703; *Walstab v. Spottiswoode* (1846), 15 M. & W. 501; *Wontner v. Shairp* (1846), 2 Car. & Kir. 273; *Moore v. Garwood* (1849), 19 L. J. Ex. 15; *Peel v. Thomas* (1855), 3 C. L. R. 397; *London & Continental Assoe. Soc. v. Rodgrave* (1858), 4 C. B. N. S. 524.

6,500 shares, applts. never having transferred the land & having acted as shareholders in respect of the shares allotted to them:—*Held*: applts. could not be made liable as upon a contract to pay in cash; that was not their contract; & their liability in damages for the breach of their contract could not be enforced in the winding up proceedings.—*Re MODERN HOUSE MANUFACTURING CO.*, DOUGHERTY & GOUDY'S CASE (1918), 28 O. L. R. 237; 4 O. W. N. 861; 12 D. L. R. 217; 14 D. L. R. 257; 29 O. L. R. 266.—CAN.

r. — Application conditioned on appointment as director.]—A. who was the holder of fifty shares in a co. entered into an agreement with the co. through its managing director to take 150 more shares on the condition that he was to be appointed a director

1519. ——.]—*GALVANIZED IRON CO. v. WESTOBY*, No. 1189, *ante*.

1520. ——. Application conditioned on making gift of money & shares—Repudiation of agreement to make gift.]—Provisional directors entered into an agreement to give A., the projector, £2,500 in money, & £2,500 in paid-up shares. The agreement did not appear in the deed of settlement which A. had executed for 350 of those shares:—*Held*: the co. were not bound by the agreement, & although they repudiated it, still A. was liable unconditionally as a contributory in respect of the 350 shares.—*Re COSMOPOLITAN LIFE ASSURANCE CO., NICKOLL'S CASE* (1857), 24 Beav. 639; 53 E. R. 505.

Annotations:—*Refd. Re Anglesea Colliery Co.* (1866), L. R. 2 Eq. 379. *Mentd. Western of Canada Oil Lands & Works Co., Re Carling, Hespeler & Walsh's Cases* (1875), 1 Ch. D. 115.

1521. ——. Application conditioned on obtaining contract—Contract never reduced to terms.]—W. applied in writing for shares in a joint-stock co., subject to a condition that he should have the supplying of certain articles required by the co. Shares were allotted to him, but the co. never having come to any definite arrangement as to his supplying them with the articles mentioned in the condition, he neither signed the arts. of assocn., paid any deposit, nor did any act amounting to an unqualified acceptance of the shares. The co. being afterwards wound up in the Ct. of Bkpcy., under 1856 Act:—*Held*: W.'s name ought not to be placed on the list of contributories.—*Re SUNKEN VESSELS RECOVERY CO., LTD., WOOD'S CASE* (1858), 3 De G. & J. 85; 28 L. J. Ch. 899; 2 L. T. 68; 5 Jur. N. S. 1377; 44 E. R. 1201, L. J.

Annotations:—*Refd. Re Rolling Stock Co. of Ireland, Shackelford's Case* (1866), 1 Ch. App. 570, n. *Mentd. Re National Patent Steam Fuel Co., Ex p. Barton* (1859), 33 L. T. O. S. 99.

1522. ——. Agreement conditioned on appointment as agents.]—*Re ANGLO-DANISH & BALTIC STEAM NAVIGATION CO., SAHLGREEN & CARRALL'S CASE*, No. 1715, *post*.

1523. ——. Non-performance of agreement by managing director.]—B. was induced by S., the managing director of a co., to sign an application for 1,000 shares in the co., on the understanding that such application should not be sent in to the directors until S. had either satisfied or given security for the necessary payments. Subsequently B. became a director of the co., & an advertisement was issued under his authority, representing the subscribed capital of the co. to be greatly in excess of what it really was. No application was presented to the directors, & no payments or formal allotment made in respect of the shares, but B.'s name was placed on the

register as the holder of them. As soon as this fact was brought to B.'s knowledge he repudiated the shares, but on the co. being wound up, his name appeared on the register:—*Held*: his name had been improperly placed on the register, & must be struck off.—*Re UNIVERSAL BANKING CO., BARTLETT'S CASE* (1868), 19 L. T. 628; *sub nom. Re UNIVERSAL BANKING CO., LTD., BARTLETT'S CASE, MACKRETH'S CASE*, 17 W. R. 131.

1524. ——.]—(1) H. signed an agreement to take twenty shares in a co. in case it was "successfully floated" & in case two-thirds of the shares were *bond fide* taken up. There was no evidence that he had ever received an allotment of shares, or had ever signed any application for them:—*Held*: the agreement being conditional, & the condition unperformed H. was not liable, & his name must be removed from the list of contributories.

(2) G. signed an application for twenty shares, but neither paid nor authorised any person to pay anything in respect of them. There was no evidence that any letter of allotment had been forwarded to him in the proper course, & he had paid no deposit in respect of the shares:—*Held*: G.'s name must be removed from the list of contributories.—*Re LAND SHIPPING COLLIERY CO., LTD., Ex p. HARWOOD, GULL, GEARY & STAFFORD* (1869), 20 L. T. 736.

1525. ——. Failure of condition through no fault of applicant.]—*Re MONARCH INSURANCE CO., GORRISEN'S CASE*, No. 1480, *ante*.

1526. ——.]—Where a person to whom shares in a co. have been allotted has commenced proceedings, before the filing of a winding-up petition against the co., to obtain rescission of the contract, if any, to take the shares, the election thus made by him to avoid the contract is not departed from by his subsequently opposing the petition in the character of a contributory.

A conditional applicant for shares in a co. before allotment, to whom shares are allotted, may repudiate his shares if the conditions specified in his application are not fulfilled, as there is no *consensus ad idem*, & therefore there is no contract between the co. & appct.—*Re BRINSMEAD (THOMAS EDWARD) & SONS, TOMLIN'S CASE*, [1898] 1 Ch. 104; 67 L. J. Ch. 11; 77 L. T. 521; 46 W. R. 171; 14 T. L. R. 53; 42 Sol. Jo. 67; 4 Mans. 384.

See, also, No. 1747, *post*.

1527. ——. Or waived by shareholder.]—*Re ALDBOROUGH HOTEL CO., SIMPSON'S CASE*, No. 1504, *ante*.

1528. Effect of winding up—Whether allottee under conditional application liable—Only where

of the co. & that the business of the co. was to be transferred from M. when it had been formed to S. The 150 shares were allotted to A. but he never paid the allotment money & though the business of the co. was nominally at least transferred to S., A. was never appointed a director. Shortly after this allotment the co. went into liquidation:—*Held*: A. could not be made a contributory in respect of the 150 shares which he had offered conditionally to take.—*POWELL v. SEN* (1917), 1 L. R. 40 All. 45.—IND.

s. ——. Application conditioned on appointment as cashier.]—On the representation of the manager of a banking co. that petitioner would be appointed cashier in a new branch of the co. if he took 400 preference shares, petitioner applied for & paid the deposit on 100 shares & was entered on the register of shareholders. Subsequently

he found himself unable to take the remaining 300 shares & he was not appointed cashier & the directors treated the contract to take shares as cancelled. Petitioner applied to have his name removed from the list of contributories:—*Held*: petitioner's application was conditional as he had no intention to become a member of the co. until he was appointed cashier & he was entitled to be struck off the register of preference shareholders.—*RAMANBHAI M. NILKAUTH & SANKALCHAND BECHARDUS v. GHASHIRAM LUDHPRASAD* (1918), 1 L. R. 42 Bom. 595.—IND.

t. ——. Agreement conditioned on raising of specified capital.]—The prospectus of a public co. set out "Share capital £100,000 in 20,000 shares of £5 each. First issue 80,000 in 16,000 £5 shares. In addition to the above shares £30,000 of 6 per cent debentures to be issued.

The consideration to be paid by the co. for the whole of the before-mentioned property, together with the good will has been fixed by the vendor at £90,000 of which £55,000 is payable in cash & the balance £35,000 in fully paid-up shares, debenture or cash or partly in each, at the option of the directors. This will leave for working capital stock & extension of plant £20,000." An appct. for 120 shares added to his letter of application the condition—"If all capital subscribed for." At the date of allotment the 16,000 shares were allotted, except certain shares which the co. had the option of allotting to the vendor in lieu of cash as part payment of the price of work, etc., sold to the co. & a portion of the debentures offered to the public had not been taken up. In an action for payment of calls against the appct.:—*Held*: the whole capital had been subscribed for in the

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specific performance of contract will be decreed.]—

A. & B. held each 500 original shares in a co. It was afterwards determined that new shares in the co. should be created; 1,000 original shares were to be transferred to C., who was thereupon to join the direction of the concern. That arrangement was effected by A. & B. transferring their original shares to C., & by each receiving an allotment of 500 of the new shares, which were duly created, in lieu of the old ones, & on being paid 10s. per share by the co. C. afterwards sold his 1,000 shares at a large profit, but never joined the concern. The co. was ordered to be wound up, when A. & B. each repudiated their liability in respect of their 500 shares, on the ground that they only consented to take them if C. joined the direction:—*Held*: (1) the test of the liability of A. & B. to be placed on the list of contributories was, whether specific performance of their agreement to take the shares could have been decreed against them; &, as the ct. thought it could not, they were not contributories; (2) there was not sufficient part performance to compel the ct. to settle A. & B. as contributories.

The essence of the agreement clearly was that C. should become a director & A. & B., in my opinion only acceded to the arrangement on the faith of that & of the assistance which he & his friends were to render to the co. (LORD ROMILLY, M.R.).—*Re LONDON & HAMBURG BANK, Ex p. PRESTON & HENRY* (1867), 15 L. T. 496; 15 W. R. 299.

1529. — Agreement to take shares at option of company—Whether option exercisable after winding up.]—*Re ALEXANDRA PARK CO., SHARON'S CLAIM, No. 1669, post.*

1530. — Conditions becoming incapable of performance.]—*Re RICHMOND HILL HOTEL CO., PELLATT'S CASE, No. 1514, ante.*

1531. Effect of cancellation of collateral agreement—Appointment as agent—Agreement to take shares not cancelled.]—A., upon his appointment as agent to a limited assurance co., agreed to take shares upon the terms that the payment for them should be deducted from his commission as agent, & no deposit was ever paid by him upon them, but he was registered as the holder of the shares. The co., very soon after his appointment, dismissed him; but, as he contended, wrongfully. On the winding up of the co.:—*Held*: the co.'s cancellation of A.'s appointment as agent, whether justifiable or not, could not operate as a cancellation of A.'s agreement to become a shareholder, &, subject to any question of account as to payment for the shares, A. was liable as a contributory.—*Re LIFE ASSOCN. OF ENGLAND, LTD., THOMSON'S CASE* (1865), 4 De G. J. & Sm. 749; 34 L. J. Ch.

525; 12 L. T. 717; 11 Jur. N. S. 574; 13 W. R. 958; 46 E. R. 1114, L. JJ.

Annotation:—*Fold. Re General Provident Assce., Bridger's Case* (1869), L. R. 9 Eq. 74.

Conditional underwriting contract—Whether condition performed.]—*See No. 1163, ante.*

(b) *Conditional Allotment.*

See Sub-sect. 3, D. (b) ii., post.

C. Fraudulent Agreements.

1532. Allottee not to incur any liability.]—The manager of a banking co., in which he held shares, induced a friend D., living in the country, to subscribe the co.'s deed for 100 shares, upon the understanding, of which a minute was entered in the co.'s books, that all the shares that should not be transferred by him to other parties should be transferred for him by the directors, & that he should receive nothing, nor incur any liability, in respect of the shares. After disposing of thirty shares, the purchase-money for which was paid to the directors, D., in pursuance of the arrangement, transferred the remainder back to the manager by assigning it to him & his successors in office. He never received or paid anything in respect of the shares, &, eight years after the last transaction, the affairs of the co. were wound up under the Joint Stock Cos. Winding-up Act, 1848 (c. 45):—*Held*: the effect of the transaction was to hold out D. as a partner, to induce others to become members of the co., & he was properly placed on the list as a contributory.—*Re BOROUGH OF ST. MARYLEBONE BANKING CO., DAVIDSON'S CASE* (1849), 3 De G. & Sm. 21; 18 L. J. Ch. 254; 13 L. T. O. S. 363; 13 Jur. 722; 64 E. R. 362.

Annotations:—*Reid. Re Universal Salvage Co., Ex p. Woodfall* (1849), 14 Jur. 29; *Re Rolling Stock Co. of Ireland, Shackelford's Case* (1866), 1 Ch. App. 570, n.

1533. Price of shares to be paid by company—Agreements separable—Agreement to take shares enforced against allottee.]—An action was brought by a co. for the specific performance by deft. of an agreement which he had entered into to take 2,000 £10 shares in the co., & pay for them in such numbers & at such times as should be required for the purposes of the co. His name had been placed on the register of shareholders, & a call had been made upon him which he refused to pay. Contemporaneously with the agreement to take the shares the board of directors had agreed with deft. to pay him £4,000 in consideration of services rendered by him to the co. This sum was to be paid twelve months after the shares should have been paid for in full. The directors afterwards called on deft. to pay up the full amount of 1,000 of his shares, which he refused to do. Deft. alleged that the two agreements formed really only one contract for the issue of the shares at a discount;

sense of his letter of application & he was in consequence liable in payment of the calls.—*SWEDISH MATCH CO., LTD. v. SEIVWRIGHT* (1889), 16 R. (Ct. of Sess.) 989; 26 Sc. L. R. 689.—SCOT.

a. — Or waiver by shareholder.] Pltf. subscribed for shares in deft. co. subject to the term that the co. would erect a steel plant at M. He paid for the shares in instalments & some time after receipt of the full amount share certificates were sent him. They reached his office during his absence. There was no evidence of his actual receipt thereof, but they were retained. There was no evidence of formal allotment of shares to him nor of any notice

of allotment. He never attended meetings but received notices of meetings accompanied by proxies which he filled out & sent. His name was not entered in the register of shareholders, but it appeared in a ledger account, for the price of his shares, in the book which contained elsewhere what purported to be a register of shareholders. He said that during certain years he regarded himself as a shareholder, but understood that he could rescind & withdraw or the co. could cancel his shares if the co. abandoned the steel project. The co. did not erect the plant. Pltf. sued for rescission of the agreement to take the shares & for a return of the purchase-price & in the

alternative for damages:—*Held*: pltf. must fail; in all the circumstances in evidence, pltf. *de facto* became a shareholder of the co. The term attached to his subscription was, as shown by the conduct of the parties, a condition subsequent & this ceased to be operative as a condition subsequent, & this ceased to be operative as a condition when pltf. became a shareholder. Thereafter it could operate, if at all, only as a collateral agreement entitling him to surrender his shares & demand the return of the money paid for them; & such an agreement was *ultra vires* of the co.—*CHRISTIE v. ALBERTA ROLLING MILLS CO., LTD.*, [1919] 1 W. W. R. 572.—CAN.

that he had not rendered any services to the co. ; & that the contract was divided into two parts for the express purpose of evading a provision of the co.'s arts. of assocn. which prohibited the directors from issuing shares at a price below par without the consent of a general meeting. No such consent had been given to the contract with deft. :—*Held* : (1) as deft. had acted in collusion with the directors to defraud the co., he could not be heard to set up this fraud for the purpose of making invalid the agreement, which was *ex facie* valid, to take & pay for the shares ; (2) as the parties had contemplated a piecemeal performance of the one agreement, the ct. could compel the performance of a part ; (3) in the absence of any proof of *mala fides*, the resolution of the directors to call up the amount of the shares was conclusive evidence that the money was required for the purposes of the co. Specific performance of the agreement to take & pay for the shares was accordingly decreed.—*ODESSA TRAMWAYS CO. v. MENDEL* (1878), 8 Ch. D. 235 ; 47 L. J. Ch. 505 ; 38 L. T. 731 ; 26 W. R. 887, C. A.

1534. — Allottee liable to refund—In winding up.]—*Re ANGLO-INDIAN & COLONIAL INDUSTRIAL & COMMERCIAL INSTITUTION, LTD.* (1888), 4 T. L. R. 769.

Allotments made *mala fide*.]—*See* Sub-sect. 3, D. (c), *post*.

D. Proof of Contract.

(a) What Evidence Admissible.

1535. Unstamped documents not constituting entire contract—Letter of allotment—Operating as offer—Accepted by conduct.]—*WILLEY v. PARRATT*, No. 1484, *ante*.

1536. — — — Application not produced—No presumption that parties *ad idem*.]—*MOORE v. GARWOOD*, No. 1483, *ante*.

1537. — — — Accompanied by circular.]—Pltf. received a letter of allotment, allotting him 100 shares in a projected railway, upon which he paid a deposit of £2 2s. per share. With the letter of allotment, the board of directors, one of whom was deft., caused to be sent to pltf. a circular containing, amongst others, the following provision :—"In the event of the Act not being obtained, the directors undertake to return the whole of the deposits, without deduction." There was no evidence of any application by pltf. for shares, or that his allotted shares had been exchanged for scrip ; & it appeared that he had never signed the parliamentary contract or subscribers' agreement. The project proving abortive :—*Held* : (1) money had & received lay, to recover back the deposit paid ; (2) the letter of allotment & circular were admissible in evidence without being stamped, inasmuch as they did not constitute the whole agreement between the directors & the allottees ; (3) the sending of the letter of allotment & circular to pltf. was sufficiently proved by the statement of the secretary of the co., that he had received instructions to send them to all the allottees, that pltf. was one of them, & he believed he had sent them

to him.—*WARD v. LONDESBOROUGH (LORD)* (1852), 12 C. B. 252 ; 18 L. T. O. S. 209 ; 138 E. R. 900.

Annotation :—*As to* (2) *Folld.* *Londesborough v. Mowatt* (1854), 18 Jur. 1094.

See, generally, EVIDENCE.

(b) Other Cases.

1538. Sufficiency of proof—Statement in prospectus—That directors would take up balance of ordinary shares.]—*Re MOORE BROTHERS & CO., LTD.*, No. 445, *ante*.

1539. Burden of proof—On allottee disputing validity of allotment—Allotment book *prima facie* evidence.]—The seven subscribers to the memorandum of assocn. of a co., regulated by 1862 Act, s. 154, Table A. without meeting together for the purpose, all signed a document in writing dated July 27, 1888, appointing four persons to be the first directors of the co., & these four persons met & resolved that two directors should form a quorum to transact the business of the co. At the first ordinary meeting, which was held on Aug. 20, 1888, these four persons did not retire from office as provided by art. 58 of Table A. ; but a resolution was passed at the meeting authorising them to continue to act as directors ; & two of these four persons on the same day allotted to K., an appct., 200 ordinary shares in the co. :—*Held* : (1) as the subscribers to the memorandum of assocn. had all concurred in appointing the first directors of the co., the fact that they had not met together for the purpose of coming to their determination did not invalidate their act, & accordingly, the appointment in writing of July 27, 1888, was good ; (2) the resolution passed at the general meeting of Aug. 20, 1888, was valid to the extent of continuing in office the then present directors ; (3) the allotment of 200 shares made to K. by two of these four directors was valid.

(4) K. afterwards, as he admitted, applied for 300 preference shares, & received an allotment of them. By the co.'s allotment book it appeared that 300 shares were allotted to him on Sept. 29, 1888, but no minutes were kept after Aug. 20, 1888. The co. was afterwards ordered to be wound up, & at that time K. was on the register of shareholders as the holder of 500 shares. K. disputed the validity of both allotments to him :—*Held* : as K. was a contributory in respect of his 200 shares, the allotment book of the co. was, under 1862 Act, s. 154, *prima facie* evidence against him of an allotment to him on Sept. 29, 1888, & although there was no record of any board or committee meeting on that day, the entry in the allotment book, coupled with his admission, threw upon him the burden of proving that the allotment was invalid ; & not having discharged it, he must be settled upon the list as a contributory for the 300 shares as well as the 200 shares.—*Re GREAT NORTHERN SALT & CHEMICAL WORKS, Ex p. KENNEDY* (1890), 44 Ch. D. 472 ; 59 L. J. Ch. 288 ; 62 L. T. 231 ; 2 Meg. 46.

Annotation :—*Generally, Mentd.* *Re Consolidated Nickel Mines*, [1914] 1 Ch. 883.

Proof of communication of allotment.]—*See* Sub-sect. 3, E. (c), *post*.

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b. Sufficiency of proof—Letter purporting to bear applicant's signature.]—Pltf. co. sued H. for calls in respect of shares held by him in the co. He

denied that he had applied for shares, & that the shares had been allotted to him. The acting secretary of the co. produced as evidence of the application for the shares a letter purporting to bear H.'s signature & stated that the co. had made allotment of them to

H. & that notice thereof as well as notice of calls had been sent to H. :—*Held* : the evidence was not sufficient to prove the application by & allotment to H.—*HARVEY v. FARMERS CO-OPERATIVE MEAT INDUSTRIES, LTD* (1922), 43 N. L. R. 330.—S. AF.

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E. Cancellation of Contract.

1540. Power of directors—Construction of articles.]—*Re BRITISH PROVIDENT, ETC. ASSURANCE SOCIETY, COLEMAN'S CASE, No. 1493, ante.*

1541. ——— Power to alter, rescind or abandon contracts.]—*Re NANTEOS CONSOLS CO., THOMAS' CASE, No. 1499, ante.*

1542. ——— Power to delegate authority—Compromise by one valid.]—M. applied for shares in a co. in faith of the prospectus, & paid the deposit on application. Subsequently he received an altered prospectus announcing a change of directors & an alteration in the contract for the purchase of the works. He wrote withdrawing his application, but the letter of allotment was posted before the co. received his letter. M. refused to pay the amount due on allotment, & instructed his solr. to commence an action to recover his deposit. The chairman of the directors afterwards, being deputed by the board, called upon him & arranged verbally to compromise the matter by the co. giving M. an acceptance for the amount of his deposit. A formal resolution cancelling the allotment was passed, but not till some time later, after presentation of a petition on which an order was made for winding up the co. The directors had, by the articles of association, power to delegate their powers to "committees consisting of members of their body," & the interpretation clause provided that "words importing the plural shall include the singular":—*Held*: (1) the contract to take shares was complete; (2) the directors had power to delegate to the chairman their power to compromise M.'s claim; (3) he had entered into a binding agreement to do so, & M.'s name must be removed from the list of contributories.—*Re SCOTTISH PETROLEUM CO., MACLAGAN'S CASE (1882), 51 L. J. Ch. 841; 46 L. T. 880.*

1543. ——— General power of compromise—Exercised bona fide.]—*Re INTERNATIONAL MINING SYNDICATE, LTD., Ex p. SMITH, Re INTERNATIONAL MINING SYNDICATE, LTD., Ex p. SIMPSON, No. 1489, ante.*

See, further, Sect. 26, sub-sect. 1, B.; Sect. 27, sub-sect. 4, post.

1544. ——— Allotment in error—Application by allottee on behalf of another.]—*Re HOYLAKÉ RY. CO., Ex p. KEIGHTLEY, [1874] W. N. 18.*

1545. ——— Allotment ultra vires.]—A. co. was formed in 1871 with a capital divided into shares of £5 each. The capital not having been all taken up, the directors passed a resolution that each of the existing shareholders should have the option

of taking the unissued shares at £1 each in proportion to his holding. Allotments were made of shares in pursuance of this resolution to various persons, including B., one of the directors. Afterwards it was discovered that the transaction was *ultra vires*, & the directors passed a resolution rescinding their previous resolution & the allotments, & B.'s name was never placed on the register of shareholders in respect of them. The co. having been wound up compulsorily:—*Held*: the rescission was valid, & B. was not a contributory in respect of the shares so allotted to him.—*Re ESSEX BREWERY CO., BARNETT'S CASE (1874), L. R. 18 Eq. 507; 30 L. T. 862; 22 W. R. 891.*

1546. Where company bound—Five years' acquiescence.]—W. having applied for shares in a co., they were duly allotted to him; but, owing to irregularities having shortly afterwards been discovered, the directors rescinded their previous resolution allotting the shares to W., & returned the deposit he had paid on application. For five years W. was never treated as a shareholder in respect of these shares, but on the co. then going into liquidation, the liquidator sought to make W. liable in respect of the shares:—*Held*: (1) as by 1862 Act, s. 23, to constitute a shareholder a person must have agreed to become a shareholder, & his name must be entered on the register, the liquidator was seeking for specific performance of the contract to take shares; he was in no better position than the co.; & the delay of five years was fatal; (2) the ct. was not satisfied that it would be just to place W.'s name on the register.—*Re WEST LONDON COMMERCIAL BANK, LTD., WHITELEY'S CASE (1889), 60 L. T. 807; 1 Meg. 154.*

1547. Sale of property to company for shares & cash—Voidable agreement—Failure of company to complete contract.]—Two persons agreed to sell certain property to a co. for a price to be paid, part in fully paid-up shares, part in shares partly paid up, & the remainder in cash, as & when the co. should receive any money in respect of shares subscribed for over & above the first £1,000; & it was provided that if the shares & cash should not be paid within two years from the date of the agreement, the agreement should be void, & that any moneys & shares paid thereunder should be retained as liquidated damages for breach of the agreement. The shares were issued to the vendors & their nominees, but the event on which the cash was to be paid never happened, & the co. was wound up within two years from the date of the agreement:—*Held*: (1) the vendors must be placed on the list of contributories in respect of their shares; (2) they were entitled to a lien on

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c. Power of directors—Company not fully organised.]—J. agreed, in writing, to sell certain coal areas to R., promoter of a mining co. which, it was expected, would eventually take them over. The price was to be paid partly in cash & the balance in stock of the co. to be delivered within six months. The promoters were unable to secure the necessary capital & the co. had never been organised. In an action claiming damages for breach of the contract to deliver the stock:—*Held*: the time limit in the contract & circumstances disclosed at the trial, showed that the parties intended that the stock to be delivered was that of a fully organised co.; both parties knew when the contract was made that no such stock existed; & as it never came into existence, for which R. was

not to blame, the contract could not be enforced.—*ROCHE v. JOHNSON (1915), 53 S. C. R. 18.—CAN.*

d. By applicant for shares—Before company formed.]—In action for calls due to a co. before the formation of the co. deft. applied for 100 shares & forwarded £5 with the application. He attended meeting at which the co. was declared formed & took active part in it. After that, but before any shares were allotted to him, he refused to have anything to do with the co. & repudiated liability:—*Held*: was not liable.—*BARKER v. CAIRD (1876), 14 N. S. W. S. C. R. 358.—AUS.*

e. ——— Induced to take shares by misrepresentation.]—Verbal misrepresentations, made to appcts. for shares by a secretary *pro tem.* & provisional director of an inchoate co., whose duty it is to receive applications for shares & to whom appcts. are impliedly

referred by the prospectus for further information, constitute grounds upon which such appcts. can subsequently sue the co. when formed for the rescission of an agreement to take shares which has been induced by such misrepresentations.—*ADAMANTA DIAMOND MINING CO., LTD. v. SMYTHE (1883), 1 H. C. 406.—S. AF.*

f. ——— Impossibility of performance.]—Where a contract is for certain specified stock of a co. & a sufficient number of unissued shares to give the purchaser a controlling interest in the co., both parties believing at the time of entering into the contract that such unissued shares existed when in fact they did not exist, the purchaser has the right at his election to the enforcement or rescission of the part of the contract which can be carried out, & that the amount paid for the unissued shares be returned to him, &

the property sold for the amount of cash which had not been paid.—*Re PATENT CARRIAGE CO., GORE & DURANT'S CASE* (1866), L. R. 2 Eq. 349.

Annotations:—As to (2) Distd. Re Brentwood Brick & Coal Co. (1876), 4 Ch. D. 562. Generally, Mentd. Dansk Rekyrliffel Syndikat Akt. v. Snell, [1908] 2 Ch. 127; Barker v. Stickney, [1918] 2 K. B. 356.

F. Breach of Contract.

1548. Specific performance—Whether decreed.]—Deft. agreed, in writing, to take shares in a joint-stock co., which were transferable, “& to execute the deed of settlement when required.” Specific performance was refused.—*SHEFFIELD GAS CONSUMERS' CO. v. HARRISON* (1853), 17 Beav. 294; 51 E. R. 1047.

Annotations:—Dtd. New Brunswick, etc. Co. v. Muggeridge (1859), 4 Drew. 686. Consd. Oriental Inland Steam Co. v. Briggs (1861), 2 John. & H. 625 (see 8 Jur. N. S. 201).

1549. ———.]—A bill by a co. alleged that deft. had agreed to accept shares. The arts. of assocn. were silent as to the mode of acceptance, & 1856 Act, s. 9, & Sched. B., applied, by which the acceptance must be in writing signed. Deft. had never signed an acceptance. This fact & the statute were set up by plea:—*Held*: (1) the agreement was a good agreement to do that which the statute required; (2) the decree would not be nugatory, as in a joint-stock partnership a partner cannot put an end to the partnership, but only to his own quality of shareholder; he must remain shareholder, or constitute another person shareholder in his place.—*NEW BRUNSWICK, ETC. CO. v. MUGGERIDGE* (1859), 4 Drew. 686; 7 W. R. 369; 62 E. R. 263; *subsequent proceedings* (1860), 1 Drew. & Sm. 363.

Annotation:—As to (2) Consd. Oriental Inland Steam Co. v. Briggs (1861), 2 John. & H. 625.

1550. ——— Clear contract to accept shares.]—In a case where there is a clear contract to accept shares, & the remedy at law is shown to be inadequate, the ct. will decree specific performance. But where the validity of the contract to accept the shares was doubtful, & the inadequacy of the legal remedy not clearly made out, & there having been an unexplained delay of two years, a demurrer to a bill for specific performance of a contract to accept shares was allowed with costs.—*ORIENTAL INLAND STEAM CO., LTD. v. BRIGGS* (1861), 2 John. & H. 625; 4 L. T. 578; 9 W. R. 778; 70 E. R. 1209; *on appeal*, 4 De G. F. & J. 191, L. C.

Annotations:—Refd. Re General Provident Assco., Bridger's Case (1869), L. R. 9 Eq. 74. Mentd. Re Imperial Land Co. of Marseilles, Harris' Case (1872), 7 Ch. App. 589, n.

1551. Disclaimer by trustee in bankruptcy—Measure of damages.]—By a contract made in Feb. 1898, H. agreed to sell to a co. certain properties; & by the same contract H. agreed

to subscribe & pay for in cash so much of the share capital of the co. as should not be taken up by the public. In the events which happened H. became bound under the contract to take up & pay for certain preference shares & 25,000 ordinary shares of £1 each in the co. In June, 1898, H. became bkpt., & in July following his trustee in bkpcy. disclaimed the contract. Soon afterwards the co. went into liquidation, & the liquidator lodged a proof against H.'s estate for damages for breach of the contract. H.'s estate was estimated to realise not more than 4s. in the pound. The liabilities of the co. were about £16,000 whilst its assets comprised, practically, about £4,000, at a bank & the claim against H.'s estate. The liquidator made a call of £1 per share on the ordinary shares of the co., & claimed that the proof against H.'s estate should stand at £25,000 on the ground that the measure of damages for the injury caused to the co. by the disclaimer was the loss of the call of £1 per share on the 25,000 shares which H. was bound to take up. The trustee admitted the proof for £10,500 only, that being the difference between the then estimated assets & liabilities of the co.:—*Held*: as the disclaimer had put an end to the contract, & the claim of the co. could only be for damages for breach of contract, the trustee had assessed the damages on the right principle, & the proof must stand at £10,500.—*Re HOOLEY, Ex p. UNITED ORDNANCE & ENGINEERING CO.*, [1899] 2 Q. B. 579; 68 L. J. Q. B. 993; 6 Mans. 404.

See, also, BANKRUPTCY & INSOLVENCY, Vol. IV., pp. 302 et seq.

G. Misrepresentation as Ground for Relief.

(a) In General.

See, generally, MISREPRESENTATION & FRAUD.

1552. General rules.]—A person suing a co. to obtain rescission of an agreement to take shares in it must, generally speaking, bring his case under one of the following heads: (1) Where the misrepresentations were made by directors or other general agents of the co., entitled to act & acting on its behalf; (2) where the misrepresentations were made by a special agent of the co., while acting within the scope of his authority including the case of a person constituted agent by subsequent adoption of his acts; (3) where the co. could be held affected, before the contract was complete, with the knowledge that it was induced by misrepresentation; (4) where the contract was made on the basis of certain representations whether the particulars were known to the co. or not & it turned out some of them were material & untrue.—*LYNDE v. ANGLO-ITALIAN HEMP*

to damages in respect of these shares.—*SMITH v. SCHON* (1919), 46 D. L. R. 233.—CAN.

g. Notice of avoidance by applicant—Companies Act, 1908, s. 96.]—The above sect. is in effect a statute of limitation. Its real meaning is that no avoidance of an allotment of shares can be effective unless the note of avoidance is given before the expiration of one month after the statutory meeting. It does not mean that notice of avoidance can only be given within the confines of that month. It may be given before the statutory meeting is held.—*Re HARRIS (FRANK) GRANITE CO., LTD.* (No. 1) (1913), 32 N. Z. L. R. 835.—N.Z.

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h. Failure to deliver—Measure of

damages.]—In an action for non-delivery of scrip, pltf., in order to ascertain the measure of damages, is entitled to elect whether he will take the market value of the scrip at the time contract was broken or the market value at the time of the trial.—*VICARY v. FOLEY* (1891), 17 V. L. R. 407.—AUS.

k. ———.]—A contract to deliver shares, or their value, on flotation of a co. binds the contractor, in lieu of delivery, to pay the value of the shares at the time of flotation, & failure to deliver or pay at such time does not render him liable to pay the highest value of the shares prior to payment.—*TEUBES v. WIESE*, [1912] W. L. D. 148.—S. AF.

l. Failure of allotment.]—Pltf. subscribed for stock on the terms of a letter written to him by the secretary

of a committee of promoters of a projected co., & paid half the amount of his subscription. The money was forwarded by the committee to the incorporators of the co., which was incorporated. No stock having been allotted to pltf., he brought an action against the committee for the amount paid, declaring upon the common *indebitatus* counts. A non-suit was entered at the trial:—*Held*: the non-suit was right.—*BREDEN v. LYON* (1876), *temp. Wood*, 50.—CAN.

m. Contract for sale & purchase of shares—Specific performance.]—The ct. will enforce the specific performance of a contract for the sale & purchase of shares of a co. not only at the suit of the co. itself, when the contract is with it, but at the suit of an individual holder of shares already issued.—*DAVID v. DOW* (1916), 34 W. L. R. 666 10 W. W. R. 674.—CAN.

Sect. 17.—The contract to take shares: Sub-sect. 1, G. (a) & (b).]

SPINNING Co., [1896] 1 Ch. 178; 65 L. J. Ch. 96; 73 L. T. 502; 44 W. R. 359; 12 T. L. R. 61.

Annotations:—As to (2) Refd. Re Consort Deep Level Gold Mines, Ex p. Stark (1896), 66 L. J. Ch. 122. As to (4) Refd. Re Consort Deep Level Gold Mines, Ex p. Stark (1896), 66 L. J. Ch. 122; Re Pacaya Rubber & Produce Co., Burns' Appln., [1914] 1 Ch. 542.

1553. Nature of relief.]—A person purchasing a chattel or goods, concerning which the vendor makes a fraudulent misrepresentation, may on finding out the fraud elect to retain the chattel or goods, & still have his action to recover any damage he has sustained. But the same principle does not apply to shares or stock in a joint-stock co., for a person induced by the fraud of the agents of a joint-stock co. to become a partner in that co. can bring no action for damages against the co. whilst he remains in it; his only remedy is *restitutio in integrum* & rescission of the contract; & if that becomes impossible, by the winding-up of the co. or by any other means, his action for damages is irrelevant, & cannot be maintained.—

HOULDSWORTH v. CITY OF GLASGOW BANK (1880), 5 App. Cas. 317; 42 L. T. 194; 28 W. R. 677, II. L.

Annotations:—Consd. Re Hull & County Bank, Burgess's Case (1880), 15 Ch. D. 507; Re Great Australian Gold Mining Co., Ex p. Appleyard (1881), 18 Ch. D. 587; Re Addlestone Linoleum Co. (1887), 37 Ch. D. 191. Apld. Simson & Mason v. New Brunswick Trading Co. (1888), 5 T. L. R. 148. Refd. Chapleo v. Brunswick Bldg. Soc. (1881), 6 Q. B. D. 696; British Mutual Banking Co. v. Charnwood Forest Ry. (1887), 18 Q. B. D. 714; McKeown v. Boudard Peveril Gear Co. (1896), 65 L. J. Ch. 446; Re Railway Time Tables Publishing Co., Welton's Claim (1898), 79 L. T. 679. Mentd. Ludgater v. Love (1881), 44 L. T. 694; Thorne v. Heard, [1894] 1 Ch. 599; Whitechurch v. Cavanagh, [1902] A. C. 117; Citizens' Life Asso. v. Brown, [1904] A. C. 423; Hambro v. Burnand (1904), 9 Com. Cas. 251; Lloyd v. Grace, Smith, [1912] A. C. 716; Pratt v. British Medical Assocn., [1919] 1 K. B. 244.

(b) Nature of Misrepresentation.

Misrepresentation in prospectus.]—See Sect. 8, sub-sect. 3, ante.

1554. Statement that allotment completed.]—In an action for money had & received brought by a depositor against one of the committee of

management of a projected railway co., it appeared from the prospectus that the capital was to have been £3,000,000, in 120,000 shares, deposit £1 7s. 6d. per share. Pltf. requested an allotment of sixty shares, stating "I undertake to accept the same, subject to the regulations of the co., & to sign the legal documents, & to pay, when required, the deposit." To this the following answer, in substance, was sent: "Not transferable. The L. Co., capital £3,000,000, in 120,000 shares of £25 each, etc.—Sir,—The committee have, at your request, allotted you sixty shares, upon condition that the deposit be paid on or before Oct. 18; in default of which such allotment will be forfeited." Before the day so appointed for the payment of the deposit, the committee of management issued an advertisement, stating that they had completed the allotment of shares, & apologising to disappointed appcts. There was evidence that pltf. saw this advertisement; within a day or two he paid his deposit, & he afterwards executed the subscription deed, which gave authority to the committee to pay expenses out of the sum subscribed. The committee allotted only 58,000 shares, though they had had the opportunity of allotting the whole 120,000. The deposits had been expended, & there were no funds to make the deposit required by the House of Commons. Pltf., with a knowledge of the last two circumstances, attended a meeting which was called of the shareholders, & moved that the deposits should be returned, but was outvoted. Afterwards the scheme was abandoned:—**Held:** (1) the application for & the allotment of the shares did not, at the time when pltf. paid the deposit, constitute a contract binding upon pltf. to take & pay for shares in a concern consisting of 58,000 shares only; (2) the application being unconditional, & the form of the allotment conditional, the contract was not, upon that account, binding upon pltf.; (3) the jury were warranted in saying that the advertisement, stating that the committee had completed the allotment of shares, was a fraudulent misrepresentation, & a material inducement to pltf. to pay his money; & pltf. was therefore entitled to recover it back in

PART III. SECT. 17, SUB-SECT. 1.—G. (a).

1553 i. Nature of relief.]—In an action by a shareholder of an investment assocn. to have it declared that his subscription for shares had been obtained by fraud & misrepresentation, & that it was not binding upon him, & for other relief, it appeared that in 1882 the association had amalgamated with a loan society, of which he was shareholder & manager. There were many material misrepresentations, falsely & fraudulently made, in a certain report of the association, which had been an important factor in bringing about the assent to the amalgamation by the society, & in inducing pltf. to subscribe for the shares in the association, & that pltf. had not become aware of their falsity until shortly before bringing this action. After the amalgamation the association borrowed large sums of money upon debentures, etc., on the faith of the apparently existing state of affairs, but it was not shown that the association was insolvent, or on the eve of insolvency:—**Held:** pltf. was entitled to a rescission of the contract made by his subscription for stock in the association.—**NELLES v. ONTARIO INVESTMENT ASSOCN. (1889)**, 17 O. R. 129.—**CAN.**

1553 ii. —.]—Pltf., without asking to have the sale to him rescinded, or offering to return the stock or bonds, claimed to recover damages he had

sustained by reason of deft's. alleged fraud & misrepresentation, being the difference between the amount paid for the stock, & the real value of the stock at the time the purchase was made:—**Held:** it was no answer to offer to take the stock & bonds & pay the purchase price with interest & expenses, less all sums paid for interest or dividends; for, if there had been fraud & misrepresentation, pltf. must recover at least nominal damages.—**WEATHERBE v. WHITNEY (1897)**, 30 N. S. R. 49.—**CAN.**

1553 iii. —.]—A false representation to one subscribing for shares in the co. that all the statutory requirements have been complied with to enable the co. to commence business, entitled the subscriber to refuse payment for the shares & to recover cash paid thereon.—**VANCOUVER LIFE INSURANCE CO. v. RICHARDS, [1919]** 3 W. W. R. 907; 48 D. L. R. 707.—**CAN.**

1553 iv. —.]—**HOULDSWORTH v. CITY OF GLASGOW BANK, LIQUIDATORS (1880)**, 17 Sc. L. R. 510.—**SCOT.**

1553 v. —.]—In an action by a shareholder against the directors of the co. for damages for fraudulent misrepresentations contained in the prospectus:—**Semle:** the true measure of damages is the difference between the amount paid for the shares & their real value at the time of allotment, & such value must be ascertained by the light of subsequent events.—**BEN-**

JAMIN v. MINTER (1896), 8 H. C. 37.—**S. AF.**

PART III. SECT. 17, SUB-SECT. 1.—G. (b).

n. Representation as to title to company's property.—Exclusion of intoxicating liquors.]—Pltf., a co. formed for the purpose of colonising lands in the North-West Territories, represented to deft. that the Dominion Govt. had agreed to the selection by the co. of a compact choice tract of land in the said territories for the purpose of settlement, free from the use of intoxicating liquors. Deft., on the faith of these representations, entered into two agreements with the co., agreeing in each to purchase & pay for 320 acres of land, & paid certain instalments thereon. The co. never had, & could not obtain, the choice compact tract stated, nor any special privileges as to the exclusion of liquors:—**Held:** these were material misrepresentations; & deft., having been induced to enter into the agreement thereby, was therefore entitled to have them rescinded, & to recover back the money paid by him.—**TEMPERANCE COLONISATION CO. v. FAIRFIELD (1888)**, 16 O. R. 544; 17 A. R. 205.—**CAN.**

o. Representation as to nature of company's property.]—Pltf. sued defts. for damages caused to him by their having induced him, through fraudulent misrepresentation of fact issued in a prospectus, to take shares in a certain

an action for money had & received; (4) the payment of the deposit having been obtained from pltf. by misrepresentation, the deed executed by him under the same belief formed no answer to the action; (5) pltf.'s subsequent attendance at the meeting did not preclude him from bringing the action.—*WONTNER v. SHAIRP* (1847), 4 C. B. 404; 4 Ry. & Can. Cas. 542; 17 L. J. C. P. 38; 9 L. T. O. S. 148; 11 Jur. 373; 136 E. R. 563.

Annotations:—*As to* (1) *Refd.* *Re Universal Salvage Co., Ex p. Mansfield* (1850), 14 L. T. O. S. 345; *Johnson v. Goslett* (1857), 3 C. B. N. S. 569. *As to* (2) *Refd.* *Duke v. Andrews* (1848), 2 Exch. 290. *As to* (3) *Refd.* *Jones v. Harrison* (1848), 2 Exch. 52; *Middleton v. Beresford* (1848), 10 L. T. O. S. 504; *Watson v. Charlemont* (1848), 12 Q. B. 856; *Watts v. Salter* (1850), 10 C. B. 477; *Robson v. Devon* (1857), 5 W. R. 724; *Farrant v. Barnes* (1862), 11 C. B. N. S. 553. *As to* (4) *Refd.* *Jones v. Harrison* (1848), 2 Exch. 52; *Landon v. Beiorley* (1848), 10 L. T. O. S. 505; *Middleton v. Beresford* (1848), 10 L. T. O. S. 504. *Generally, Mentd.* *Bell v. Mexborough* (1848), 10 L. T. O. S. 457; *Re Universal Salvage Co., Ex p. Sharpus* (1849), 13 L. T. O. S. 420.

1555. Statement that company flourishing—Company insolvent & practically at an end—Representation by directors generally.—Where, after the objects of a co. have totally failed, & it is insolvent, & practically at an end, other persons are induced to join the concern, & even sign the deed, by misrepresentations made by the directors as to the flourishing state of the concern, they are not liable to be made contributories.

The result would be different, where the misrepresentations are made by the proprietors on the original constitution of the co., & the question of contribution arises between a number of innocent shareholders.—*Re UNIVERSAL PROVIDENT LIFE ASSOCN., BELL'S CASE* (1856), 22 Beav. 35; 26 L. J. Ch. 137; 27 L. T. O. S. 193; 20 J. P. 595; 2 Jur. N. S. 844; 4 W. R. 538; 52 E. R. 1020.

Annotations:—*Expld.* *Re Universal Provident Life Asscn., Holt's Case* (1856), 22 Beav. 48. *Distd.* *Re Liverpool Borough Bank, Duranty's Case* (1858), 26 Beav. 268. *Consd.* *Re Life Asscn. of England, Blake's Case* (1865), 34 Beav. 639. *Refd.* *Re Royal British Bank, Ex p. Brockwell* (1857), 26 L. J. Ch. 855; *Re Deposit & General Life Assce., Ayre's Case* (1858), 25 Beav. 513; *Re Royal British Bank, Nicol's Case* (1859), 3 De G. & J. 387; *Re Reese River Silver Mining Co., Ex p. Smith* (1867), 36 L. J. Ch. 385.

1556. — Company on verge of insolvency—Representation by single director.—A. became a shareholder & director of a co., on the representations of one of the directors, that it was in a flourishing condition, whereas it was on the verge of insolvency:—*Held*: the misrepresentation did not relieve A. from being a contributory.—

gold-mining syndicate promoted by themselves & of which they were the directors. The misrepresentations complained of were that auriferous reefs extended for miles through the properties in which the syndicate was interested & that the results of work done by defts. on these reefs showed that they were exceptionally rich:—*Held*: the evidence as to negative results obtained in subsequent independent operations did not, in all the circumstances, disprove the genuine character of the positive results previously obtained by defts., & pltf. had not proved that the representations contained in the prospectus were of the character alleged by him. Though the conduct of defts. had not been satisfactory & they had not exercised sufficient vigilance to see that their said representations were in accordance with fact, yet there had not been such distinct misconduct on their part, contributing to the action, as to make it proper to deprive them of their costs.—*BENJAMIN v. MINTER* (1896), 8 H. C. 37.—S. AF.

p. Representation that stock partly subscribed.—Action brought by incorporated body to recover \$500, the

amount of 5 shares of pltf.'s capital stock for which deft. subscribed on Apr. 20, 1892. Deft. set up that he was induced to become a subscriber for the shares by the representations of pltf.'s agent, that C. & M. had each subscribed or promised to subscribe for \$10,000 of stock, upon the condition that subscriptions for \$50,000 were obtained on or before Jan. 1, 1893; that deft.'s subscription was required in order to assist in making up what was still required of the \$50,000, & that his subscription would not be binding unless the \$50,000, including the subscription of C. & M., were fully subscribed on or before Jan. 1, 1893. It was proved that neither C. nor M. had subscribed or promised to subscribe for \$10,000 each, either conditionally or unconditionally, nor did they do so at any time after deft.'s subscription, nor was \$50,000 subscribed on or before Jan. 1, 1893:—*Held*: the representations were proved to have been made; & by reason of them deft. was induced to subscribe for the stock as a sort of escrow; it was not to be effective nor operative unless the \$50,000 was obtained within the limited period of

Re UNIVERSAL PROVIDENT LIFE ASSOCN., HOLT'S CASE (1856), 22 Beav. 48; 52 E. R. 1025.

Annotations:—*Refd.* *Re Royal British Bank, Ex p. Brockwell* (1857), 26 L. J. Ch. 855; *Re Deposit & General Life Assce., Ayre's Case* (1858), 25 Beav. 513; *Re Royal British Bank, Nicol's Case* (1859), 3 De G. & J. 387.

1557. — Statements made on original constitution of company.—*Re UNIVERSAL PROVIDENT LIFE ASSOCN., BELL'S CASE*, No. 1555, *ante*.

1558. Representation that liability limited.—A. & B. were partners, & A., on the faith of representations made to him by the secretary of a co., informed B. that the liabilities were limited, & thereupon B. consented to shares being taken in the co. A. executed the co.'s deed alone, in the name of the firm. Two calls were paid by the firm, & dividends were received by the firm, as part of the partnership assets. The firm then dissolved partnership & all the assets & liabilities, the above shares being particularly specified, were transferred from A. to B. The co. failed, & was wound up. It then appeared that the liabilities of the co. were not limited, & B. alleged that A. alone was liable as a contributory:—*Held*: the misrepresentation as to the limited liabilities not being wilful, & the co. assenting, B. was primarily liable, & A. secondarily liable, as contributories.—*Re PROTESTANT ASSURANCE ASSOCN., Ex p. LETTS & STEER* (1857), 26 L. J. Ch. 455; 5 W. R. 399.

1559. Representation as to number of officers to be appointed—Medical referees—Shareholder appointed medical referee.—(1) W. having agreed to become one of the medical referees of an insurance co., on the understanding that there would only be two of them, the secretary of the co. called upon him, produced the deed of settlement, & induced him to execute it for 200 shares, representing that on his doing so he would be appointed one of the medical referees, of whom there would be only two; that the business would be equally divided between them; that the directors would not consent to his appointment unless he took 200 shares; & that all the office-bearers were required to take & had taken that number. Soon after this, W. discovered that four medical referees had been named. He thereupon claimed to be released from his shares, & demanded a return of his calls. He afterwards discovered that most of the office-bearers had never taken 200 shares:—*Held*: whatever breach of contract there might have been on the part of the co. towards W., there was

time.—*ONTARIO LADIES' COLLEGE v. KENDRY* (1905), 5 O. W. R. 605; 10 O. L. R. 324.—CAN.

q. Representation as to disposition of certain assets.—Pltfs., exors. of F., brought an action to rescind a contract for the purchase of shares in a co., on the ground of fraud & misrepresentation on the part of defts. The question was as to the disposition of certain liquid or quick assets of the co. to which pltfs. claimed to be entitled under the terms of the contract but which defts. contended were to be applied in reduction of the current liabilities of the co. F. knew from the beginning that the quick assets were not to form part of the assets to be retained by the co., but were to be applied in reduction of the liabilities:—*Held*: pltfs.' action must be dismissed with costs.—*DAVISON v. PRIEST* (1920), 53 N. S. R. 426; 51 D. L. R. 158.—CAN.

r. Representation as to reserve fund.—Pltf. sought to recover payments made to deft. co. & damages on account of statements alleged to be false & fraudulent contained in a prospectus issued by the directors of

Sect. 17.—The contract to take shares: Sub-sect. 1, G. (b) & (c).]

nothing in the above circumstances to entitle him to be discharged from his liabilities as a shareholder.

(2) The deed of settlement provided, that if a shareholder should fail to pay a call for two months, the secretary should send him a notice requiring payment within 21 days, & if the sum should not be paid within that time, the directors might declare the shares forfeited. W & others having failed to pay for more than two months, the directors passed a resolution that notices should be sent to them requiring immediate payment, & that unless the calls were paid within 21 days the shares should be irremediably forfeited. A notice was accordingly sent to W. He did not pay. The co. went on for three years, during which he was not treated as a shareholder, & did not claim to be one, though his name remained on the register. The co. being wound up:—*Held*: declaration of forfeiture, though not strictly regular, complied substantially with the requisitions of the deed of settlement, & W. was not a contributory.—*Re HOME COUNTIES, ETC., ASSURANCE CO., WOOLLASTON'S CASE* (1859), 4 De G. & J. 437; 33 L. T. O. S. 294; 5 Jur. N. S. 853; 7 W. R. 645; 45 E. R. 169; *sub nom. Re HOME COUNTIES & GENERAL LIFE ASSURANCE SOCIETY, Ex p. WOOLLASTON*, 28 L. J. Ch. 721, L. JJ.

Annotations:—As to (1) *Reid. Re Rolling Stock Co. of Ireland, Shackelford's Case* (1866), 1 Ch. App. 567. As to (2) *Consd. Re State Fire Insce., Webster's Case* (1862), 32 L. J. Ch. 135; *Re East Kongsberg Co., Bigg's Case* (1865), 1 L. R. Eq. 309. As to (2) *Reid. Re North Hallenbeagle Mining Co., Knight's Case* (1867), 2 Ch. App. 321; *Re Asiatic Banking Corpn., Ex p. Collum* (1869), 39 L. J. Ch. 59.

Compare Nos. 1493, 1498, *ante*.

1560. Representation to title to company's property.]—NEW BRUNSWICK & CANADA RAILWAY & LAND CO. v. CONYBEARE, No. 1567, *post*.

1561. Representation that shares would rise.]—In an action by a shareholder against a director of a joint-stock co. for fraudulent representations, by which pltf. had been induced to become a shareholder, the representations proved being, that deft. believed that money might be made by the shares, holding them a month; & the facts, as known to deft. at the time, being, that the co. could not get rid of their first issue of shares, & could not get on without further capital; & that he had undertaken for a large number of shares, which he was selling, after employing various brokers to make contracts for purchases,

with the effect of raising the shares to a premium, which they maintained, until after pltf.'s purchases:—*Held*: the question was, whether deft. wrote the letter *bond fide*, & in the belief that the shares would maintain their rise for a month.—*GRAY v. COLLINS* (1865), 4 F. & F. 302.

1562. Representation that dividend guaranteed—During progress of certain works—Documents referred to but not set out in memorandum & articles.]—Where one party makes statements as to the contents of documents, he cannot afterwards say that those statements were known by the other party to be untrue, unless he shows that the business proceeded on that footing. Where an appct. for shares agrees to be bound by the arts. & memorandum of assocn., he must be taken to have notice of their contents, but not of documents referred to in them, & misrepresented by the prospectus.

Where a prospectus stated that the contractor had guaranteed interest at £2 10s. per cent. on the paid-up capital until the works were completed, & that a foreign government had guaranteed interest at £9 per cent., whilst, in fact, the contractor's liability was limited to £20,000, & the guarantee by the foreign government was only whilst the line did not produce £9 per cent. from no default of the co.:—*Held*: a shareholder who had taken shares on the faith of the prospectus would be relieved from them in equity.—*KISCH v. CENTRAL RY. CO. OF VENEZUELA, LTD.* (1865), 3 De G. J. & Sm. 122; 34 L. J. Ch. 545; 12 L. T. 801; 29 J. P. 595; 11 Jur. N. S. 646; 13 W. R. 1006; 46 E. R. 584, L. JJ.; *affd. sub nom. CENTRAL RY. CO. OF VENEZUELA (DIRECTORS, ETC.) v. KISCH* (1867), L. R. 2 H. L. 99, H. L.

Annotations:—*Consd. Re Overend, Gurney, Oakes v. Turquand & Harding, Peek v. Turquand & Harding* (1867), L. R. 2 H. L. 325; *Re Reese River Silver Mining Co., Smith's Case* (1867), 2 Ch. App. 604; *Re Estates Investment Co., Ex p. Ashley, Scholey v. Central Ry. of Venezuela* (1870), 39 L. J. Ch. 354. *Reid. Denton v. MacNeil* (1866), L. R. 2 Eq. 352; *Ross v. Estates Investment Co.* (1866), L. R. 3 Eq. 122; *Re Cachar Co., Lawrence's Case, Re Russian (Vyksounsky) Iron Works Co., Kincaid's Case* (1867), 2 Ch. App. 412; *Henderson v. Lacon* (1867), L. R. 5 Eq. 249; *Kent v. Freehold Land & Brickmaking Co.* (1867), L. R. 4 Eq. 588; *Re Madrid Bank, Wilkinson's Case* (1867), 36 L. J. Ch. 489; *Re Anglo-Danubian Steam Navigation & Colliery Co., Walker's Case* (1868), L. R. 6 Eq. 30; *Chester v. Spargo* (1868), 18 L. T. 314; *Hodgkinson v. Kelly* (1868), L. R. 6 Eq. 496; *Langham v. East Wheel Rose Consolidated Silver-Lead Mining Co.* (1868), 37 L. J. Ch. 253; *Re Estates Investment Co., McNeill's Case* (1870), L. R. 10 Eq. 503; *Panama & South Pacific Telegraph Co. v. India Rubber, Gutta Percha, & Telegraph Works Co.* (1875), 10 Ch. App. 520, n.; *Cargill v. Bower* (1878), 10 Ch. D. 502; *Blenkhorn v. Penrose* (1880), 43 L. T. 668; *Mathias v. Yetts* (1882), 46 L. T. 497; *Re Scottish Petroleum Co.* (1883), 23 Ch. D. 413; *Symonds v. City Bank* (1886), 34 W. R. 364; *Scott v. Snyder Dynamite*

the co. on the faith of which pltf. was induced to subscribe & pay for a number of a new issue of preference shares. One of the principal matters complained of was a statement to the effect that undrawn profits or assets of the co. to a large amount had been appropriated to a "reserve fund," whereas, as pltf. alleged, the co. never had any reserve or sinking fund. The evidence showed that profits which were supposed to have been earned, instead of being distributed in dividends, were transferred to an account referred to & known as the "reserve account":—*Held*: the words "reserve fund," as used in the prospectus, did not necessarily mean a reserve fund which was invested, but the important thing was the reserving of the amount out of property available for distribution in dividends, & appropriating it in the books of the co. to meet contingencies, which was shown in this case to have been done. Even

if pltf. understood the fund to be invested, this, in the case of a manufacturing co., would not be a material representation which would influence the conduct of plaintiff in taking shares.—*KENNEDY v. ACADIA PULP & PAPER MILLS CO., LTD.* (1905), 38 N. S. R. 291.—CAN.

s. Representation as to nominal capital—Endorsement on share certificate.]—C. sued the A. Co. for rescission of a contract to take shares & refund of the sum of £100 & interest paid by him under the contract. He alleged that a share certificate delivered by the A. Co. to him bore an endorsement that the nominal capital of the co. £62,500, whereas in fact the registered nominal capital was more than £22,500 at the date of the issue of the certificate:—*Held*: the summons disclosed no cause of action such as was claimed though it did disclose a claim for issue of a certificate correctly reflecting the

capital of the co.—*AGRICULTURAL CO-OPERATIVE UNION, LTD. v. CHADWICK* (1922), 43 N. L. R. 135.—S. AF.

t. Representation as to shares subscribed.]—A misrepresentation by an officer of a co. as to the number of shares subscribed for is a material one, & entitles an appct. to rescind his agreement to take shares; & this is so even if the misrepresentation was made by a promoter before the co. was formed, & that the shareholder had subscribed the memorandum of assocn.—*COLONIAL LAND SETTLEMENT OF NEW ZEALAND CO. (LTD.) v. BOHAN* (1885), 3 N. Z. L. R. 98.—N.Z.

a. Statement as to objects of company—Effect of delay.]—The prospectus, on the faith of which deft. applied for shares, set out the objects of the proposed co. as the establishment of freezing, cold storage, & canning works. Prior to the formation of the co. & after its formation, but

Projectile Co. (1892), 67 L. T. 104; Aaron's Reefs v. Twiss, [1896] A. C. 273; Byrne v. Milom & Askam Hamatite Iron Co. (1901), 46 Sol. Jo. 85. *Mentd. Re* Canadian Native Oil Co., Fox's Case (1868), L. R. 5 Eq. 118; *Re* Estates Investment Co., *Ex p.* Pawle (1869), 38 L. J. Ch. 318; Bellairs v. Tucker (1884), 13 Q. B. D. 562; Newlands v. National Employers' Accident Assn. (1885), 54 L. J. Q. B. 428.

1563. Issue of erroneous report—Inducement to take up reserved shares.]—The directors of a banking co., in Feb. 1864, issued a report declaring a dividend of 15 per cent. upon the shares, & a bonus of 10 per cent., & a large addition to the reserve fund. In June, 1864, they offered to the shareholders the option of taking, according to the proportion of shares held by each shareholder, certain reserved shares at a premium. The exors. of a person deceased accepted some of these reserved shares. The report of Feb. 1864, was, in fact, utterly erroneous, & in Sept. the bank stopped payment. No evidence of wilfulness on the part of the directors in misrepresenting the affairs of the co. was given:—*Held*: there was not enough on this state of facts to constitute a misrepresentation which would avoid the acceptance of the shares, & so prevent applts. from being put, personally, upon the lists of contributories.—*JACKSON v. TURQUAND* (1869), L. R. 4 H. L. 305; 39 L. J. Ch. 11, H. L.

1564. Representation as to identity of company.]—Shortly before Nov. 1895, B. took steps with a view to becoming a Fellow of an old established society called "The Auctioneers' Institute of the United Kingdom." In Nov. 1895, X., an officer of a recently incorporated society, with unlimited liability, named "The Institute of Auctioneers & Valuers," called on B. & asked him to become a member of it. B. believed the new society to be the old one, & in this belief, which was known to & fostered by X., B. applied for membership in the new society, & received a certificate of membership. In answer to his subsequent inquiries of the new society, untruthful statements were made to B. which resulted in his remaining in his error as to the identity of the society:—*Held*: there was not even a voidable contract to become a member, but no contract at all; & B. was entitled to have his name removed from the list of contributories in the winding-up of the new society, although he had not before the winding-up commenced taken any step to have it declared that he was under no liability.—*Re INTERNATIONAL SOCIETY OF AUCTIONEERS & VALUERS, BAILLIE'S CASE*, [1898] 1 Ch. 110; 67 L. J. Ch. 81; 77 L. T. 523; 46 W. R. 187; 42 Sol. Jo. 97; 4 Mans. 395.

1565. Representation as to nature of company—

before allotment, the promoters & directors were advised to postpone the erection of the canning works until the completion of the freezing works:—*Held*: delay in carrying out one of the objects set out in the prospectus, was not a misrepresentation entitling deft. to repudiate his shares.—*NORTH WEST CO-OPERATIVE FREEZING & CANNING CO., LTD. v. EASTON* (1915), 11 Tas. L. R. 65.—*AUS.*

b. Representation as to time of commencement of operations.]—The co. gave V. authority to establish agencies in Canada in connection with its accident insurance business & to appoint medical examiners there. At the time the co. had no licence to carry on the business of insurance in Canada, nor any immediate intention of making arrangements to do so, & V. was an official of the co. & was aware of these facts. V. appointed pltf. the sole medical examiner of the co. for Vancouver, assuring him that the co. would commence to carry on

its accident business there within a couple of months, & then obtained from him a subscription for a number of shares of the co.'s unissued capital, which were paid for partly by pltf.'s cheques, payable to the co., & as to the balance by a series of promissory notes. The co. did not commence business in Vancouver within the time specified by V., nor did it obtain a licence to carry on the business of insurance in Canada until many months later. In an action by pltf. to recover back the money he had paid & for the cancellation & return of the notes:—*Held*: he was entitled to recover back the money he had paid & to have the notes returned for cancellation.—*INTERNATIONAL CASUALTY CO. v. THOMSON* (1913), 48 S. C. R. 167.—*CAN.*

c. Statement that success guaranteed.]—Where a statement contained in a prospectus of a co. "that thousands interested in this financial institution guarantee it a thorough financial success" was found to be

Whether amounting to warranty.]—Pltf. asked the local manager of a firm of rubber merchants, who had underwritten a large number of shares in a rubber & produce co. then in the course of formation, whether his firm were bringing out a rubber co. He replied that they were. Pltf. then asked him whether the co. was all right. The manager replied that his firm were bringing it out, to which pltf., rejoined that that was good enough for him. In answer to further inquiries the manager told pltf. that he could let him have 5,000 shares at a certain premium. Pltf. agreed to take the shares, which were subsequently allotted to him. The shares having fallen in value, pltf. brought an action against the firm for fraudulent misrepresentation & for breach of warranty, the alleged warranty being that the co. was a rubber co. The jury negatived fraudulent misrepresentation but found that the co. could not be properly described as a rubber co., & that the manager had given a warranty as alleged:—*Held*: there was no evidence proper to be submitted to the jury upon the question of warranty.

The question whether an affirmation made by the vendor at the time of sale constitutes a warranty depends on the intention of the parties to be deduced from the whole of the evidence, & the circumstance that the vendor assumed to assert a fact of which the purchaser is ignorant, though valuable as evidence of intention, is not conclusive of the question.—*HELLBUT, SYMONS & CO. v. BUCKLETON*, [1913] A. C. 30; 82 L. J. K. B. 245; 107 L. T. 769; 20 Mans. 54, H. L.

Annotations:—Reid. Guaranty Trust Co. of New York v. Hannay, [1918] 2 K. B. 623; *Harrison v. Knowles & Foster*, [1918] 1 K. B. 608; *Collins v. Hopkins*, [1923] 2 K. B. 617. *Mentd. Niblett v. Confectioners' Materials Co.*, [1921] 3 K. B. 387.

(c) *Misrepresentation by Directors, Agents, etc.*

See, generally, AGENCY, Vol. I., pp. 587 et seq.

1566. How far act of company—General rule.]—If a person be induced, by the false representations of a co., to take shares, he cannot be rendered liable as a contributory; but the representations must come from an actual report put forward by the authority of the co., & not from the statements of directors' clerks or others.—*Re ROYAL BRITISH BANK, Ex p. FROWD* (1861), 30 L. J. Ch. 322; 3 L. T. 843; 9 W. R. 328.

1567. ———.]—A ct. of equity will not relieve on a general charge of fraud, but it must be alleged in what the fraud consists, & how it has been effected. If reports are made to the shareholders of a joint-stock co. by the directors, & adopted at one of the meetings of the co., &

false, a subscription induced thereby was not binding upon the subscriber.—*PIONEER TRACTOR CO., LTD. v. PEEBLES* (1914), 29 W. L. R. 371; 18 D. L. R. 477; 7 Sask. L. R. 322.—*CAN.*

d. Statement that company already incorporated.]—The statement in a prospectus that a co. is incorporated when in reality it is only about to be incorporated is not such a misrepresentation as will enable appct. for shares to rescind his contract after they have been duly allotted to him.—*Re WAIPORI RIVER-DREDGING CO., LTD., SHAW'S CASE* (1892), 10 N. Z. L. R. 24.—*N.Z.*

PART III. SECT. 17, SUB-SECT. 1.—
G. (c).

e. How far act of company—Statement by directors—Through agent.]—Deft. was induced to sign an application for shares in a co. on representation by pltf.'s agent that the shares subscribed for were treasury stock,

Sect. 17.—The contract to take shares: Sub-sect. 1, G. (c).]

afterwards industriously circulated, the representations in those reports become after this adoption those of the co., & therefore binding on the co.; & if those reports, so circulated can be shown to be the proximate & immediate cause of shares being bought by individuals, the co. cannot retain the benefit of the contract & keep the purchase-money which has been paid. Representations made by the secretary to a person in a general conversation, without a view to any definite statement by that person that he wants to purchase shares, are not binding on the co.

If an incorporated co., acting by its agent, induces a person to enter into a contract for the benefit of the co., that co. can no more repudiate the fraudulent agent than an individual could repudiate him, & the co. are bound by the misrepresentations of their agent. But the principle cannot be carried so far that an action can be brought against the co. on the ground of deceit, because the directors have done an act which might render them liable to such an action. If the ground alleged for rescinding a contract, executed, to become a shareholder in a co., is a representation that the co. had a good title to certain land, whereas it was not a good title but a defeasible title, the opinion of the ct., that the title was doubtful, is not sufficient to warrant the ct. to interfere with regard to such a contract (LORD CRANWORTH).—*NEW BRUNSWICK & CANADA RAILWAY & LAND CO. v. CONYBEARE* (1862), 9 H. L. Cas. 711; 31 L. J. Ch. 297; 6 L. T. 109; 8 Jur. N. S. 575; 10 W. R. 305; 11 E. R. 907, H. L.; *reversq. S. C. sub nom. CONYBEARE v. NEW BRUNSWICK & CANADA RAILWAY LAND CO., LTD.* (1860), 1 De G. F. & J. 578, L. JJ.

Annotations:—*Consd. Kisch v. Central Ry. of Venezuela* (1865), 3 De G. J. & Sm. 122; *Western Bank of Scotland v. Addie, Addie v. Western Bank of Scotland* (1867), L. R. 1 Sc. & Div. 145; *Houldsworth v. City of Glasgow Bank* (1880), 5 App. Cas. 317; *Hambro v. Burnand*, [1903] 2 K. B. 399. **Refd.** *Re Leeds Banking Co., Ex p. Barritt* (1865), 5 New Rep. 460; *Re Coal Economising Gas Co., Ex p. Gover* (1875), 45 L. J. Ch. 83; *McKeown v. Boudard Peveril Gear Co.* (1896), 74 L. T. 310. **Mentd.** *A. G. v. Ray* (1874), 9 Ch. App. 402, n.

1568. — Statements by directors.] — 100 shares were sold in one parcel by a broker, for two vendors, of fifty shares each, in a joint-stock co. Five of the shares were transferred by deed by one of the vendors to the purchaser, & the purchase-money of the 100 shares was paid to the broker. The purchaser was accepted by the directors as the proprietor of the 100 shares, & his name was entered accordingly in the co.'s books:—**Held:** the 100 shares formed the subject of one contract, & the whole must be governed by the

terms of the deed of transfer of the five shares. Directors fraudulently inducing a person to become a purchaser of shares in a co. may be personally liable to him, but they cannot be considered as the agents of the body of shareholders to commit a fraud of this kind, nor is such a fraud a valid objection, the purchaser's name being on the list of contributories.—*Re NORTH OF ENGLAND JOINT STOCK BANKING CO., DODGSON'S CASE* (1849), 3 De G. & Sm. 85; 14 L. T. O. S. 207; 14 Jur. 386; 64 E. R. 391.

Annotations:—*Consd. Re North of England Joint Stock Banking Co., Bernard's Case* (1852), 5 De G. & Sm. 283. **Refd.** *Re Pennant & Craigwen Consolidated Lead Mining Co., Ex p. Fenn* (1853), 1 Eq. Rep. 344; *Re Ginger, Ex p. Tipperary Joint Stock Banking Co.* (1856), 28 L. T. O. S. 42; *Re Royal British Bank, Nicol's Case* (1859), 3 De G. & J. 387; *Western Bank of Scotland v. Addie, Addie v. Western Bank of Scotland* (1867), L. R. 1 Sc. & Div. 145. **Mentd.** *Re Monmouthshire & Glamorganshire Joint Stock Banking Co., Ex p. Cape's Exor.* (1852), 22 L. J. Ch. 601; *Re Royal British Bank, Brockwell's Case* (1857), 4 Drew. 205; *Re Portsmouth Banking Co., Helby's, Stokes' & Horsey's Cases* (1866), L. R. 2 Eq. 167.

1569. — — — For benefit of directors.] — *BURNES v. PENNELL*, No. 2243, *post*.

1570. — — — Influencing stranger.] — If the directors of a joint-stock co., in the course of their dealings on behalf of the co. with third parties, by fraud induce such parties to contract with them, & the co. benefits by the transaction, the co. will be bound by such fraud; even where the fraud consist in false reports submitted by the directors at their annual meetings to the co., the co. will be bound by such reports, when dealing with third parties who rely on the representations therein made.

Where A., a principal, knowing a material objection to his property, employs B., an agent, who is ignorant of such objection, to sell or let the property, & B. unconsciously makes a false representation to the purchaser, thereby inducing a contract, A. will be bound by such misrepresentation (LORD ST. LEONARDS).

The N. joint-stock co., who were bankers & brokers, sued D. for money lent to him to purchase certain shares in their co. D. pleaded that the directors of the co. had in their annual reports to the co. falsely represented their affairs to be flourishing, whereas the co. was insolvent; & paid large dividends, whereas such dividends were paid out of the capital & that B., their manager, falsely representing the said shares to be of great value, induced D. to purchase them, & at the same time, on the part of the co., offered to advance the money necessary to make the purchase, & promised that the co. would hold the said shares for D. until they could be sold at a profit, without D. being called upon for the price, & D. relying on such representations accepted the shares, which

& that the money paid was to go into the treasury of the co. & was to be used for certain specified purposes. The shares were, as a matter of fact, the property of pltf., & the promissory note given by deft. in payment was indorsed to pltf. In an action on the note:—**Held:** that pltf. was responsible for the fraud practised on deft. by the misrepresentations of the agent who sold them.—*GOULD v. GILLIES* (1907), 40 S. C. R. 437.—**CAN.**

1568 i. — — —.] — S., a director of a joint-stock bank, upon a false representation to F., & an offer of indemnity, induced him to allow a number of shares to be entered in his name; & without the knowledge of F., issued a great number of the unappropriated shares, & entered them in the share-register book in the name of F., debiting him in the books of the bank for the price of them. To

procure purchasers for those shares, two documents were prepared one purporting to be a prospectus of the co., which falsely treated the paid up capital as £100,000, made the number of appropriated shares far exceed the real number, & falsely stated the names of the directors. The other document was a false & fabricated balance-sheet of the bank. Those documents were transmitted to England, & circulated by J., the brother of S. G., induced by false representations, & the statements contained in those documents, bought a number of the shares entered in the name of F. The transfer deeds were executed by F., & certificates of transfer, describing the shares according to the false entries in the bank books, were given to G., signed by S., K., & J., of whom S. alone was a director. The purchase-money was placed in the books to the credit of

the bank. G.'s name was entered in the share-register book, & returned to the Stamp-office as the proprietor; & on the next dividend day, he received a dividend upon them, as if they had been old shares transferred by a *bond fide* holder. Upon a petition presented for winding up the co.:—**Held:** G., having been induced to purchase the shares by the frauds & misrepresentations of S. & his agents, was at liberty to repudiate the contract as against the existing shareholders, & that should be removed from the list of contributories.

Semble: the rule that directors are not the agents of a co. to commit a fraud cannot apply to a case where the fraud complained of relates to a matter which is of the essence of the contract, & a part of it.—*Re TIPPERARY JOINT-STOCK BANK, Ex p. GINGER* (1857), 9 Ir. Jur. 221.—**IR.**

B. accordingly bought & paid for & still possessed:—*Held*: this was a good answer to the action.—*NATIONAL EXCHANGE CO. v. DREW* (1855), 25 L. T. O. S. 223; 2 Macq. 103, H. L.

Annotations:—*Consd.* *Re North Shields Quay & Improvements Co.*, Davidson's Case (1858), 4 K. & J. 688; *Re National Patent Steam Fuel Co.*, *Ex p.* Worth (1859), 4 Drew. 529; *Re Royal British Bank, Nicol's Case* (1859), 3 De G. & J. 387; *Barry v. Croskey* (1861), 2 J. & H. 1. *Reid.* *Eastern Counties Ry. v. Hawkes* (1855), 5 H. L. Cas. 331; *Re Home Counties & General Life Assce.*, *Ex p.* Woolaston (1859), 7 W. R. 540; *Re Overend, Gurney, Ex p. Oakes & Peck* (1867), L. R. 3 Eq. 576; *Western Bank of Scotland v. Addie, Addie v. Western Bank of Scotland* (1867), L. R. 1 Sc. & Div. 145. *Mentd.* *Bartlett v. Salmon* (1855), 6 De G. M. & G. 33; *Re Royal British Bank, Brockwell's Case* (1857), 4 Drew. 205; *Smith v. Kay* (1859), 7 H. L. Cas. 750; *Cargill v. Bower* (1878), 10 Ch. D. 502; *Houldsworth v. City of Glasgow Bank* (1880), 5 App. Cas. 317; *Ludgater v. Love* (1881), 44 L. T. 694; *Symonds v. City Bank* (1886), 34 W. R. 364; *Hambro v. Burnand*, [1903] 2 K. B. 399.

1571. ———.]—The directors of a co., by their reports, grossly misrepresented the state of the co. Those reports got into circulation, & were seen by A., who, on the faith of them, took new shares created by the co.:—*Held*: the fraudulent reports of the directors were the reports of the co., & A. was not properly made a contributory.—*Re ROYAL BRITISH BANK, BROCKWELL'S CASE* (1857), 4 Drew. 205; 26 L. J. Ch. 855; 29 L. T. O. S. 375; 3 Jur. N. S. 879; 5 W. R. 858; 62 E. R. 79.

Annotations:—*Consd.* *Re Hull & London Life Assce.*, Gibson's Case, Kemp's Case, Hudson's Case (1858), 2 De G. & J. 275; *Re Northumberland & Durham District Banking Co.*, *Ex p.* Bigge (1858), 28 L. J. Ch. 50; *Re Royal British Bank, Nicol's Case* (1859), 3 De G. & J. 387. *Distd.* *Re London & Eastern Banking Corp.*, *Ex p.* Longworth's Exors. (1859), 29 L. J. Ch. 55. *Dbtd.* *Re Royal British Bank, Mixer's Case* (1859), 4 De G. & J. 575. *Expld.* *Re National Patent Steam Fuel Co.*, *Ex p.* Worth (1859), 4 Drew. 529. *Consd.* *Western Bank of Scotland v. Addie, Addie v. Western Bank of Scotland* (1867), L. R. 1 Sc. & Div. 145. *Reid.* *Re Welsh Potosi Lead & Copper Mining Co.*, *Ex p.* Official Liquidator (1857), 29 L. T. O. S. 400; *Re Home Counties & General Life Assce.*, *Ex p.* Woolaston (1859), 7 W. R. 540; *Re Royal British Bank, Ex p. Frowd* (1861), 30 L. J. Ch. 322. *Mentd.* *Re Leeds Banking Co.*, *Ex p.* Barrett (1865), 2 Drew. & Sm. 415.

1572. ———.]—Where, by false representations of the directors of a co., a stranger is induced to take shares directly from the co., the transaction is not binding in equity, & he is not a contributory. But if, by such representations of the directors, he takes them from a third party, he is a contributory.—*Re LIVERPOOL BOROUGH BANK, DURANTY'S CASE* (1858), 26 Beav. 268; 28 L. J. Ch. 37; 32 L. T. O. S. 114; 4 Jur. N. S. 1068; 7 W. R. 70; 53 E. R. 901.

Annotations:—*Expld.* *Huddersfield Banking Co. v. Lister*, [1895] 2 Ch. 273. *Reid.* *Re Royal British Bank, Nicol's Case* (1859), 3 De G. & J. 387. *Mentd.* *Re Overend, Gurney, Ex p. Oakes & Peck* (1867), L. R. 3 Eq. 576; *Peck v. Gurney* (1871), L. R. 13 Eq. 79.

1573. ———.]—If the directors, in the course of the performance of their duty, make any false or fraudulent representations to the shareholders, & afterwards think proper to give them unauthorised circulation beyond the limits of the co., a stranger who chances to act upon them, & suffers loss in consequence, must either submit or bear what his own voluntary acquiescence in representations which are not addressed to him has brought upon him; or, if he has any remedy at all, it must be against those who, seeking to deceive the public generally, have entitled him to make a case against them out of his own individual deceptions as one of the public (*LORD CHELMSFORD, C.*).—*Re ROYAL BRITISH BANK, NICOL'S CASE*, No. 2382, *post*.

1574. ———.]—(1) The charter of a co. empowered the directors to increase the capital by the issue of new shares of £100 each, but not

by less than £10,000 at a time, & it was provided that the additional capital derived from such new shares should not be published & declared as a portion of the capital of the co. till the Board of Trade was satisfied that the whole amount of the increase of capital from time to time determined on had been subscribed for the shares issued, at least £50 per share paid up, & a supplementary deed executed by the persons taking the shares. An issue of 2,000 new shares was determined upon, the subscribers to be entitled to £5 per cent. interest on the sums paid by them until they had paid up £50 per share, & afterwards to participate in dividends. M. took some of them, paid up £50 per share, & executed a supplementary deed, obtained certificates of shares & received interest, but only a small part of the 2,000 shares were ever subscribed for. The sums received in respect of them were entered in the reports under the head of liabilities:—*Held*: M. was a shareholder liable to be placed on the list of contributories, & not entitled to rank as a creditor for what he had paid.

(2) The directors of a co. from time to time made to the general meetings of shareholders & printed & published false & fraudulent reports of the affairs of the co. There was nothing to show that the shareholders were aware of the falsehood of these reports. An issue of new shares being made, M. was induced by these reports to take some of them:—*Held*: that, notwithstanding the fraud, he was liable to be placed on the list of contributories.

I think it was a fraud on the part of the directors which cannot be attributed to the co. Supposing it was a fraud on the part of the co., I do not think that applt. is now entitled to avail himself of it & rescind the contract. It is a settled rule that a contract obtained by fraud is not void, but that the party defrauded has a right to avoid it if he does so while matters can be replaced in their former position. In each case we must look to see whether the contract has been acted upon. If it has been acted upon by the party defrauded so that others who are interested cannot be restored to their former rights, the contract cannot be rescinded, & nothing remains to the party defrauded but a reparation in damages (*LORD CAMPBELL, C.*).—*Re ROYAL BRITISH BANK, MIXER'S CASE* (1859), 4 De G. & J. 575; 28 L. J. Ch. 879; 1 L. T. 19; 7 W. R. 677; 45 E. R. 223, L. C. & L. JJ.

Annotations:—*As to* (1) *Reid.* *Western Bank of Scotland v. Addie, Addie v. Western Bank of Scotland* (1867), L. R. 1 Sc. & Div. 145. *As to* (2) *Reid.* *Re Royal British Bank, Ex p. Frowd* (1861), 9 W. R. 328; *Re National Assce. & Investment Asscn.* (1862), 6 L. T. 118; *Re Life Asscn. of England, Ex p. Blake* (1865), 5 New Rep. 352.

1575. ———.]—Where the directors of a co. in the discharge of their duty make a report to a general meeting of the shareholders containing misrepresentations; & a third person, relying on those misrepresentations, deals with the co. by taking shares direct from the co., those representations vitiate the whole transaction. But where a third person, relying on such misrepresentations, takes shares not from the co. but from a shareholder in the co., the transaction is not vitiated, & the third person is liable as a contributory in respect of the shares he has so taken.—*Re NATIONAL PATENT STEAM FUEL CO.*, *Ex p.* WORTH (1859), 4 Drew. 529; 28 L. J. Ch. 589; 33 L. T. O. S. 87; 5 Jur. N. S. 504; 7 W. R. 281; 62 E. R. 203.

Annotations:—*Reid.* *Re Royal British Bank, Ex p. Frowd* (1861), 30 L. J. Ch. 322; *Re Overend, Gurney, Ex p. Oakes & Peck* (1867), L. R. 3 Eq. 576.

1576. ———.]—NEW BRUNSWICK &

Sect. 17.—The contract to take shares: Sub-sect. 1, G. (c).]

CANADA RAILWAY & LAND CO. v. CONYBEARE, No. 1567, *ante*.

1577. — Adoption at annual meeting of report containing untrue statements.]—Statements contained in the report made by the directors of a joint-stock co., & adopted at an annual meeting of the shareholders though untrue, are not such misrepresentations, *quoad* a shareholder not present at the meeting as to entitle him to be relieved, from a contract to take additional shares, though the contract may have been made upon the faith of the representations.—*Re LEEDS BANKING CO., BARRETT'S CASE* (1865), 3 De G. J. & Sm. 30; 6 New Rep. 242; 34 L. J. Ch. 558; 12 L. T. 514; 13 W. R. 826; 46 E. R. 549, L. JJ.

Annotations:—*Consd. Re Leeds Banking Co., Addinell's Case* (1865), L. R. 1 Eq. 225. *Follid. Re Leeds Banking Co., Mallorie's Case* (1866), 36 L. J. Ch. 40. *Reid. Re Leeds Banking Co., Fearnside & Dean's Case, Dobson's Case* (1866), 1 Ch. App. 231.

1578. — —.]—(1) Suit to rescind a share-taking contract for shares in a joint-stock banking co., and for *restitutio in integrum*, or, alternatively, for damages:—*Held*: under the circumstances, unsustainable.

(2) Notwithstanding numerous irreconcilable decisions, the true doctrine seems to be, that where a person has been drawn into a contract to purchase shares by the fraudulent misrepresentations of directors, & where the directors, in the name of the co., seek to enforce that contract, or where the person who has been deceived institutes a suit to rescind it, the misrepresentations are imputable to the co., & the purchaser cannot be held to his contract (*LORD CHELMSFORD, C.*).

(3) If an untrue statement is made, founded on a belief destitute of all reasonable grounds, or which the least inquiry would immediately have corrected, it may fairly & correctly be characterised as misrepresentation & deceit (*LORD CHELMSFORD, C.*).

(4) If the directors employed the manager to make false representations as to the stability of the co., the effect would have been the same as if made by the directors themselves (*LORD CHELMSFORD, C.*).

(5) I entertain considerable doubt whether the pursuer in this case has connected the directors sufficiently with the alleged misrepresentations to make them imputable to the co. That the directors knew of the manager's endeavours to get pursuer to take shares is nowhere alleged; nor is it alleged that the manager gave authority to the local agent from whom the misrepresentations were immediately derived (*LORD CHELMSFORD, C.*).

(6) A co. cannot retain any benefit which they have gained through the fraud of their agent (*LORD CHELMSFORD, C.*).

(7) If, instead of seeking to set aside the contract, the person defrauded prefers an action of damages for the deceit, such action cannot be maintained against the co., but only against the directors (*LORD CHELMSFORD, C.*).

An incorporated co. cannot, in its corporate character, be called on to answer in an action for deceit (*LORD CRANWORTH*).

(8) The incorporated co. cannot be sued for frauds

committed by directors before the incorporation (*LORD CRANWORTH*).

(9) That the complainant was himself a member of the co., whose agents had committed the fraud, would not be a valid objection to his suit for redress; nor would it be an answer that his suit might prejudice those who had innocently acquired their shares after he had acquired his (*LORD CHELMSFORD, C.*).—*WESTERN BANK OF SCOTLAND v. ADDIE, ADDIE v. WESTERN BANK OF SCOTLAND* (1867), L. R. 1 Sc. & Div. 145, H. L.

Annotations:—*As to* (1) *Consd. Mackay v. Commercial Bank of New Brunswick* (1874), L. R. 5 P. C. 394. *Follid. Houldsworth v. City of Glasgow Bank* (1880), 5 App. Cas. 317. *Consd. Armstrong v. Jackson*, [1917] 2 K. B. 822. *Reid. Adam v. Newbigging* (1888), 13 App. Cas. 308. *As to* (2) *Consd. Oakes v. Turquand & Harding, Peek v. Turquand & Harding, Re Overend, Gurney* (1867), L. R. 2 H. L. 325; *Derry v. Peek* (1889), 14 App. Cas. 337. *As to* (3) *Consd. Derry v. Peek* (1889), 14 App. Cas. 337. *As to* (4) *Consd. Houldsworth v. City of Glasgow Bank* (1880), 5 App. Cas. 317. *Reid. Weir v. Barnett, Bell, etc.* (1878), 38 L. T. 929; *Chapleo v. Brunswick Benefit Bldg. Soc.* (1880), 5 C. P. D. 331; *Newlands v. National Employers' Accident Asscn.* (1885), 54 L. J. Q. B. 428; *Hambro v. Burnand*, [1903] 2 K. B. 399. *As to* (5) *Reid. Weir v. Barnett, Bell, etc.* (1878), 38 L. T. 929; *Houldsworth v. City of Glasgow Bank* (1880), 5 App. Cas. 317; *Chapleo v. Brunswick Benefit Bldg. Soc.* (1880), 5 C. P. D. 331; *Newlands v. National Employers' Accident Asscn.* (1885), 54 L. J. Q. B. 428; *Hambro v. Burnand*, [1903] 2 K. B. 399. *As to* (6) *Consd. Houldsworth v. City of Glasgow Bank* (1880), 5 App. Cas. 317. *Reid. Oakes v. Turquand & Harding, Peek v. Turquand & Harding, Re Overend, Gurney* (1867), L. R. 2 H. L. 325; *Blake v. Albion Life Assco. Soc.* (1878), 4 C. P. D. 94; *Erlanger v. New Sombrero Phosphate Co.* (1878), 3 App. Cas. 1218; *Adam v. Newbigging* (1888), 13 App. Cas. 308; *Capel v. Sim's Ships Compositions Co.* (1888), 57 L. J. Ch. 713; *Armstrong v. Jackson*, [1917] 2 K. B. 822. *As to* (7) *Consd. Houldsworth v. City of Glasgow Bank* (1880), 5 App. Cas. 317. *Reid. Swift v. Winterbotham & Goddard* (1873), 42 L. J. Q. B. 111; *Blake v. Albion Life Assco. Soc.* (1878), 4 C. P. D. 94; *Citizens' Life Assco. v. Brown*, [1904] A. C. 423. *As to* (8) *Consd. Mackay v. Commercial Bank of New Brunswick* (1874), L. R. 5 P. C. 394. *Reid. Citizens' Life Assco. v. Brown*, [1904] A. C. 423. *As to* (9) *Consd. Houldsworth v. City of Glasgow Bank* (1880), 5 App. Cas. 317. *Generally, Mentd. Lyndo v. Anglo-Italian Hemp Spinning Co.*, [1896] 1 Ch. 178; *Salomon v. Salomon*, [1897] A. C. 22; *Lloyd v. Grace, Smith*, [1912] A. C. 716.

1579. — — Statement by one director.]—In an action by pltf. co. for a call on 5,000 shares, deft. denied liability & counterclaimed a rescission of her contract to take shares & a return of the sum she had paid on her application for shares & on their allotment to her. In answer to questions left to them the jury found (1) that deft. was induced to apply for shares by representations fraudulently made by L., a director of pltf. co.; (2) that the representations were made both before & after the co. had been incorporated & L. had become a director; & (3) that they were made for the purposes of the co. & in its supposed interests. It appeared that after the formation of the co. all the interested parties, directors & signatories, well knew that L. was continuing what he had been doing previously, namely, endeavouring to raise money on behalf of the co.:—*Held*: in these circumstances L. was the agent of the co., the co. was bound by his acts, & the deft. was entitled to judgment on the claim & counterclaim.—*HILO MANUFACTURING CO., LTD. v. WILLIAMSON* (1911), 28 T. L. R. 164, C. A.

1580. — Statement by secretary.]—If a party is induced to subscribe to a co., upon misrepresentation made by it or on its behalf, the shareholders, on the co. being wound up, cannot

1580 i. — Statement by secretary.]—Verbal misrepresentations, made to appcts. for shares by a secretary *pro tem* & provisional director of an inchoate co., whose duty it is to receive applications for shares & to whom appcts. are impliedly referred by the prospectus for further information,

constitute grounds upon which such appcts. can subsequently sue the co. when formed for the rescission of an agreement to take shares which has been induced by such misrepresentations.—*ADAMANTA DIAMOND MINING CO., LTD. v. SMYTHE* (1883), 1 H. C. 406.—S. AF.

f. — Statement by promoter — Before incorporation.]—*GOURLIE v. CHANDLER* (1907), 41 N. S. R. 341.—CAN.

g. — — —.]—A co. is not bound by the misrepresentations of a promoter made before incorpora-

insist upon such party being placed on the list of contributories. Misrepresentations made by a secretary or manager, in the absence of authority, do not bind the co. It cannot be assumed that he was an agent to commit a fraud. A judgment in favour of a co. at law, for the payment of the deposit on shares subscribed for, will not prevent this ct. from giving relief when the subscription was procured by fraud, which was not in evidence when the judgment was obtained.—*Re DEPOSIT & GENERAL LIFE ASSURANCE CO., AYRE'S CASE* (1858), 25 Beav. 513; 27 L. J. Ch. 579; 31 L. T. O. S. 192; 4 Jur. N. S. 596; 53 E. R. 733.

Annotations:—*Distd. Re Northumberland & Durham District Banking Co., Ex p. Bigge* (1858), 28 L. J. Ch. 50. *Expld. & Distd. Re Liverpool Borough Bank, Duranty's Case* (1858), 26 Beav. 268. *Reid. Leeds Banking Co., Ex p. Barrett* (1865), 11 Jur. N. S. 234.

1581. ———.]—*NEW BRUNSWICK & CANADA RAILWAY & LAND CO. v. CONYBEARE*, No. 1567, ante.

1582. ———.]—In March, 1869, P. wrote to the secretary of the A. co. making certain inquiries as to the state of the co. He received a letter in reply signed by the secretary, & giving, as P. alleged, an untrue account of the state of the co. Just before the winding-up of the co. in Sept. 1869, P. filed a bill against the co. & against the directors, alleging that he had been induced by the fraudulent misrepresentations of the officers of the co. to purchase shares, & praying that the co. or the directors might be ordered to repay him the price of the shares, & to indemnify him for all calls, etc. P.'s inquiry had been communicated by the secretary to the manager, but it did not appear that the correspondence between P. & the secretary had been brought to the knowledge of the directors. It having been decided that P.'s name must be placed on the list of contributories:—*Held*: the answering of inquiries such as those addressed by P. to the secretary did not fall within the business of the co. deputed to the manager & secretary, & consequently that in the absence of proof connecting the directors personally with the replies made to P., no action or suit for misrepresentation could be maintained against them.—*PARTRIDGE v. ALBERT LIFE ASSURANCE CO.* (1872), 16 Sol. Jo. 199.

Annotation:—*Mentd. Newlands v. National Employers' Accident Asscn.* (1885), 54 L. J. Q. B. 428.

1583. ———.]—The secretary of a co. has no general authority to make representations to induce persons to take shares in a co.; so that a person who is induced to take shares in a co. by a fraudulent misrepresentation, not authorised by or known to the officers of the co. entitled to make representations, of the secretary of a co. is not entitled to maintain an action against the co. for the rescission of the contract, or for damages

for such misrepresentation.—*NEWLANDS v. NATIONAL EMPLOYERS' ACCIDENT ASSOCN., LTD.* (1885), 54 L. J. Q. B. 428; 53 L. T. 242; 49 J. P. 628, C. A.

Annotation:—*Reid. Barnett v. South London Tram. Co.* (1887), 18 Q. B. D. 815.

1584. ———.]—A principal is not liable in an action of deceit for the unauthorised & fraudulent act of a servant or agent committed, not for the general or special benefit of the principal, but for the servant's or agent's private ends. The secretary of a co. answered questions which were put to him as secretary as to the validity of certain debenture stock of the co. The answers were untrue & were fraudulently made by the secretary for his own benefit. In an action against the co. for loss arising from the representations, the jury found that the secretary was held out by the co. as a person to answer such inquiries on their behalf:—*Held*: the co. were not liable.—*BRITISH MUTUAL BANKING CO. v. CHARNWOOD FOREST RY. CO.* (1887), 18 Q. B. D. 714; 56 L. J. Q. B. 449; 57 L. T. 833; 52 J. P. 150; 35 W. R. 590, C. A.

Annotations:—*Consd. Hambro v. Burnand*, [1903] 2 K. B. 399; *Ruben v. Great Fingall Consolidated*, [1904] 2 K. B. 712. *Reid. Hambro v. Burnand* (1904), 9 Com. Cas. 251; *Lloyd v. Grace, Smith*, [1911] 2 K. B. 489. *Mentd. Crapp v. East Stonehouse L. B.* (1889), 5 T. L. R. 501; *Bishop v. Balkis Consolidated Co.* (1890), 25 Q. B. D. 512; *Tomkinson v. Balkis Consolidated Co.* (1891), 60 L. J. Q. B. 558; *Thorne v. Heard*, [1894] 1 Ch. 599; *Spooner v. Browning, Todd & Whish* (1897), 77 L. T. 685; *Trott v. National Discount Co.* (1900), 17 T. L. R. 37; *Beer v. Prudential Assco.* (1902), 66 J. P. 729; *Whitechurch v. Cavanagh*, [1902] A. C. 117; *Anglo-American Oil Co. v. Manning*, [1908] 1 K. B. 536; *Malcolm, Brunner v. Waterhouse* (1908), 24 T. L. R. 854; *Lloyd v. Grace, Smith*, [1912] A. C. 716; *Moss S.S. Co. v. Whinney*, [1912] A. C. 254; *Re Jubilee Cotton Mills*, [1923] 1 Ch. 1.

1585. ———.]—*Statement by manager of company.*—A shareholder in a joint-stock banking co. executed a deed of transfer, binding him to pay to two trustees for the co. all sums then due, or to become due, in respect of twenty shares; & he received the usual certificate that he held twenty shares. He shortly afterwards acquired thirty other shares, but did not execute any deed in respect of them; he then obtained a certificate that he was the holder of fifty shares. In answer to inquiries respecting the circumstances of the co., which he shortly afterwards made, the manager of the co. informed him, among other particulars, that the dividends were payable half-yearly, whereas, in fact, the liabilities of the co. at that time greatly exceeded its assets. He then purchased fifty more shares in the co., being shares forfeited by former owners, & then held by the directors in trust for the co., of which circumstance, however, he was ignorant, & received a certificate that he was the holder of 100 shares. He received the dividends on these 100 shares

tion unless when it allotted the shares, it knew that they had been applied for on the faith of misrepresentations.

—*OFFSHOOP PROPRIETARY MINES, LTD. (IN LIQUIDATION) v. REEVES*, [1907] T. H. 76.—S. AF.

h. ———.]—*Statement by agent.*—A co. gave V. authority to establish agencies in Canada in connection with its casualty insurance business, & to appoint medical examiners therein. At the time, the co. had no licence to carry on the business of insurance in Canada, nor any immediate intention of making arrangements to do so, & V. was an official of the co. & was aware of these facts. V. appointed T. the sole medical examiner of the co. for Vancouver, B. C., assuring him that the co. would commence to carry on its casualty insurance business there within a couple of months, & then

obtained from him a subscription for a number of shares of the co.'s treasury stock. In an action by T. against the co. & V. to recover back the money he had paid:—*Held*: in the transaction which took place, V. was the co.'s agent; & the co. was responsible for the deceit practised in procuring the subscription from T.—*INTERNATIONAL CASUALTY CO. v. THOMSON* (1913), 25 W. L. R. 256.—CAN.

k. ———.]—Where an agent of a co. expressed an opinion with regard to the earnings of the co. which he knew to be false & assisted in inducing a contract for shares, the subscription so induced was not binding.—*PIONEER TRACTOR CO. v. PEEBLES* (1914), 29 W. L. R. 371; 7 W. W. R. 124; 18 D. L. R. 477; 8 W. W. R. 632.—CAN.

l. ———.]—*Statement in prospectus.*—H. applied for shares to the promoters of a co. about to be registered, on the faith of a prospectus issued by them, paid the amount due on application & allotment, & had the shares allotted to him. The co. was registered with some of the promoters as directors, but the capital & objects of the co. as set out in the memorandum of assocn. differed materially from the prospectus. On discovering the discrepancy as to the capital, H. & other intending shareholders sent a written protest to the directors, & asked for a meeting to be held. The directors called a meeting for the purpose of increasing the capital to the amount stated in the prospectus when H. attended & declined to agree to any smaller amount of capital than that mentioned in the prospectus &

Sect. 17.—The contract to take shares: Sub-sect. 1, G. (c) & (d).]

for two years, until 1847, when the co. stopped payment:—*Held*: the shareholder was a contributory for 100 shares without qualification, & that the inaccurate representation of the manager, however fraudulent, did not relieve the shareholder from his obligations as such in respect of the fifty shares purchased from the directors.—*Re NORTH OF ENGLAND JOINT STOCK BANKING CO., BERNARD'S CASE* (1852), 5 De G. & Sm. 283; 21 L. J. Ch. 408; 18 L. T. O. S. 283; 16 Jur. 810; 64 E. R. 1118.

1586. ———.]—*Re DEPOSIT & GENERAL LIFE ASSURANCE CO., AYRE'S CASE*, No. 1580, *ante*.

See, also, No. 1582, *ante*.

1587. ——— **Employed by directors to make representations.**]—*WESTERN BANK OF SCOTLAND v. ADDIE, ADDIE v. WESTERN BANK OF SCOTLAND*, No. 1578, *ante*.

1588. ——— **Statement by promoter.**]—L. signed the memorandum of assocn. of a co. before its incorporation for 250 shares. After its incorporation he sought to escape from liability on the shares on the ground that he was induced to sign the memorandum by the misrepresentation of a promoter of the co.:—*Held*: assuming the misrepresentation was made & acted on, L. was nevertheless liable on the shares, (a) because the co. before it came into existence could not appoint an agent & was therefore not liable for the acts of the promoter; (b) by signing the memorandum L. on the registration of the co. became bound, not only as between himself & the co., but also as between himself & other persons who should become members.—*Re METAL CONSTITUENTS, LTD., LURGAN'S (LORD) CASE*, [1902] 1 Ch. 707; 71 L. J. Ch. 323; 86 L. T. 291; 50 W. R. 492; 9 Mans. 196.

1589. ——— **Statement by law agent.**]—*BURNES v. PENNELL*, No. 2243, *post*.

Authority of directors & officers generally, *see* Sects. 28, 29, *post*.

(d) Loss of Right to Relief.

1590. By acquiescence—Acting as shareholder—Before discovery of misrepresentation—Execution of subscription deed.]—*WONTNER v. SHAIRP*, No. 1554, *ante*.

1591. ——— After discovery of misrepresentation—Attendance at meeting.]—*WONTNER v. SHAIRP*, No. 1554, *ante*.

1592. ———.]—Three persons became shareholders in a co. on a representation, not fraudulently, but, as the event proved, untruly made, by the solicitor & another, who was a promoter of the co., that two men of wealth would become shareholders:—*Held*: having signed the deed without inquiry as to the truth of the representation, & continued to act as shareholders after they discovered its untruth, they were properly

withdrew from the meeting, but a resolution was subsequently passed to increase the capital. He received notice to attend a meeting to confirm this resolution, when he insisted that he was not a shareholder, & withdrew from the meeting in which he took no part. He then applied to have his name removed from the register of shareholders:—*Held*: H. was not a shareholder.—*Re TASMANIAN FRUIT GROWERS v. PRODUCE CO-OPERATIVE CO., LTD., HERON'S CASE* (1905), 1 Tas. L. R. 30.—AUS.

m. ———.]—*Re INDIAN COM-*

PANIES ACT, 1866, & EAST INDIA BUILDING & GENERAL CONTRACT CO., LTD. (1867), 2 Ind. Jur. N. S. 296.—IND.

n. ——— **Statements in annual reports.**]—Demurrer to a statement of claim for damages against a co., wherein it was alleged that pltf. was induced by fraudulent statements in the annual reports, & in letters written to him by the president, to purchase stock from the co., which stock was valueless, overruled with costs.—*MOORE v. ONTARIO INVESTMENT ASSOCN.* (1888), 16 O. R. 269.—CAN.

made contributories.—*Re HULL & LONDON LIFE ASSURANCE CO. & HULL & LONDON FIRE INSURANCE CO., GIBSON'S CASE, KEMP'S CASE, HUDSON'S CASE* (1858), 2 De G. & J. 275; 4 Jur. N. S. 1005; 6 W. R. 384; 44 E. R. 994, L. C. & L. JJ.

Annotation:—*Refd. Lynde v. Anglo-Italian Hemp Spinning Co.*, [1896] 1 Ch. 178.

1593. ———.]—A shareholder, who had taken shares on the faith of a prospectus, afterwards discovered that by the articles of assocn. the objects of the co. materially differed from those stated in the prospectus. He subsequently dealt with the shares as owner, by attempting to sell them:—*Held*: he had acquiesced & could not afterwards repudiate them on the ground of the misrepresentation.—*Re HOP & MALT EXCHANGE & WAREHOUSE CO., Ex p. BRIGGS* (1866), L. R. 1 Eq. 483; 35 Beav. 273; 35 L. J. Ch. 320; 14 L. T. 39; 12 Jur. N. S. 322; 55 E. R. 900.

Annotations:—*Consd. Re Russian Vyksounsky Ironworks Co., Ex p. Stewart* (1866), 35 L. J. Ch. 738. *Distd. Central Ry. of Venezuela v. Kisch* (1867), L. R. 2 H. L. 99; *Re Cheltenham & Swansea Ry. Carriage & Waggon Co. Little's Case* (1869), 20 L. T. 162. *Consd. Re Murray, Dickson v. Murray* (1887), 57 L. T. 223. *Refd. Re Metropolitan Coal Consumers' Assocn., Ex p. Edwards* (1891), 64 L. T. 561; *Imperial Ottoman Bank v. Trustees, Exors. & Securities Insee. Corpn.* (1895), 13 R. 287.

1594. ———.]—A shareholder in a co. filed a bill to have his contract to take shares declared void on the ground of deception & misrepresentation of the co. by reason of their having commenced their railway when only one-fifth of the share capital was subscribed, & having entered into a contract for the construction of a part only of the proposed line, with insufficient capital:—*Held*: his bill must be dismissed on the ground of his having continued to act as a shareholder for some months after he became aware of the circumstances on which he founded his case.—*SHARPLEY v. LOUTH & EAST COAST RY. CO.* (1876), 2 Ch. D. 663; 46 L. J. Ch. 259; 35 L. T. 71, C. A.

Annotations:—*Refd. Re Metropolitan Coal Consumers' Assocn., Ex p. Edwards* (1891), 64 L. T. 561; *Aaran's Reefs v. Twiss*, [1896] A. C. 273.

Compare cases in Sub-sect. 3, F., post.

1595. ——— **Delay in repudiation—Must be within reasonable time.**]—Where a person has been, by the fraudulent misrepresentation of directors, or by their fraudulent concealment of facts, drawn into a contract to purchase shares in a co., the directors cannot enforce the contract against him, but he may rescind it. But he must do so within a reasonable time.—*OAKES v. TURQUAND & HARDING, PEEK v. TURQUAND & HARDING, Re OVEREND, GURNEY & Co.* (1867), L. R. 2 H. L. 325; 36 L. J. Ch. 949; 16 L. T. 808; 31 J. P. 195; 15 W. R. 1201, H. L.; *affg. S. C. sub nom. Re OVEREND, GURNEY & Co., Ex p. OAKES & PEEK* (1867), L. R. 3 Eq. 576.

Annotations:—*Appld. Re Cleveland Iron Co., Ex p. Stevenson* (1867), 16 W. R. 95. *Consd. Re Estates Investment Co., Pawle's Case* (1869), 4 Ch. App. 497; *Reese River Silver Mining Co. v. Smith* (1869), L. R. 4 H. L. 64. *Appld.*

PART III. SECT. 17, SUB-SECT. 1.—G. (d).

o. **By acquiescence—Lapse of time.**]—An alleged misrepresentation in a prospectus on which deft. relied as ground for rescission of his agreement to take shares having been brought to his notice shortly after the contract to take shares had been made, & he having taken no steps in the matter till two years afterwards, when he had been sued on the contract:—*Semble*: even if the misrepresentations had originally furnished a good ground of defence, deft. would have been

Re London & County General Agency Assocn., Hare's Case (1869), 4 Ch. App. 508. *Consd. Waterhouse v. Jamieson* (1870), L. R. 2 Sc. & Div. 29; *Tennent v. City of Glasgow Bank* (1879), 4 App. Cas. 615. *Apld. Re Ystalyfera Co.* (1886), 2 T. L. R. 900; *Re Lennox Publishing Co., Ex p. Storey* (1890), 62 L. T. 791; *Westmoreland Green & Blue Slate Co. v. Feilden* (1891), 7 T. L. R. 585. *Reid. Re Oriental Commercial Bank, Alabaster's Case* (1868), L. R. 7 Eq. 273; *Re London & Mediterranean Bank, Wright's Case* (1871), 7 Ch. App. 55; *McEuen v. West London Wharves & Warehouses Co.* (1871), 6 Ch. App. 655; *Cree v. Somervail* (1879), 4 App. Cas. 648; *Re Scottish Petroleum Co.* (1883), 23 Ch. D. 413; *Re London & Leeds Bank, Ex p. Carling, Carling v. London & Leeds Bank* (1887), 56 L. J. Ch. 321; *Re British Burmah Land Co.* (1888), 4 T. L. R. 631; *Cockledge v. Metropolitan Coal Consumers' Assocn.* (1891), 64 L. T. 826; *East Broken Hill Consols v. Mallaby-Deeley* (1895), 11 T. L. R. 465; *Hemp, Yarn & Cordage Co., Hindley's Case*, [1896] 2 Ch. 121. *Mentd. Henderson v. Lacon* (1867), L. R. 5 Eq. 249; *Re Overend, Gurney, Ex p. Musgrave* (1867), 37 L. J. Ch. 161; *Re Universal Banking Corp., Gunn's Case* (1867), 3 Ch. App. 40; *Downes v. Ship* (1868), L. R. 3 H. L. 343; *Kent v. Freehold Land & Brickmaking Co.* (1868), 3 Ch. App. 493; *Ogilvie v. Currie* (1868), 37 L. J. Ch. 541; *Re Overend, Gurney, Barrow's Case* (1868), 3 Ch. App. 784; *Re Aberaman Ironworks, Peek's Case* (1869), 4 Ch. App. 532; *Re London & Northern Insee. Corp., Stace & Worth's Case* (1869), 4 Ch. App. 682; *Overend, Gurney v. Gurney* (1869), 4 Ch. App. 701; *Re Warren's Blacking Co., Pentelow's Case* (1869), 4 Ch. App. 178; *Re General Provincial Life Assce., Ex p. Daintree* (1870), 18 W. R. 396; *Re Imperial Land Co. of Marseilles, Ex p. Jeaffreson* (1870), L. R. 11 Eq. 109; *Re Contract Corp., Hudson's Case* (1871), L. R. 12 Eq. 1; *Re Empire Assce. Corp., Challis's Case, Somerville's Case* (1871), 6 Ch. App. 266; *Re Hercules Insee., Pugh & Sharman's Case* (1872), L. R. 13 Eq. 566; *Re Paraguassu Steam Tramroad Co., Black's Case* (1872), 8 Ch. App. 254; *Re Blakely Ordnance Co., Brett's Case, Re Oriental Commercial Bank, Morris' Case* (1873), 8 Ch. App. 800; *Re Welsh Flannel & Tweed Co.* (1875), L. R. 20 Eq. 360; *Re Nassau Phosphate Co.*, (1876) 2 Ch. D. 610; *Collins v. City & County Bank, Stone v. City & County Bank* (1877), 38 L. T. 9; *Stone v. City & County Bank, Collins v. City & County Bank* (1877), 3 C. P. D. 282; *Re Hull & County Bank, Burgess's Case* (1880), 15 Ch. D. 507; *Re Scottish Petroleum Co., MacLagan's Case* (1882), 51 L. J. Ch. 841; *Re London Celluloid Co., Bayley & Hanbury's Case* (1888), 36 W. R. 673; *Re National Debenture & Assets Corp., [1891] 2 Ch. 505; Boaler v. Brodhurst* (1892), 8 T. L. R. 398; *Re Laxon*, [1892] 3 Ch. 555; *Re Kent Coalfields Syndicate*, [1898] 1 Q. B. 754; *Ladies' Dress Assocn. v. Pulbrook* (1899), 68 L. J. Q. B. 871; *Re Trench & Tubeless Tyre Co., Bethell v. Trench & Tubeless Tyre Co.* (1899), 69 L. J. Ch. 97; *Re Yolland, Husson & Birkett, Leicester v. Yolland, Husson & Birkett* (1907), 77 L. J. Ch. 43; *Moosa Goolam Ariff v. Ebrahim Goolam Ariff* (1912), 28 T. L. R. 505; *First National Reinsurance v. Greenfield*, [1921] 2 K. B. 260; *Abram S.S. Co. v. Westville Shipping Co.*, [1923] A. C. 773.

1596. — — — — —.]—To an action by a co. against a shareholder for calls, deft. pleaded he was induced to become a shareholder by the fraud of pltf., that he had never recognised, since notice of the fraud, any rights or liabilities in him as such shareholder, nor received any benefit from his shares, & that within a reasonable time after notice of the fraud he had repudiated the shares & given notice to the pltf. of his repudiation:—*Held*: a good plea.—*BWLCH-Y-PLWM LEAD MINING CO. v. BAYNES* (1867), L. R. 2 Exch. 324; 36 L. J. Ex. 183; 16 L. T. 597; 15 W. R. 1108.

Annotations:—*Foll. Anderson v. Costello* (1871), 19 W. R. 628. *Consd. First National Reinsurance v. Greenfield*, [1921] 2 K. B. 260. *Reid. Oakes v. Turquand & Harding, Peek v. Turquand & Harding, Re Overend, Gurney* (1867), L. R. 2 H. L. 325; *Re Murray, Dickson v. Murray* (1887), 57 L. T. 223.

1597. — — — — — **Sixteen days.**]—B. held fifty £100 shares, with £20 per share paid-up, in

the A. co., which was afterwards amalgamated with the W. co. He was offered, & accepted, 500 £10 shares, with £2 per share paid-up, in the W. co. in lieu of his shares in the A. co. At the time when he accepted these shares two calls had been made & were due, but he had then no information of this fact. Within sixteen days after he was applied to for payment of the calls, B. gave the co. notice that he would dispute his liability to pay the calls:—*Held*: his name must be taken off the list of contributories.—*Re WESTERN INSURANCE CO., LTD., BRIGGS'S CASE* (1869), 19 L. T. 758.

1598. — — — — — **Until result of action by another shareholder known.**]—*Re ESTATES INVESTMENT CO., ASHLEY'S CASE*, No. 735, *ante*.

1599. **By election to keep shares—Claim for damages.**]—*SIMSON & MASON, LTD. v. NEW BRUNSWICK TRADING CO.* (1888), 5 T. L. R. 148.

1600. **By rights of third parties intervening.**]—*Re ROYAL BRITISH BANK, MIXER'S CASE*, No. 1574, *ante*.

1601. — — — — — **By winding up of company.**]—*HOULDSWORTH v. CITY OF GLASGOW BANK*, No. 1553, *ante*.

1602. — — — — —.]—*Re ESTATES INVESTMENT CO., ASHLEY'S CASE*, No. 735, *ante*.

1603. — — — — — **Voluntary winding-up without supervision included.**]—The principle that a shareholder who has been induced to take shares in a co. by the fraudulent representations of the directors, cannot repudiate his shares or recover back the price paid for them after the co. has been wound up, if at the time of the intended repudiation there are any debts of the co. unpaid, extends to the case of a voluntary winding-up without supervision.

By the arts. of assocn. of a bank every shareholder was required to pay calls to the person & at the time & place appointed by the directors; & 21 days' notice was to be given of the time & place appointed. By a resolution of the directors before a voluntary winding-up, they made a call payable by instalments at certain dates, but no place or person at which or to whom the call was to be paid was mentioned, & no notice of the call was given by the directors. After the winding-up the liquidator gave notice to the shareholders that a call had been made, & requested them to pay it to certain persons at a specified place & time:—*Held*: the liquidator had power to enforce the call made by the directors, & the notice given by him was sufficient under 1862 Act, s. 95 (4), (8), s. 133 (5), (7).—*STONE v. CITY & COUNTY BANK, COLLINS v. CITY & COUNTY BANK* (1877), 3 C. P. D. 282; 47 L. J. Q. B. 681; 38 L. T. 9, C. A.

Annotations:—*Reid. Re Scottish Petroleum Co., MacLagan's Case* (1882), 46 L. T. 880. *Mentd. Houldsworth v. City of Glasgow Bank* (1880), 5 App. Cas. 317; *Re Pyle Works* (1890), 44 Ch. D. 534; *Thomson v. Henderson's Transvaal Estates*, [1908] 1 Ch. 765; *MacConnell v. Prill*, [1916] 2 Ch. 57.

1604. — — — — — **Commencement of winding up.**]—Since 1873 A. had appeared on the register of a joint stock banking co. as the holder of £6,000 of stock. On Oct. 2, 1878, the bank stopped payment. On Oct. 5, the directors issued circulars

estopped from raising it by the presumption of acquiescence arising from lapse of time.—*ADAMANTA DIAMOND MINING CO. v. WEGE* (1883), 2 H. C. 172.—S. AF.

p. — — — — — **Acting as shareholder.**]—Where there appear in a prospectus of a co., as provisional directors, the names of persons who have not consented thereto, & who do not take shares in the co., a shareholder who

subscribes the memorandum of assocn., attends meeting of shareholders, & takes part in the election of directors cannot subsequently repudiate his shares on the ground of misrepresentation.—*PALMERSTON BREWERY CO., LTD. v. WOLLERMAN* (1884), 2 N. Z. L. R. 223.—N.Z.

q. **By delay in repudiation.**]—*Resp.* co. sought to recover calls upon shares of their capital stock

claimed to have been subscribed for by applt. The main defence was that the subscription for the shares was procured by fraudulent misrepresentation. The jury found that deft. was not misled by any statements made to him & that he had delayed his repudiation for an unreasonable time after becoming dissatisfied. Judgment was accordingly entered for pltf. On appeal:—*Held*: the jury had been

Sect. 17.—The contract to take shares: Sub-sect. 1, G. (d); sub-sect. 2, A. & B. (a).]

summoning an extraordinary general meeting to pass a resolution to wind up the co. On Oct. 18, a report made by independent investigators was sent to all the shareholders, which showed that the insolvency of the co. was of such an overwhelming character that large calls would have to be made to meet its liabilities. On Oct. 21, A. raised an action for reduction of his contract to take stock, on the ground that he was induced to purchase by the fraudulent misrepresentation of the directors. The summons in this action was served on the co. on the same day. On Oct. 22, an extraordinary resolution to wind up the co. voluntarily was passed. A. was put on the list of contributories. In a petition by A. for rectification of the register & the list of contributories based on the action of Oct. 21:—*Held*: the rights of innocent third parties had intervened; & A.'s action for reduction of his contract was too late to exempt him from liability.—*TENNENT v. CITY OF GLASGOW BANK* (1879), 4 App. Cas. 615; 40 L. T. 694; 27 W. R. 649, H. L.

Annotations:—*Consd. Re Hull & County Bank, Burgess's Case* (1880), 15 Ch. D. 507. *Distd. Re Taurine Co.* (1883), 25 Ch. D. 118. *Consd. Re London & Leeds Bank, Ex p. Carling, Carling v. London & Leeds Bank* (1887), 56 L. J. Ch. 321; *Re Roundwood Colliery Co., Lee v. Roundwood Colliery Co.*, [1897] 1 Ch. 373. *Reid. Adam v. Newbigging* (1888), 13 App. Cas. 308; *East Broken Hill Consols v. Mallaby-Deeley* (1895), 11 T. L. R. 465. *Mentd. Nelson Mitchell v. City of Glasgow Bank & Liquidators* (1879), 27 W. R. 875; *Re Ambition Investment Bldg. Soc.*, [1898] 1 Ch. 89.

1605. — Contract not voidable but void.]
—*Re INTERNATIONAL SOCIETY OF AUCTIONEERS & VALUERS, BAILLIE'S CASE*, No. 1564, *ante*.

Compare cases in Sect. 8, sub-sects. 3, E., & 4, C., & Sect. 13, sub-sect. 5, B. (f), ante.

properly directed & the judgment should be affirmed.—*BOECKH v. GOWGANDA QUEEN MINES* (1912), 46 S. C. R. 645.—CAN.

r. By failure to repudiate before winding up.—Where persons are induced by misrepresentation to take shares in a co., it is too late to repudiate after the co. has gone into liquidation, even when the grounds of repudiation have not been discovered until after the winding up order has been made.—*Re BRUCE'S PATENT OATMEAL & MILLING CO. (LTD.), REID & GRAY'S CASE* (1893), 11 N. Z. L. R. 152.—N.Z.

PART III. SECT. 17, SUB-SECT. 2.—A.

1606 i. Expression of willingness to take shares.]—Deft. had taken shares in a road co., for which he subscribed his name, & the secretary called to solicit a further subscription. Deft. told him he would take another £100, & the secretary afterwards, in deft.'s absence, put down his name for these shares:—*Held*: not sufficient to charge deft.

The authority to take shares should be in writing; but, *semble*: authority by parol would be binding.—*INGER-SOLL & THAMESFORD GRAVEL ROAD CO. v. MCCARTHY* (1858), 16 U. C. R. 162.—CAN.

1606 ii. —.]—A co. was incorporated by a special Act of the Legislature of Nova Scotia, passed on May 19, 1891. Sect. 1 of the Act provided that the persons therein named "& such other persons as shall become shareholders in the co. hereby established, & their successors, shall be a body corporate for the purpose of, etc." There was no reference to any past acts of the promoters of the co. or adoption of them. Some time before Apr. 2, 1891, deft. signed a subscription list headed, "We, the

undersigned, agree to take the number of shares opposite our names in the H. O. Co., & to pay the amount when called upon by aforesaid co." He attended none of the meetings of the co., & before the organisation of it, wrote the secretary stating that he would refuse any calls made upon him:—*Held*: deft. was not liable, the Act contemplating subscription to a share list, or some act or other to be done after its passage which would constitute deft. a shareholder.—*HALIFAX STREET CARPETTE CO. v. McMANUS* (1894), 27 N. S. R. 173.—CAN.

s. Signing of stock book — & issue of certificate of allotment — Though agreed deposit not paid.—Deft. was sued as a shareholder for unpaid stock. It appeared he had signed the stock book, which was headed with an agreement by the subscribers to become shareholders to the extent of the stock set opposite their respective names; they also covenanting upon allotment of their shares to pay ten per cent of the amount of said shares & all future calls. Deft. duly received a certificate of allotment but never paid the ten per cent, though notified to pay that amount:—*Held*: his offer having been accepted by the co., deft. was liable as a shareholder.—*DENISON v. LESSLIE* (1879), 3 A. R. 536.—CAN.

t. Payment of first call — No formal subscription for stock.—Defts., as partners, had been appointed agents of plfts. on condition that they should become holders of 200 shares of the capital stock of the co. In pursuance of this agreement they were entered in the stock register of the co. for that number of shares, under the partnership name; & 200 shares of the original stock were allotted to them & the usual certificate sent. They did not, how-

SUB-SECT. 2.—THE APPLICATION.

A. What constitutes.

1606. Expression of willingness to take shares.]
—*Re IRISH WEST-COAST RY. CO., CARMICHAEL'S CASE*, No. 1691, *post*.

1607. Agreement to place shares.]—*Re MONARCH INSURANCE CO., GORRISSEN'S CASE*, No. 1480, *ante*.

1608. When implied—Acceptance of directorship—Implied application for qualification shares.]
—By the arts. of assocn. of a dairy co., it was provided that a director's qualification should be the holding in his own right of not less than ten shares. P., a medical man, not being a shareholder, was invited by the directors to take a seat at the board & the office of medical examiner, & he accepted this office by letter, & acted as a director during a short period, but no shares were ever allotted to him. He subsequently resigned, but his resignation was declined, & an action, afterwards dismissed for want of prosecution, was brought against him to recover calls due on the qualification shares. The co. having gone into liquidation:—*Held*: the action for calls was no bar to the liquidator's claim to place P. on the list of contributories for the qualification shares; his acceptance of the offer was, at least, equivalent to an application for the shares, & his name must be placed upon the list accordingly.—*Re HAMPSHIRE CO-OPERATIVE MILK CO., LTD., PURCELL'S CASE* (1880), 29 W. R. 170.

Annotation:—*Consd. Re Colombia Chemical Factory Manure & Phosphate Works, Hewitt's Case, Brett's Case* (1883), 25 Ch. D. 283.

See, also, No. 1745, *post*, & generally, Sect. 28, sub-sect. 2, C., *post*.

1609. — Application for founders' share—Implied application for ordinary shares—Provision

ever, formally subscribe for the stock. A draft upon the firm for the first call was accepted & paid as arranged with one of defts. Subsequently E. wrote to plfts. that he was about retiring from the firm, & desiring to be informed as to the position of the "stock subscribed for by them"; signing the letter as "senior partner," etc. In an action for calls:—*Held*: (1) defts. were liable, & could not be heard to say that they had not subscribed for the stock; (2) it was unnecessary to show that any specific shares had been allotted to defts., or that the calls were made by properly constituted directors.—*NATIONAL INSURANCE CO. v. EGGLESON* (1881), 29 Gr. 406.—CAN.

u. Mere signing of subscription list insufficient.—*HALIFAX STREET CARPETTE CO., LTD. v. GLASSEY* (1894), 27 N. S. R. 181.—CAN.

a. Application purporting to forward amount due.—An application for shares purporting to forward the amount due on application may be accepted & an allotment made thereon.—*MIDAS GOLD-DREDGING CO., LTD. v. HENRY* (1904), 23 N. Z. L. R. 158.—N.Z.

b. Not provisional agreement to take shares—Where allotment made—Without receiving formal application form—& calls ignored.—A co. which was in difficulties intimated by circular to its creditors & shareholders that to avoid immediate liquidation it was proposed to raise additional capital by the issue of new preference shares provided that a sufficient number of the creditors agreed to postpone payment of their debts. A schedule in these terms was inclosed to shareholders: "I—hereby express my willingness to take — of the proposed new preference shares." The circular stated that on a certain day a

in articles.]—By a clause in the memorandum of assocn., "every original holder of a founders' share shall apply for & take at least fifty of the ordinary shares"; *Held*: the co. were justified in placing deft., who only applied for founders' shares, on the register as an ordinary shareholder, & for each founders' share applied for & allotted to him he must take up fifty ordinary shares.—**GENERAL PHOSPHATE CORPN., LTD. v. HORROCKS** (1892), 8 T. L. R. 350.

Underwriting agreement.]—See No. 1152, *ante*, No. 1826, *post*.

Application for shares—After allotment—Unknown to allottee.]—See No. 1758, *post*.

On application by another.]—See No. 1757, *post*.

Offer of shares by company to member—Request by member to reserve shares.]—See No. 1486, *ante*.

Acceptance by member.]—See Sub-sect. 3, F., *post*.

B. Application by Agents.

(a) Authority of Agent.

1610. Whether authority by deed necessary—Execution of partnership deed—Estoppel.]—A co. was formed in India to carry on the business of

insurance, & L., residing in the Mauritius, gave special verbal instructions to F., who was the agent for the co. in India, to execute the partnership deed for L., which was done, & L.'s name appeared in the list of shareholders. Afterwards, on the insolvency of the co., L. set up the defence that he was not a shareholder, for no power by deed was given to F. to execute the deed in his name:—*Held*: a partner might become liable in that character without having executed the partnership deed, if his name was put on the list of shareholders with his consent, so as to entitle him to share in the profits.—**LEISHMAN v. COCHRANE** (1863), 1 Moo. P. C. C. N. S. 315; 9 L. T. 104; 12 W. R. 181; 15 E. R. 720, P. C.

Signature of memorandum & articles.]—See No. 317, *ante*.

See, generally, AGENCY, Vol. I., pp. 281 *et seq*.

On behalf of underwriter.]—See Nos. 1149, 1157-1159, *ante*.

Exercise of authority.]—See AGENCY, Vol. I., p. 424, No. 1182.

Revocation of authority—Authority coupled with an interest—Agent to apply on behalf of underwriter.]—See Nos. 1154-1156, *ante*.

See, generally, AGENCY, Vol. I., pp. 694 *et seq*.

general meeting would be held to consider whether the shares should be created or the co. go into liquidation. A., a shareholder, filled up the schedule expressing his willingness to take fifty of the new shares. At the meeting it was decided to create the shares. A second circular was then issued in these terms: "I — hereby apply for — shares of the new Preference stock." To this circular A. sent no reply, but the directors proceeding on his reply to the first circular allotted to him fifty of the shares. There was conflict of evidence as to whether he ever received the allotment letter, but it was admitted that he received but paid no attention to several call letters. The co. went into liquidation & the liquidators entered A.'s name in the list of contributories in respect of the said shares:—*Held*: the answer sent to the first circular was not sufficient to bind him to become a shareholder of the co. & his name must be struck off the list.—**MASON v. BENHAR COAL CO., LIQUIDATORS** (1882), 9 R. (Ct. of Sess.) 883; 19 Sc. L. R. 642.—SCOT.

c. Signing of pro forma document acknowledging purchase of shares not binding—Right to repudiate before allotment still reserved.]—The agent of a co. having suggested to pltf. that he should apply for shares in the co., pltf. signed a document on a printed form as follows: "This serves to confirm the purchase by me of 25 £1 shares in the — Co. on account of which I have paid to your agent (amount not stated). Please forward letter of allotment to my address as under. Script to be issued when the shares are fully paid." At the same time pltf. gave the agent a promissory note for £25 in favour of the latter, payable four months after date, the agent undertaking that the note should not in the meantime be discounted. The agent having discounted the note before it fell due & paid the purchase price of the shares to the co. before any letter of allotment had been sent to pltf., the latter wrote to the co. purporting to withdraw his application for shares:—*Held*: (1) the document signed by pltf. did not constitute an out-&-out purchase of shares, but was an application for shares on allotment; (2) pltf. was entitled to withdraw the application before allotment & claim from the co. a refund of the amount paid by him to redeem the promissory note on its due

date.—**AFRICAN FINANCE & INVESTMENT, LTD. v. VAN DER SPREY**, [1920] C. P. D. 596.—S. AF.

PART III. SECT. 17, SUB-SECT. 2.—B. (a).

d. Sharebroker acting for client—Liability on transfer of shares for purpose of re-transfer only.]—A sharebroker purchased shares in a bank for a client who requested that the shares should be transferred to three other persons named by her. The sharebroker applied to the bank to have the shares so transferred, but the bank refused on the ground that, as one transfer for all the shares had been executed by the holder, it would be necessary to transfer the shares into the name of one person, who could apply to have the new scrip issued in the three different lots, so that the holder could transfer to the owners of the shares. At the bank's suggestion & request, the sharebroker allowed the shares to be transferred into his name for the purposes of re-transfer only:—*Held*: the broker had agreed to become a member of the co. within 1890 Act, s. 24, & that, after registration, his name was rightly put on the list of contributories.—**Re MERCANTILE BANK (IN LIQUIDATION), Ex p. BAGLEY** (1894), 20 V. L. R. 489.—AUS.

e. Agent applying in his own name.]—A *bona fide* subscription for stock in a corporate co. by one person in his own name, but really as trustee & agent for another who had requested such stock to be subscribed for, is valid.—**DAVIDSON v. GRANGE** (1854), 4 Gr. 377.—CAN.

f. Whether partner can bind a firm.]—To an action by creditors of a ry. co. against shareholders, under Railway Act, s. 80, defts., three in number, pleaded that, at the time of the alleged subscription, they were in partnership as ironmongers; that by the terms of their co-partnership no one of them could bind the others by such a subscription without their consent; that the subscription was signed by C., one of them, in the name of the firm, without the consent of G., another of the partners, but on the express condition that unless he should ratify it the same should not bind any of them, & that G. refused to ratify; & defts. denied that they had ever paid anything on account of the shares, as alleged in the declaration:—*Held*:

though one partner could not bind the others in such a matter, it should have been averred that when the calls were made upon defts. as alleged, they refused to pay on the ground that they were not shareholders or liable.—**MOORE v. GURNEY** (1861), 21 U. C. R. 127.—CAN.

g. Promoter acting as agent—Duty of company to inquire into the extent of his authority.]—S. signed a subscription for shares in a co. to be formed & a promissory note for the first payment, both of which documents he delivered to the promoter of the co., to which they were transferred after incorporation. In an action for payment of calls, S. swore that the stock was to be given to him in part-payment for the goodwill of his business, which the co. were to take over. The promoter testified that the shares subscribed for were to be in addition to those to be received for the goodwill:—*Held*: though S. could, before incorporation, constitute the promoter his agent to procure the allotment of shares for him & give his note in payment, yet the possession by the promoter did not relieve the co. from the duty of inquiring into the extent of his authority, & whichever of the two statements at the trial was true, the promoter could not bind S. by an unconditional application.—**OTTAWA DAIRY CO. v. SORLEY** (1904), 24 C. L. T. 202; 34 S. C. R. 508.—CAN.

h. Junior clerk applying on behalf of employer.]—On an application by the official liquidator under 1908 Act, s. 197, to settle the list of contributories of a co., it appeared that B. had in Aug., 1907, signed a written application for 1,720 shares in the co. The shares were duly allotted to him, & his name entered in the share register in respect thereof. Proof was given that B., who was a junior clerk on a small salary, had signed the application at the request of M., & did not desire to acquire any shares on his own behalf; also, that in the letter forwarding the application a cheque was enclosed for the amount payable on application & allotment, signed by M.'s firm, & it was stated that the application would be replaced by others for an equal amount during the next few days. M. afterwards signed the memorandum of assocn. for 1,720 shares, but his name was not entered in the share register as a member in respect of these

Sect. 17.—The contract to take shares: Sub-sect. 2, B. (a) & (b) & C.]

Application by unauthorised agent—Company with knowledge.]—See No. 1351, ante.

Termination of authority.]—See AGENCY, Vol. I., p. 689, No. 2983.

(b) Liabilities of Principal and Agent.

Liability of principal.]—See, generally, AGENCY, Vol. I., pp. 569, 570.

—Application by unauthorised agent—Knowledge of company.]—See No. 1351, ante.

—Application after allotment.]—See Nos. 1757, 1758, post.

—As subscriber to memorandum & articles—Signature by agent.]—See No. 316, ante.

—.]—See, also, No. 1481, ante.

Liability of agent.]—See, generally, AGENCY, Vol. I., pp. 620 et seq.

1611. —Entered on register of shareholders—Application on behalf of undisclosed principal—Liable as contributory.]—A person accepting shares in a co., though intending to do so as agent only for another, will be personally liable in respect thereof, unless he state at the time of acceptance that he accepts them only as agent.

A., who was a shareholder in & director of a co., signed an undertaking to take fifty additional shares in the co., intending at the time, but not so stating, to take them on behalf of a landowner for whom he was agent. The landowner subsequently took 100 additional shares in his own name, & as A. contended, in satisfaction of the fifty shares agreed to be taken by him. The co. was afterwards wound up:—*Held*: in the absence of notice given by A. at the time of signature, that he signed the undertaking as agent only, he must remain on the list of contributories in respect of the fifty shares.—*Re SOUTHAMPTON, ISLE OF WIGHT & PORTSMOUTH IMPROVED STEAM BOAT CO., LTD., BIRD'S CASE* (1864), 4 De G. J. & Sm. 200; 33 L. J. Bcy. 49; 9 L. T. 669; 10 Jur. N. S. 138; 46 E. R. 894; *sub nom. Re SOUTHAMPTON, ISLE OF WIGHT & PORTSMOUTH IMPROVED STEAM BOAT CO., Ex p. SOUTHAMPTON, ISLE OF WIGHT & PORTSMOUTH IMPROVED STEAM BOAT CO.*, 12 W. R. 321, L. C.

1612. —Principal's name entered in share register—Liable as contributory.]—B. being applied to by C. to allow shares in a joint-stock co. to be taken in his name, consented on condition that he should not be liable to any demands in respect thereof, & this arrangement was known to the directors, who were well aware that the deposit had been paid by C., & always treated C. as the real owner of the shares. By a subsequent arrangement between the directors & C., but which was not within the powers of the

directors, nor confirmed by the co., it was agreed that these shares should be transferred into C.'s name, & accordingly, the secretary made the alteration in the share-ledger, but B.'s name was not removed from the register of shareholders. The co. was afterwards ordered to be wound up in bkpcy., & B.'s name was inserted in the list of contributories. Upon an application by B. that his name might be removed from the register of shareholders, coupled with an appeal from the order placing him on the list of contributories:—*Held*: whatever might be the equities as between B. & C. the co. had a right to retain B. as a contributory, & the application & appeal were dismissed, notwithstanding the submission of C. to have his own name substituted for that of B.—*Re MOSELEY GREEN COAL & COKE CO., LTD., BARRETT'S CASE* (1864), 4 De G. J. & Sm. 416; 4 New Rep. 308; 33 L. J. Ch. 617; 10 L. T. 594; 10 Jur. N. S. 711; 12 W. R. 925; 46 E. R. 979, L. C.

1613. —Application signed "for" named principal—Application in pursuance of arrangement with company—Applicant not contributory.]—C. sent to the directors of a co. a letter of application signed by him "for" his son, naming him, for the allotment of 200 shares. C. was one of the directors, & the application was made under an arrangement between the directors that, in order to make it appear that the whole share capital had been issued, the shares remaining unallotted should be issued to their nominees temporarily until applied for by the public. The son was registered as holder of the shares but nothing was paid on them:—*Held*: the facts did not establish such an actual contract by C. to take the shares as to justify his exors. being placed on the list of contributories in respect of it.—*Re BRITANNIA FIRE ASSOCN., COVENTRY'S CASE*, [1891] 1 Ch. 202; 60 L. J. Ch. 186; 64 L. T. 185; 39 W. R. 328; 7 T. L. R. 133, C. A.

Annotation:—Distd. Re Central Klondyke Gold Mining & Trading Co., Savigny's Case (1898), 5 Mans. 336.

—Breach of warranty of authority—Measure of damages.]—See AGENCY, Vol. I., p. 665, No. 2794.

See, also, No. 1351, ante.

—Application at request of director—Pre-tended payment of consideration.]—See No. 1351, ante.

—Allotment to agent instead of principal by mistake.]—See No. 1544, ante.

C. Application in Fictitious Name or in Name of Another.

1614. Application in fictitious name—Whether applicant liable as member.]—A person who applies for shares in a fictitious name, or in the name of a person incapable of contracting, is

shares:—*Held*: it was clear that B. was applying on behalf of M. or his firm, & the 1,720 shares in respect of which M. had signed the memorandum of assocn. were intended to be the same shares as those for which B. had applied; & M.'s name should be substituted for that of B. on the share register & the list of contributories in respect of the 1,720 shares in question.—*Re MARLBOROUGH BREWERY & AERATED WATER CO., LTD., BRANDS' CASE* (1912), 31 N. Z. L. R. 817.—N.Z.

PART III, SECT. 17, SUB-SECT. 2.—B. (b).

k. Liability of principal—Authorised agent present at meeting when shares allotted—Share certificate delivered to agent—Where an appct. for shares

constituted another person his agent to do all that is necessary to make him a shareholder, the allotment of shares at a meeting at which such agent is present & the delivery of the share certificate to the agent are of the same effect as if appct. were present at the meeting, & the certificate subsequently delivered to him, & there is therefore no necessity of giving notice of allotment.

In an action by a liquidator of a co. to recover the unpaid amount outstanding on certain shares, deft. denying that he was a shareholder on the ground that there was no application for such shares, & no notice of allotment given to him:—*Held*: he was liable.

Deft. was precluded from disputing his position as shareholder by his

conduct in giving a note to the co. & allowing it to be retained, receiving notice of the shareholders' meetings, attending the meetings as a shareholder & giving a proxy to another to represent him at a meeting, & failing to take steps to recall or repudiate his application for over a year.—*TRADERS TRUST CO. v. GOODMAN*, [1917] 2 W. W. R. 1235; 37 D. L. R. 31.—CAN.

1. —Shares applied for by unauthorised agent—Notice of allotment received, & calls paid, by principal.]—A person in whose name shares are applied for without his authority, but who receives notice of allotment & pays calls, cannot afterwards repudiate the shares.—*SOUTHLAND FROZEN MEAT & PRODUCE EXPORT CO. (LTD.) v. POTTER* (1885), 3 N. Z. L. R. 208.—N.Z.

liable to be himself placed on the list of contributories in respect of the shares so applied for.

S., with the concurrence of an agent of the co., induced his married daughter to sign an application for shares, she being in ignorance of the nature of the document she signed. S. paid the deposit on the shares, & received a dividend upon them. Both the married daughter & her husband were in total ignorance that any shares were standing in her name:—*Held*: the name of S. must be placed on the list of contributories in respect of the shares.—*Re HERCULES INSURANCE CO., PUGH & SHARMAN'S CASE* (1872), L. R. 13 Eq. 566; 41 L. J. Ch. 580; 26 L. T. 274.

Annotations:—*Distd. Re Britannia Fire Assocn., Coventry's Case*, [1891] 1 Ch. 202; *Re National Bank of Wales, Massey & Giffin's Case*, [1907] 1 Ch. 582. *Refd. Re Central Klondyke Gold Mining & Trading Co., Savigny's Case* (1898), 5 Mans. 336.

1615. ———.]—M. applied that shares, to which he was beneficially entitled, should be allotted, some to John Francis, others to W. & Eliza Aire & others to Bessie M. He had a son whose christian names were John Francis. His sister Eliza was married to a W. Hare, & he had a daughter, an infant, called Bessie. W. & Eliza Hare, had given him leave to use their names for the purposes of an allotment, but he caused the allotment to be made to W. & Eliza Aire. M. subsequently sold all the shares, & blank transfers were executed. At this time John Francis, the son, was dead; still the blank transfers of the shares allotted to John Francis purported to be executed by John Francis. W. & Eliza Hare did not execute the transfers which purported to be executed by W. & Eliza Aire. Bessie M., who had then attained her majority, signed the transfers of the shares which stood in her name, but without knowing anything about the documents she was asked to sign. M. sent in the transfers to the co. for registration, but they were never registered, & the names in which the shares had originally been allotted remained on the register at the date of the winding up of the co. The liquidator applied to have those names removed, & that M. might be settled on the list of contributories instead:—*Held*: John Francis & W. & Eliza Aire represented fictitious persons, & M. must be settled on the list of contributories in respect of the shares standing in those names; although Bessie M. was a real person, she had never assented to be a shareholder, nor acquiesced in being on the register after she came of age, M. had merely made use of her & her name, & he must be settled on the list of contributories in respect of the shares standing in her name.—*Re YEOLAND'S CONSOLS, MANLEY'S CASE* (1890), 2 Meg. 74.

1616. ———.]—A person who applies for & is allotted shares under an alias is estopped from disputing his liability as a shareholder.—*Re CENTRAL KLONDYKE GOLD MINING & TRADING CO., LTD., SAVIGNY'S CASE* (1898), 5 Mans. 336.

See, also, No. 1341, ante, & compare No. 2595, post.

1617. Application in name of another—Whether applicant liable as member.]—A. purchased shares in a joint-stock banking co. with his own money, & had them transferred into the name of B., &

directed B. to stand possessed of them in trust for C. & D., the infant children of A. B. accepted the trust, received the dividends on the shares, & paid them into a bank to the general account of A. Some time after the transfer, A. & B. signed an instrument, whereby B. declared that he was a trustee of the shares for C. & D., & A. indemnified B. against all losses which might be incurred by him on account of the shares:—*Held*: A. was not a contributory.—*Re NORTH OF ENGLAND BANKING CO., FENWICK'S CASE* (1849), 1 De G. & Sm. 557; 18 L. J. Ch. 112; 12 L. T. O. S. 511; 13 Jur. 204; 63 E. R. 1193.

Annotation:—*Mentd. Re North of England Joint Stock Banking Co., Straffon's Executors' Case* (1852), 1 De G. M. & G. 576.

1618. ———.]—Original shares were taken in a joint-stock co. by A., in the names of B. & C., & they were entered in the list of shareholders. The co. failed, & on the winding up, B. & C. repudiated all knowledge of the transaction, & denied any authority to A.:—*Held*: A. was not liable as a contributory.—*Re ST. GEORGE'S BENEFIT BUILDING SOCIETY, Ex p. ESCUDIER* (1859), 7 W. R. 371.

1619. ———.]—Shares in a joint-stock bank were purchased by a solr. in the names of his brother & his clerk, who held the shares as trustees for him; but there was no fraudulent object in thus concealing the name of the real purchaser. By the co.'s deed it was provided that no trusts should be recognised; & no transfer of shares should be made without the consent of two directors. Upon the winding up of the co., the official liquidators placed only the names of the two holders of the shares upon the list of contributories:—*Held*: the beneficial owner was not liable to be placed upon the list.—*Re EAST OF ENGLAND BANKING CO., Ex p. BUGG* (1865), 2 Drew. & Sm. 452; 35 L. J. Ch. 43; 12 L. T. 696; 11 Jur. N. S. 616; 13 W. R. 911; 62 E. R. 692.

Annotations:—*Refd. Re Great Wheal Busy Mining Co., King's Case* (1871), 6 Ch. App. 196. *Mentd. Re European Bank, Masters' Case* (1872), 7 Ch. App. 292.

1620. ———.]—The W. co. was originated & financed by the L. co. M. upon receiving £15 allowed his name to be put on the register of the W. co. as a holder of a large number of shares, for which he executed blank transfers. Subsequently, M.'s shares were declared forfeited. Shortly afterwards the W. co. was ordered to be wound up, & the official liquidator, finding that M. was a mere nominee of the L. co., sought to make that co. liable in respect of the shares:—*Held*: the application must be refused.—*Re INTERNATIONAL CO., LTD., MAY'S CASE* (1870), 23 L. T. 643.

Annotation:—*Mentd. Re International Contract Co., Hughes' Claim* (1872), L. R. 13 Eq. 623.

1621. ———.]—Nominee incapable of contracting—Nominee refused by company.]—A father applied for shares in a co. in the name of his son, & he paid the deposit; the co., however, refused to allow him to execute the deed on behalf of the son. Having done no further act:—*Held*: the father was not a contributory.—*Re ELECTRIC TELEGRAPH CO. OF IRELAND, MAXWELL'S CASE* (1857), 24 Beav. 321; 53 E. R. 382.

PART III. SECT. 17, SUB-SECT. 2.—C.

1617i. Application in name of another—Whether applicant liable as member.]—A co. brought action to recover calls on shares. Deft. pleaded that he was not a shareholder, that he only became a nominal appct., at the request of a

third party, for the purpose of the issue of the letters patent, & that it had been agreed by the provisional directors that deft. should not become a shareholder. The action was dismissed by consent. Later, when the co. was being wound up, the liquidator sought to place deft.'s name on the list of contributories:—*Held*: a pre-

vious judgment to the effect that the person sought to be settled on the list of contributories is not a shareholder estops the liquidator from setting up that deft. was a shareholder.—*Re ONTARIO SUGAR CO., MCKINNON'S CASE* (1910), 17 O. W. R. 1038; 2 O. W. N. 496; 24 O. L. R. 332.—CAN.

Sect. 17.—The contract to take shares: Sub-sect. 2, C., D., E., F. & G.]

1622. ————.]—*Re HERCULES INSURANCE CO., PUGH & SHARMAN'S CASE, No. 1614, ante. Infant.]—See Sub-sect. 3, D. (e), post, & No. 1621, ante.*

1623. ————.]—*Accepted by company.]—D. in 1864 applied for 300 shares in a bank, 100 in his own name & 200 in the name of M., his wife, & paid the deposit on the whole 300. M. was ignorant of the transaction. D. subscribed the memorandum & arts. of assocn. for himself & M. & paid all calls on the shares. The co. went into liquidation in 1866, & D. died soon afterwards, having within a year from the winding up sold & transferred 140 of the 200 shares allotted to M. M. was placed on the A. list in respect of the 60 shares & on the B. list in respect of the 140 shares, & her separate estate being insufficient to meet the calls, the liquidator applied to have the B. list rectified by placing the exors. of D. thereon in respect of the 140 shares:—*Held*: as the co. had accepted M. as a shareholder, & there had been no concealment of the nature of the transaction, the estate of D. could not be charged.—*Re LONDON, BOMBAY & MEDITERRANEAN BANK (1881)*, 18 Ch. D. 581; 50 L. J. Ch. 557; 45 L. T. 166; 30 W. R. 118.*

Annotation:—Reid. Re Britannia Fire Assocn., Coventry's Case, [1891] 1 Ch. 202.

———.]—*Unauthorised agents.]—See Nos. 1351, 1613, ante.*

D. Application by Executors.

1624. *Whether contract to take shares in individual names.]—Upon the amalgamation in 1882 between the S. & C. banking cos., A., a holder of 100 shares in the S. Bank, received a circular asking whether he would exchange his shares in the S. Bank for shares in the C. Bank, which took over the business of the other. A. died shortly afterwards without having sent any reply to the circular. On Feb. 27, 1883, a letter was sent on behalf of A.'s exors. to the C. Bank "enclosing certificate for 100 shares of the S. Bank in the name of" A., "& will thank you to let us have shares in your bank in exchange." On Feb. 28 the manager replied that when probate had been exhibited to the London agents of the bank he would send share certificates in the bank "in the name of the exors. individually." A certificate was made out to the exors. of 100 shares in the C. Bank, & an entry made in the share register with the description, "exors. of A." The exors. wrote that they objected to have the certificate in their names, & requested the bank to forward them one in the name of A. The directors accordingly ordered the certificate to be cancelled & one made out in the name of A. for 100 shares.*

PART III. SECT. 17, SUB-SECT. 2.—G.

1626 i. *Time for withdrawal—Before allotment.]—In an action for calls due to a mining co. before formation of co. deft. applied for 100 shares & forwarded £5 with application. He attended a meeting at which the co. was declared formed & took active part in it; after that but before any shares were allotted to him, he refused to have anything to do with the co. & repudiated liability. Jury gave verdict for deft.:—*Held*: on motion for new trial, deft. was not liable.—*BARKER v. CAIRD (1876)*, 14 N. S. W. S. C. R. 358.—AUS.*

m. ————.]—*Conditional agreement to take shares.]—Where appct. had agreed to take shares in a co. con-*

ditional on his receiving certain moneys which would enable him to pay for them:—Held: he had the right to withdraw his application, not having received any formal notice of allotment, by informing the co. of his inability, owing to non-receipt of the moneys, to pay for the shares, & he was not liable as a contributory.—*Re PUBLISHERS' SYNDICATE, MALLORY'S CASE (1902)*, 22 C. L. T. 162; 3 O. L. R. 552; 1 O. W. R. 142.—CAN.

n. ————.]—*Application accompanied by promissory note in part-payment of shares.]—An agreement to take shares in a co., although accompanied by the giving of a promissory note in part-payment, is nothing more than an application for the shares, & is not binding on appct. until accept-*

ance by the co. & notice thereof given to him; & if appct. gives notice of withdrawal of his application before notice of acceptance reaches him, he will be released from any obligation under his agreement or under the promissory note in the hands of the co. or in the hands of any person having no better right to it than the co. would have had.—KRUGER v. HARWOOD (1906), 16 Man. L. R. 66.—CAN.

o. ————.]—*Letter of withdrawal ignored by company.]—A person applied for shares in a projected co., but having discovered a variation between the prospectus & the arts. of assocn., he wrote, before any shares were allotted, to the co.'s agent, withdrawing his application; notwithstanding which the shares were allotted. On his*

E. Application as Trustee.

1625. *Ordinary rules governing requisites for binding contract apply.]—Re PERUVIAN RYS. CO., CRAWLEY'S CASE, ROBINSON'S CASE, No. 1478, ante.*

F. Application by or on behalf of Infants or Persons under Incapacity.

Infants.]—See Sub-sect. 3, D. (e), post, & No. 1621, ante.

Married women.]—See Nos. 1614, 1623, ante.

G. Withdrawal of Application.

1626. *Time for withdrawal—Before allotment.]—Where an appct. for shares in a co., who had paid a deposit, & agreed to accept shares when allotted, wrote to the co. before allotment revoking his application:—*Held*: he ought not to be on the list of contributories.—*Re CARDIFF & CAERPHILLY IRON CO., LTD., GLEDHILL'S CASE (1861)*, 3 De G. F. & J. 713; 30 L. J. Bcy. 42; 5 L. T. 11; 7 Jur. N. S. 981; 9 W. R. 791; 45 E. R. 1055, L. JJ.*

1627. ————.]—*M., having originally applied for 200 shares, & paid the first call on that number, afterwards expressed his desire to take fifty only, & the directors applied his money in satisfaction of the whole capital liable to be called up on fifty shares, never allotted him a larger number, paid him dividends on fifty only, & ultimately declared the remaining 150 forfeited by reason of non-payment of calls:—*Held*: it was competent to both parties to vary the original contract; under these circumstances, it had been actually varied, & M. was liable as a contributory for fifty shares only.—*Re EXHALL COAL MINING CO., LTD., MILES' CASE ((1864)*, 4 De G. J. & Sm. 471; 34 L. J. Ch. 123; 11 L. T. 581; 10 Jur. N. S. 1013; 13 W. R. 219; 46 E. R. 1001, L. JJ.*

ance by the co. & notice thereof given to him; & if appct. gives notice of withdrawal of his application before notice of acceptance reaches him, he will be released from any obligation under his agreement or under the promissory note in the hands of the co. or in the hands of any person having no better right to it than the co. would have had.—KRUGER v. HARWOOD (1906), 16 Man. L. R. 66.—CAN.

o. ————.]—*Letter of withdrawal ignored by company.]—A person applied for shares in a projected co., but having discovered a variation between the prospectus & the arts. of assocn., he wrote, before any shares were allotted, to the co.'s agent, withdrawing his application; notwithstanding which the shares were allotted. On his*

1628. ———.]—RAMSGATE VICTORIA HOTEL Co. v. MONTEFIORE, RAMSGATE VICTORIA HOTEL Co. v. GOLDSMID, No. 1693, *post*.

1629. ———.]—W. applied for 300 shares in a co. which was being formed & consented to become a director of the co., an agreement having been previously entered into between him & the secretary of the co. that W. should be paid 10s. per share if he would apply for 300 shares & give in his name as a director. Before any shares were allotted, W., through one of the directors, orally withdrew his application. Sixty shares were, nevertheless, allotted to him, & £300, which he had paid as a deposit on the 300 shares, was appropriated in payment of the deposit & first call on the sixty shares. After a delay of five months, & a year & a half before the co. was ordered to be wound up, W. filed a bill to set aside the allotment:—*Held*: (1) the agreement between W. & the secretary was null & void, & formed no consideration for W.'s agreeing to become a shareholder; (2) as he had withdrawn his application before the shares were allotted, he was entitled to have his name removed from the list of contributories; (3) he had not lost his right to relief by delay. The withdrawal of an application for shares may be made orally, & does not require to be in writing.—*Re NATAL INVESTMENT CO., LTD., WILSON'S CASE* (1869), 20 L. T. 962.

Annotation:—As to (2) *Reid*. *Re Northern Electric Wire & Cable Manufacturing Co., Ex p. Hall* (1890), 63 L. T. 369.

See, also, No. 1633, *post*.

1630. ——— Distinguished from acceptance of shares offered by company.]—By a reconstruction or amalgamation agreement the C. co. & its liquidators agreed to transfer its goodwill & assets to the M. co., part of the consideration for the transfer being that every member of the C. co. should, in respect of each share therein held by him, "be entitled as of right to claim an allotment" of either a debenture bond, or two ordinary shares of £5 each in the M. co. credited with £1 per share paid up, & the agreement provided that the M. co. should, within a month from the date of the agreement, allot & issue the bonds & shares claimed, subject to this, that it should not be bound to allot shares to any one to whom under its arts. it could have objected as a transferee

of shares. The agreement further provided that a claim must be made within 21 days from the date thereof by sending in to the M. co. or to the liquidators of the C. co. a signed claim in writing, & that the liquidators should within seven days from that date give notice in writing to each member of the C. co. stating the number of bonds or shares which he was entitled to claim as of right, with proper forms of claim. The liquidators duly gave notice to W., a shareholder in the C. co., who within the 21 days signed a document, addressed to the directors of the M. co., claiming an allotment of ten ordinary shares with £1 per share paid up, & agreeing to accept the same & to pay the further moneys payable thereon when called upon. Before any acceptance of the offer or the allotment of the shares subsequently made, W. wrote to the M. co. withdrawing his application:—*Held*: the document sent by W. was an application which could be withdrawn by him before acceptance, & not an acceptance of a prior offer by the M. co., & he was not liable as a contributory.—*Re METROPOLITAN FIRE INSURANCE CO., WALLACE'S CASE*, [1900] 2 Ch. 671; 69 L. J. Ch. 777; 83 L. T. 403; 16 T. L. R. 513; 44 Sol. Jo. 627; 8 Mans. 80.

1631. ——— Before communication of allotment.]—H. applied in writing for ten shares in a co., & the directors allotted to him ten shares. After the allotment, but before it was communicated to H., he withdrew his application:—*Held*: he did not agree to accept the shares.—*Re NATIONAL SAVINGS BANK ASSOCN., HEBB'S CASE* (1867), L. R. 4 Eq. 9; 36 L. J. Ch. 748; 16 L. T. 308; 15 W. R. 754.

Annotations:—*Consd.* Household Fire Insce. v. Grant (1879), 4 Ex. D. 216. *Distd.* *Re Olympic Fire & General Reinsurance, Pole's Case*, [1920] 1 Ch. 582. *Reid*. *Re Bowron, Bailly, Bailly's Case* (1868), L. R. 5 Eq. 428; *Re Cheltenham & Swansea Ry. Carriage & Waggon Co., Little's Case* (1869), 201 L. T. 162; *British & American Telegraph Co. v. Colson* (1871), L. R. 6 Exch. 108; *Re Imperial Land Co. of Marseilles, Harris' Case* (1872), 7 Ch. App. 587; *Re Northern Electric Wire & Cable Manufacturing Co., Ex p. Hall* (1890), 63 L. T. 369; *Re Hemp, Yarn & Cordage Co., Hindley's Case* (1896), 3 Mans. 187. *Mentd.* *Henthorn v. Fraser* (1892), 66 L. T. 439.

——— Communication by post.]—*See* Subsect. 3. E. (d), *post*.

——— What constitutes communication.]—*See* Subsect. 3. E. (b), *post*.

———.]—*See, also*, No. 1633, *post*.

receiving notice of the allotment, he again wrote persisting in his repudiation, & when applied to for calls he always refused to contribute, & his shares were declared forfeited within a year before the winding up of the co.:—*Held*: he was not a contributory.—*Re ETNA INSURANCE CO., SLATTERY'S CASE* (1872), 7 I. R. Eq. 245.—IR.

p. ——— *Signatory to memorandum of association.*]—*MOLLESON & GRIGOR v. FRASER'S TRUSTEES* (1881), 8 R. (Ct. of Sess.) 630; 18 Sc. L. R. 486.—SCOT.

q. ——— *Signing of pro forma document of subscription not binding.*]—A co. was incorporated under the Ontario Cos. Act, R. S. O. 1897, c. 191, on Apr. 4, 1907. R. did not sign the memorandum accompanying the petition, as prescribed by sect. 10, subsect. 2, of that Act, but he had signed a memorandum in the same form subscribing for \$500 of stock in the proposed co., & alleged that this subscription was not meant to bind him unless the co. attempted to buy out a certain rival business, & this not being done, he notified the co. before it was organised that he would not take the shares. In 1907 the co. drew on him for calls, but he refused to accept the drafts. In Jan., 1908, or the first time, the co. allotted stock

to R., & he attended a meeting of the shareholders on Apr. 6, 1908, but only to protest against his being considered to be one. No stock certificate was issued to him:—*Held*: since he had not signed the memorandum which accompanied the petition for incorporation, he did not become a shareholder by virtue of the statute, & he was not liable as a contributory on the winding up of the co.—*Re NIPissing PLANING MILLS, LTD., RANKIN'S CASE* (1909), 18 O. L. R. 80; 13 O. W. R. 360.—CAN.

r. ———.]—CANADIAN DRUGGISTS v. THOMPSON (1911), 19 O. W. R. 401; 2 O. W. N. 1213; 24 O. L. R. 401.—CAN.

s. ———.]—The agent of a co. having suggested to pltf. that he should apply for shares in the co., pltf. signed a document on a printed form as follows: "This serves to confirm the purchase by me of 25 £1 shares in the — Co. on account of which I have paid to your agent (amount not stated). Please forward letter of allotment to my address as under. Scrip to be issued when the shares are fully-paid." At the same time pltf. gave the agent a promissory note for £25 in favour of the latter, payable four months after date, the

agent undertaking that the note should not in the meantime be discounted. The agent having discounted the note before it fell due & paid the purchase-price of the shares to the co. before any letter of allotment had been sent to pltf., the latter wrote to the co. purporting to withdraw his application for shares:—*Held*: (1) the document signed by the plaintiff did not constitute an out & out purchase of shares, but was an application for shares on allotment; & (2) pltf. was entitled to withdraw the application before allotment & claim from the co. a refund of the amount paid by him to redeem the promissory note on its due date.—*AFRICAN FINANCE & INVESTMENT, LTD. v. VAN DER SPREY*, [1920] C. P. D. 596.—S. AF.

t. *Communication of withdrawal—By post.*]—T. duly applied by letter for certain shares in a co. to S., an agent of the co. appointed with power to receive such applications. Thereafter the directors allotted T. the number of shares for which he had applied. The next day T. posted a letter to S., withdrawing his application. Later in the same day the secretary of the co. posted a letter to T. notifying him of the allotment:—*Held*: T.'s offer had been withdrawn before the completion of any contract.

Sect. 17.—The contract to take shares: Sub-sect. 2, G.; sub-sect. 3, A., B. & C. (a).]

1632. How made—Verbal withdrawal sufficient.]
—*Re NATAL INVESTMENT CO., LTD., WILSON'S CASE, No. 1629, ante.*

1633. ——— Before communication of allotment.]—An application for shares in a co. can be withdrawn verbally before notice of allotment.—*Re BREWERY ASSETS CORPN., TRUMAN'S CASE, [1894] 3 Ch. 272; 63 L. J. Ch. 635; 71 L. T. 328; 43 W. R. 73; 38 Sol. Jo. 602; 1 Mans. 359; 8 R. 508.*

1634. Communication of withdrawal—By post—Must be received before notice of allotment posted.]
—*Re SCOTTISH PETROLEUM CO., MACLAGAN'S CASE, No. 1542, ante.*

1635. ———.]—*Re IMPERIAL LAND CO. OF MARSEILLES, HARRIS' CASE, No. 1657, post.*

See, generally, CONTRACT, Vol. XII., pp. 76, 77.

——— To clerk—Authority of clerk to receive.]
See, generally, Sect. 29, sub-sect. 1, D., post.

Application after allotment—Allotment unknown to allottee.]—*See No. 1758, post.*

SUB-SECT. 3.—ALLOTMENT.

A. In General.

1636. Meaning of allotment.]—What was an allotment? Broadly speaking, it was an appropriation of shares to a particular person. Its legal meaning & effect depended on the circumstances under which it was made. It did not of itself necessarily create the status of membership. It might be subject to a condition—as, for instance, the performance of some act such as the payment of a sum of money by the allottee (*STIRLING, J.*).—*SPITZEL v. CHINESE CORPN., LTD., No. 1639, post.*

1637. ——— Construction of agreement.]—Pltf. lent deft. £50 to assist him in the promotion of a co., on the terms that £100 was to be repaid within seven days of the proposed co. going to allotment. An allotment was made, but as in consequence of certain statements in the prospectus the co. could not obtain a trading certificate, the directors called the allottees together & returned them their money:—*Held*: there had been an "allotment" within the meaning of the agreement between pltf. & deft., & pltf. was entitled to recover the £100.—*ELLETT v. STERNBERG (1910), 27 T. L. R. 127.*

See, also, No. 1168, ante.

1638. When complete—Entry in minute-book of

resolution acceding to application.]—Upon the purchase of the business of the co. A., & amalgamating with the purchasing co. B., the shareholders in co. A. were entitled to receive shares in the amalgamated co. in exchange for the shares held by them in co. A., & a form of application was sent to the A. shareholders for their signature, requesting an allotment of shares in the amalgamated co., with an agreement to accept the same, & an authority to insert their names in the register of shareholders.

X., one of the A. directors & shareholders, signed the form of application for fifty shares, & a resolution was passed on Apr. 22, 1869, & confirmed on Apr. 29, for allotting the same to him. On May 15, X. wrote withdrawing his application, as he had determined to take no shares, requesting the directors not to allot any shares to him, & to return his application. The consideration of this letter was from time to time postponed, & X. was put off with assurances that no shares had been allotted to him. On Aug. 15, in answer to a letter from X.'s solr., threatening immediate legal proceedings to restrain the co. from placing his name on the register as a shareholder, unless the promised minute cancelling his application for shares was received by return of post, the solr. of the co. wrote stating that at the last meeting of the directors "a resolution was passed cancelling the allotment of shares to" X. No entry of such a resolution was to be found in the minute-books, & its existence was denied by one of the directors who was present at the meetings before & after Aug. 15:—*Held*: X. was liable as a contributory, the allotment of shares to him being complete by the terms of the arrangement between the two cos., as soon as the resolution acceding to his application was entered in the book; & independently of there being no evidence that the allotment was ever cancelled, the directors had no power to release a shareholder who wished to have his shares cancelled.—*Re UNITED PORTS CO., ADAMS' CASE (1872), L. R. 13 Eq. 474; 41 L. J. Ch. 270; 26 L. T. 124; 20 W. R. 356.*

Annotation:—Reid. Re Metropolitan Fire Insee., Wallace's Case (1900), 69 L. J. Ch. 777.

1639. May be conditional—Condition to be performed by allottee—Allottee not a member until condition performed.]—(1) An allotment of shares is an appropriation by the directors or managing body of a co. of shares to a particular person, but it does not necessarily create the status of membership. The allotment may be subject to a condition; e.g., that the allottee should not only indicate his acceptance, but perform some other act such as make payment of a sum of money;

—*FERN GOLD MINING CO. v. TOBIAS (1890), 3 S. A. R. 134.—S. AF.*

a. ——— *To general agent of company.]*—Notice of withdrawal, if given to the general agent of the co. who procured the subscriptions, will be sufficient notice to the co.—*KRUGER v. HARWOOD (1906), 4 W. L. R. 401; 16 Man. L. R. 433.—CAN.*

b. ——— *To canvasser of company.]*—J. signed an application for ten shares on May 1. On May 2 he wrote to the canvasser, withdrawing his application. On May 9 J. received a letter from the canvasser to the effect that before getting his letter of withdrawal, the application had been sent in to the head office & J.'s notes had been discounted:—*Held*: canvasser had no authority to receive a notice of withdrawal, & as J. had not brought home to the co. knowledge of the receipt of his letter of withdrawal before allotment or at any time, he was entered on the list of contributories.

—*Re GLOBE FIRE ASSURANCE CO., ROBERTSON'S CASE (1909), 11 W. L. R. 293.—CAN.*

c. *Contract by deed to take shares—For valuable consideration—Not revocable.]*—Deft.'s undertaking to take shares in pltf.'s co., when issued & allotted, being by deed, for valuable consideration, & being delivered to an agent of the co., was not revocable as a mere offer would be, & the resolutions of the co. & the letters to deft. were a sufficient "issue" & "allotment" of the shares.—*NELSON COKE & GAS CO. v. PELLATT (1902), 4 O. L. R. 481; 22 C. L. T. 382; 1 O. W. R. 595.—CAN.*

d. *Application containing absolute covenant to pay.]*—*Semle*: Where an application for shares contains an absolute covenant to pay, notification of withdrawal before allotment is invalid.—*MANES TAILORING CO. v. WILLSON (1907), 9 O. W. R. 209; 14 O. L. R. 89.—CAN.*

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e. *What constitutes allotment—Resolutions of company & letters to shareholder.]*—Deft.'s undertaking to take shares in pltf.'s co., when issued & allotted, being by deed, for valuable consideration, & being delivered to an agent of the co., was not revocable as a mere offer would be, & the resolutions of the co. & the letters to deft. were a sufficient "issue" & "allotment" of the shares.—*NELSON COKE & GAS CO. v. PELLATT (1902), 4 O. L. R. 481; 22 C. L. T. 382; 1 O. W. R. 595.—CAN.*

f. ——— *Mere resolution of directors insufficient.]*—There was not only no notice of allotment to pltf. but there was no allotment. What was relied upon—a resolution of the directors—was too vague, & was not intended to apply to pltf., who was never entered on the co.'s register as a shareholder.—*MCCURDY v. OAK TIRE*

a co. therefore may offer specified shares to a person on the terms that no title to the shares shall arise until a condition provided for in the contract to accept the shares has been fulfilled, & after the allotment & registration of such shares, the co. may decline to treat such person as a member if he has neglected to comply with the condition.

(2) A person who agrees to become a member of a co. & whose name is entered on the register of shareholders as the holder of certain shares is not thereby constituted a member entitled to vote at meetings of the co. in respect of such shares unless it can be shown that the co. have agreed to accept such person as a member; when, therefore, a co. have agreed to give a person certain shares upon certain conditions which remain unfulfilled, such person does not become a member, notwithstanding the allotment of shares to him in part performance of the agreement incorporating such conditions & registration of the same in his name, so long as the certificates for such shares are deposited with the intention that they shall not operate according to their purport until the event happens on which they are to issue.

(3) Meaning of "allotment" discussed (see No. 1636, *ante*).

(4) Observations as to what constitutes "issue" (see No. 1807, *post*).—SPITZEL v. CHINESE CORPN., LTD. (1899), 80 L. T. 347; 15 T. L. R. 281; 43 Sol. Jo. 350; 6 Mans. 355.

Annotation:—As to (3) *Re* Mosely v. Koffyfontein Mines, [1911] 1 Ch. 73.

See, further, Sub-sect. 3, D. (b) ii., *post*.

1640. Evidence of allotment—Entry in allotment book.]—*Re* GREAT NORTHERN SALT & CHEMICAL WORKS, *Ex p.* KENNEDY, No. 1539, *ante*.

Effect of allotment—In respect of conditional applications for or agreements to take shares.]—See Sub-sect. 3, D. (b) ii., *post*.

Allotment before application.]—See No. 1758, *post*.

B. Necessity for.

1641. General rule.]—*Re* SALOON STEAM PACKET Co., *Ex p.* FLETCHER, No. 1477, *ante*.

1642. Necessary—Though deposit paid not reclaimed.]—A. filled up a blank form of application, by which he agreed to accept a certain number of shares in a co., or any less number which might be allotted to him, & he paid a deposit, for which he

received a banker's receipt. No shares were ever allotted; but he never made any formal claim for repayment of his deposit, which the co. used. The co. was wound up before it had commenced its intended operations, & A. was placed by the Master of the Rolls on the list of contributories. But, on appeal:—*Held*: the contract was only to accept shares when an allotment of them should have been made, & until allotment there was no complete contract, & consequently A. was not a contributory.—*Re* ADELPHI HOTEL Co., LTD., BEST'S CASE (1865), 2 De G. J. & Sm. 650; 6 New Rep. 190; 34 L. J. Ch. 523; 12 L. T. 480; 11 Jur. N. S. 498; 13 W. R. 762; 46 E. R. 528, L. J.J.

Annotations:—Distd. *Re* Life Asscn. of England, Thomson's Case (1865), 4 De G. J. & Sm. 749; *Re* Llanharry Hermatite Co., Tothill's Case (1865), 11 Jur. N. S. 899.

1643. —.]—A mere application for shares in a co., not followed up by applt.'s payment of any call, or any proper allotment of the shares to him:—*Held*: not to make him a contributory to the winding up of the co.—*Re* CHESTERFIELD & MIDLAND COLLIERY Co. (1866), 14 L. T. 509; 14 W. R. 721.

1644. —.]—*Re* RICHMOND HILL HOTEL Co., PELLATT'S CASE, No. 1514, *ante*.

See, also, No. 1479, *ante*.

C. Validity of.

(a) Statutory Requirements.

See, now, 1908 Act, ss. 82, 85.

1645. "Offered to the public"—Prospectus circulated among directors' friends.]—A syndicate was formed for the purpose of securing an option to purchase certain property, the syndicate not intending to work the property but to promote a co. for the purpose. The syndicate was incorporated under Cos. Act, & a prospectus, marked "Strictly private & confidential; not for publication," was printed, & some of the directors, without the authority of the co., sent copies of it to their friends to see if they would join the syndicate. Certain shares in the syndicate were subscribed for & allotted, but the amount named in the prospectus as the minimum subscription was not subscribed. Pltf., who had subscribed for shares, brought an action, under 1900 Act, s. 4 (4), to recover the amount paid by him for his shares:—*Held*: on the facts, there had been no offer of

& RUBBER CO., LTD. (1918), 44 O. L. R. 571.—CAN.

g. No formal allotment—Validity of resolution by company.]—Deft. purchased 50 shares in pltf. co., giving his note for \$5,000 therefor, payable 10 days after date, signing at the same time an application for the shares. There was some evidence of an arrangement between deft. & the president of the co. that deft. was to be employed as a foreman by the co., & that if he proved unable to perform the work, the president would take back the shares & refund the money. Apparently there was no formal allotment of the shares by the co., beyond a resolution empowering the president to dispose of the shares, but the president placed the shares & the note in escrow in the bank, the shares to be delivered up on payment of the note:—*Held*: upon the signing of the application & the delivery of the note, deft. became the owner of the 50 shares, with power forthwith validly to assign them to any one else, or to have bound himself to do so on the issue of the certificates if the co.'s arts. of assocn. required indorsement of the certificates; & there was no notice of allotment necessary.—ANGLO-AMERICAN LUMBER

Co. v. McLELLAN (1908), 14 B. C. R. 93.—CAN.

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h. Necessary—Signatory to share subscription book.]—C., after the incorporation of a co. under Ontario Joint Stock Cos. Letters Patent Act, R. S. O. 1877, c. 150, signed a share subscription book with the following heading: "We, the undersigned, do hereby severally on behalf of ourselves, our & each of our several & respective exors. & administrators, acknowledge ourselves to be subscribers to the capital stock of the Z. & A. Society of Ontario for the number of shares & to the amount set opposite our several & respective names & seals hereunder; & we do hereby covenant, promise, & agree, each with the other of us, & with S., to pay the amount of our said several subscriptions & all calls thereon, when & as the same may be called up & made under the provisions of Ontario Joint Stock Cos. Letters Patent Act, or under any bye-laws which may be passed by the said co., & we request the number of shares for which we subscribe hereunder to be

allotted to us." No shares were allotted to C., he was not entered in the books of the co. as a shareholder, & never made any payments. Four years after this document was signed by C., the co. was wound up, & he was held liable as a contributory:—*Held*: this document did not, in the absence of any recognition by the co. of C.'s position as a shareholder, alone & *ex proprio vigore* create the liability contended for.—*Re* ZOOLOGICAL & ACCLIMATIZATION SOCIETY OF ONTARIO, COX'S CASE (1889), 16 A. R. 543.—CAN.

k. — Signatory to articles of association.]—A shareholder who has signed arts. of assocn. & partially paid for his shares is not entitled to repudiate liability for calls on the ground that the shares had not been allotted to him.—OTTOSHOP PROPRIETARY MINES, LTD. (IN LIQUIDATION) v. REEVES, [1907] T. H. 76.—S. AF.

l. — Shares issued by directors to themselves.]—No letter of allotment is necessary in respect of shares issued by the directors to themselves.—*Re* BRUCE'S PATENT OATMEAL & MILLING Co., LTD., DRYSDALE'S CASE (1890), 8 N. Z. L. R. 598.—N.Z.

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shares to the public within 1900 Act, s. 4 (4), & therefore pltf. was not entitled to succeed.

An offer of shares to the public, within the meaning of the sect., means an offer by the co., & not by an individual, to any one who chooses to come in & take shares.—*SHERWELL v. COMBINED INCANDESCENT MANTLES SYNDICATE, LTD.* (1907), 23 T. L. R. 482; 51 Sol. Jo. 446.

Compare Nos. 476, 1134, *ante*.

1646. "Named in the prospectus as the minimum subscription"—"The prospectus"—Document on which application based.]—(1) The expression "the prospectus" in 1900 Act, s. 4 (1), (4), means that document offering capital to the public upon the basis of which appct. has actually subscribed.

(2) The statement of the minimum subscription on which the directors may go to allotment, which the sect. requires to be inserted in the prospectus, must be an express statement, & not one which can be implied from other statements in the prospectus.

(3) A co. issued a prospectus offering shares to the public for subscription. By the authority of the co. a translation or abridgement of the prospectus appeared in a French newspaper. This abridgment omitted to state certain essential particulars which appeared in the original prospectus. A Frenchman who had applied for shares in the co. on the faith of the abridgment in the newspaper:—*Held*: entitled under 1900 Act, ss. 4, 5, to have the allotment cancelled & his application money returned.—*ROUSSELL v. BURNHAM*, [1909] 1 Ch. 127; 78 L. J. Ch. 94; 100 L. T. 39; 25 T. L. R. 61; 16 Mans. 30.

1647. — Sufficiency of statement—Whether express or implied.]—*ROUSSELL v. BURNHAM*, No. 1646, *ante*.

1648. — Ten per cent. of shares offered.]—By the arts. of assocn. of a co. it was provided as follows: "If the co. shall offer any of its shares to the public for subscription, the directors shall not make any allotment thereof unless & until 10 per cent. of the shares so offered shall have been subscribed, & the sums payable on application shall have been received by the co.; but this provision is no longer to apply after the first allotment of shares offered to the public for subscription has been made." The prospectus issued by the co. contained only the following statement as to the minimum subscription: "The minimum subscription is fixed by the arts. of assocn. at 10 per cent. of the shares offered":—*Held*: there had been in the case of both the arts. of assocn. & the prospectus a sufficient compliance with the requirements of 1900 Act, ss. 4, 10, as to the minimum subscription, there being a statement of an amount as to such minimum subscription which was ascertained as soon as it was known what shares the directors were offering for public subscription.—*Re WEST YORKSHIRE DARRACQ AGENCY, LTD.* (1908), 25 T. L. R. 77.

1649. "Has been subscribed"—Subscription must be effective.]—Deft. co. was registered in 1897, but no public issue of its shares was then

made. On May 12, 1904, an agreement was entered into between pltf. & defts. that pltf. should bear the expense of issuing & advertising a prospectus, which had been prepared by defts., in return for certain payments. The prospectus was duly issued. It stated that the minimum number of shares upon which allotment would be made was 40,000. As soon as the subscriptions amounted to 40,000 the directors proceeded to allot shares to appcts., including pltf., & received the application money. It turned out that some of the applications were not effective, & that the minimum subscription had not been reached. The directors of deft. co. proposed to give to each allottee the option to have the allotment cancelled & the application money returned. Pltf. moved for an injunction to restrain them from doing so:—*Held*: the agreement gave pltf. no right to the injunction; the allotment was irregular under 1900 Act, s. 4, & was voidable; under that sect. the allottees had a right at any time to rescind their contract to take shares; the allottees could also rescind on the double ground that there was an untrue statement in the prospectus, & that the condition with respect to the minimum number of shares had been broken; & the proposed action of the directors was not *ultra vires*.—*FINANCE & ISSUE, LTD. v. CANADIAN PRODUCE CORPN., LTD.* [1905] 1 Ch. 37; 73 L. J. Ch. 751; 91 L. T. 685; 53 W. R. 170; 20 T. L. R. 807; 11 Mans. 412.

1650. "Paid to & received by the company"—Application money paid by cheque—Cheques not cleared.]—In May, 1905, the directors of a new co. went to allotment on the minimum subscription fixed by the prospectus, & allotted to pltf. the shares for which he had applied. At the date of this allotment the directors had received applications for the full minimum subscription, & cheques for the whole of the application money, but many of these cheques had not then been cleared & three of them were not paid on presentation though they were at once made good by an underwriting co. On an application by pltf. for an *interim* injunction to restrain the co. from dealing with his application money:—*Held*: (1) the allotment was irregular & voidable, & pltf. was entitled to an *interim* injunction; (2) according to the true construction of 1900 Act, s. 4, it is a condition precedent to a valid allotment that the whole of the application money should have been paid to & received by the co. in cash. Any means by which money can be remitted may be used, but the remittances must be cleared & the actual cash received by the co. before allotment.—*MEARS v. WESTERN CANADA PULP & PAPER CO., LTD.*, [1905] 2 Ch. 353; 74 L. J. Ch. 581; 93 L. T. 150; 54 W. R. 176; 21 T. L. R. 661; 49 Sol. Jo. 634; 12 Mans. 295, C. A. *Annotations*:—As to (2) *Folld. Burton v. Bevan* (1908), 77 L. J. Ch. 591; *Re National Motor Mail-Coach Co., Anstis' & McLean's Claims*, [1908] 2 Ch. 228.

1651. — — — — —.]—(1) Where a cheque for application money for shares forming part of the minimum subscription for allotment is received on the day of allotment, but not paid into the co.'s bank until some days later, the application money cannot be treated as "paid to & received by the

PART III. SECT. 17, SUB-SECT. 3.—C. (a).

1650 i. "Paid to & received by the company"—Application money paid by cheque—Cheques not cleared.]—The prospectus of a co. whose shares were offered to the public, provided that the directors should not proceed to allotment unless upon a certain minimum subscription. The directors

proceeded to allotment. Part of the amount required to complete the sum payable on allotment for the minimum subscription consisted of cheques received by the directors before allotment on the day of allotment, but not honoured until a subsequent date:—*Held*: before allotment the sum payable on application had been "paid to & received by" the co. within Cos. Act, 1900, sect. 4 (1), & the allot-

ment was therefore valid.—*GLASGOW PAVILION, LTD. v. MOTHERWELL* (1903), 6 F. (Ct. of Sess.) 116; 41 Sc. L. R. 73; 11 S. L. T. 409.—*SCOT*.

m. No formal allotment—Effect of Companies Act, 1897, s. 26.]—A subscriber for a share in a co. was debited in the co.'s stock ledger with one share, was placed on the "shareholders' list," & was drawn upon for the first pay-

co." before allotment within 1900 Act, s. 4, although the cheque is duly honoured.

(2) Sect. 5, which renders an allotment to an appct. in contravention of sect. 4 "voidable at the instance of appct. within one month after the holding of the statutory meeting of the co. & not later," does not require actual legal proceedings to be taken within the month as a condition of avoidance. Notice of avoidance within the month followed by prompt legal proceedings after the month is sufficient.

Semble: the notice need not specify the ground of avoidance.—*Re NATIONAL MOTOR MAIL-COACH CO., LTD., ANSTIS' & McLEAN'S CLAIMS*, [1908] 2 Ch. 228; 77 L. J. Ch. 796; 99 L. T. 334; 15 Mans. 373.

1652. — — — — —.]—A co. issued a prospectus offering 20,000 £1 preference shares to the public & stating that no allotment would be made unless 15,000 shares had been applied for & the application money paid. Pltf. applied for 100 shares. The directors proceeded to allotment when 15,000 shares had been applied for, but in some cases the application money had only been paid by cheques which had not been cleared. Pltf. paid the full amount of his shares. The co. went into liquidation, & it then appeared that the co. was insolvent & the shares worthless. Pltf. brought this action against one of the directors claiming repayment of the money paid on application for the shares under s. 4 & compensation for loss under sect. 5 of 1900 Act. Deft. was not present at the meeting of the board at which the allotment was made, but was present at subsequent meetings at which the minutes were confirmed & a resolution passed to apply for a certificate to commence business:—*Held*: (1) as payment by cheque was not payment within 1900 Act, s. 4, until the cheque was cleared, there had been a contravention of the Act; (2) on all the evidence, deft. was not aware of the facts & had not knowingly contravened the Act.

(3) Sect. 4 applies only before allotment. After allotment is once made, whether in contravention of the Act or not, it is only voidable at the option of the shareholder, & the co. cannot pay back the application money; the only liability of the directors after allotment is the liability to make good the loss under sect. 5 (2) of the Act. Under that section, "knowingly contravene" means contravene with knowledge of the facts. A director cannot escape liability by ignorance of the law.

(4) But a director does not make himself responsible for an act done at a meeting at which he was not present, & which is complete without further confirmation, merely by voting at a subsequent meeting for the confirmation of the minutes.—*BURTON v. BEVAN*, [1908] 2 Ch. 240; 77 L. J. Ch. 591; 99 L. T. 342; 15 Mans. 272.

1653. — — — — — *Cheque dishonoured on presentation.*—*MEARS v. WESTERN CANADA PULP & PAPER CO., LTD.*, No. 1650, *ante*.

1654. Allotment before statement in lieu of prospectus filed.]—*JUBILEE COTTON MILLS, LTD. (OFFICIAL RECEIVER & LIQUIDATOR) v. LEWIS*, No. 75, *ante*.

1655. Allotment before registration—Registration same day as allotment.]—*JUBILEE COTTON MILLS, LTD. (OFFICIAL RECEIVER & LIQUIDATOR) v. LEWIS*, No. 75, *ante*.

(b) *Exercise of Powers by Directors.*

1656. Exercise of powers by directors—By committee.]—Where the power of allotting shares is vested by the deed of settlement of a co. in the directors, they have no right to delegate such power. Therefore, where a shareholder who had been offered some reserved shares accepted them conditionally, but the board of directors did not expressly assent to such conditional acceptance, but resolved that the shares remaining undisposed of should be allotted at the discretion of two of the directors & the manager; & the manager subsequently wrote the shareholder that the shares he had accepted had been allotted to him.

Upon application by the shareholders to have his name removed from the list in respect of such shares:—*Held*: the board of directors could not delegate their powers; if the shares had been allotted it was *ultra vires*, & therefore the shareholder's name must be removed from the list in respect of such shares.—*Re LEEDS BANKING CO., HOWARD'S CASE* (1866), 1 Ch. App. 561; 36 L. J. Ch. 42; 14 L. T. 747; 12 Jur. N. S. 655; 14 W. R. 942, L. JJ.

Annotations:—*Distd. Re Imperial Land Co. of Marseilles, Harris' Case* (1872), 7 Ch. App. 589, n. *Mentd. New Sombrero Phosphate Co. v. Erlanger* (1877), 5 Ch. D. 73.

1657. — — — — —.]—A contract is complete when a letter has been posted accepting an offer which can be accepted by letter so sent.

A letter of application for shares in a co. was put into the post, & was duly received by the directors. A committee appointed by the directors allotted 100 shares to appct., & the secretary of the co. put into the post a letter addressed to appct. informing him that the shares had been allotted to him, & that 10 per cent. interest would be charged on the balance due in respect of the shares. The letter was duly received by appct., but before he received it he had sent by post a letter declining to accept any shares:—*Held*: (1) the contract was completed when the letter announcing the allotment of the shares was put into the post; (2) under the arts. of assocn. of the co., the allotment of shares by a committee instead of by the whole board of directors was valid; (3) the provision for payment of interest on the balance was not a new term introduced into the contract.

One [ground taken on behalf of appct.] is that upon the construction of the arts. of assocn. the allotment was invalid, because it was made by a committee of the directors. But the arts. have in terms provided that the directors might

ment of 10 per cent. & paid the draft. There was no formal allotment to him:—*Held*: what had been done must be taken to have been done by authority of the directors & to be a mode of allotment "ordained" by them within Cos. Act, R. S. O. 1897, c. 191, s. 26.—*HILL'S CASE* (1905), 10 O. L. R. 501.—CAN.

n. Allotment made in contravention of Companies Ordinance.]—An allotment of share made in contravention of Companies Ordinance, s. 108, is not void, but voidable at the instance of appct. within the period

limited for that purpose, & if he elects to avoid it, his right as against the co. is to be relieved entirely of his contract, & to get his money back, with a right of compensation from the directors.—*PIERSON v. EGBERT, BURNS v. EGBERT* (1916), 34 W. L. R. 256, 1039; 10 W. W. R. 321.—CAN.

o. Company never organised nor licensed.]—*HODGINS v. O'HARA*, 22 C. L. T. 29, 133.—CAN.

PART III. SECT. 17. SUB-SECT. 3.—C. (b).

p. Directors never properly ap-

pointed.]—Where directors appointed at a meeting, invalid for want of compliance with the provision for seven days' notice thereof, under art. 35 of Table A. allotted shares to one of their number present at the meeting at which the allotment took place:—*Held*: sect. 64 of the Companies Statute rendered such allotment valid although at the time of allotment the directors were not validly appointed.—*FEDERAL MUTUAL LIVE STOCK INSURANCE CO. v. DONAGHY* (1888), 14 V. L. R. 857.—AUS.

q. Delegation of powers.]—At a

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delegate anything to a committee & that they did delegate this duty to this committee appears in evidence before us. It was a proper & reasonable mode of dealing with such a thing as the investigation of the applications for shares & the allotment of them (JAMES, L.J.).—*Re IMPERIAL LAND CO. OF MARSEILLES, HARRIS' CASE* (1872), 7 Ch. App. 587; 41 L. J. Ch. 621; 26 L. T. 781; 20 W. R. 690, L. JJ.

Annotations:—As to (1) *Consd.* Household Fire Insce. v. Grant (1879), 4 Ex. D. 216; *Re London & Northern Bank, Ex p. Jones*, [1900] 1 Ch. 220. *Re Id.* *Re Imperial Land Co. of Marseilles, Wall's Case* (1872), L. R. 15 Eq. 18; Brogden v. Met. Ry. (1877), 2 App. Cas. 666. *Generally, Mentd.* Evans v. Nicholson (1875), 32 L. T. 778; Taylor v. Jones (1875), 1 C. P. D. 87; Byrne v. Van Tienhoven (1880), 5 C. P. D. 344; Henthorn v. Fraser, [1892] 2 Ch. 27; Carlill v. Carbolic Smoke Ball Co., [1893] 1 Q. B. 256.

1658. — Allotment by three directors—Before quorum determined.]—Shares were allotted to B. at a meeting of three directors & before the number necessary to form a quorum had been determined:—*Held*: B. could not upon the co. being wound up, insist that the allotment was invalid.—*Re ENGLISH, ETC., ROLLING STOCK CO., LYON'S CASE* (1866), 35 Beav. 646; 14 L. T. 507; 12 Jur. N. S. 738; 14 W. R. 720; 55 E. R. 1048.

1659. — Quorum—Competent to allot—Construction of articles.]—The arts. of assocn. of a limited co. provided that the number of directors should not be less than four, nor more than seven, & four directors were named. It was also provided that two directors should form a quorum, & that the continuing directors might act notwithstanding any vacancy in the board, the directors being empowered to fill up casual vacancies. By a letter dated Nov. 8, A. applied for shares in the co., relying on the statement in the prospectus that B. was to be a director & chairman, & C. a director. At the first meeting of directors only two were present, B. & C. having sent in their resignations. The two directors elected another director, who was not present, & proceeded to allot shares. On Nov. 15 A. received a letter of allotment accompanied by a letter informing him that B. & C. had retired from the board. On Nov. 27 A. wrote withdrawing his application for shares, on the ground that B. & C. were not directors. The co. refused to withdraw his name, but took no further steps to enforce the calls on the shares, & A. took no proceedings to recover his deposit, or to have his name removed from the register. On Feb. 3, 1881, another shareholder obtained an order for the removal of his name in consequence of the resignation of B. & C. (*Re Scottish Petroleum Company, Anderson's Case*, No. 748, ante), but no agreement was proved that these proceedings should govern the cases of any other allottees. The co. was afterwards wound up, & then A. took out a summons under 1862 Act, s. 35, to have his name removed from the register:—*Held*: (1) the two directors were competent to allot the shares; (2) the letter which accompanied the allotment letter did not qualify it, so as to prevent it being an unconditional acceptance of A.'s offer to take shares; (3) A. had entered into a complete contract to take shares, but in consequence of the retirement of

B. & C. the contract was voidable; but, (4) as A. had taken no steps before the commencement of the winding up to have his name removed from the register, his name was properly on the list of contributories.

There is a difference between a contract to take shares & other contracts, as in the former case the contractor acquires a status as a member which it requires some active proceeding to alter, repudiation alone not being sufficient.

Qu.: whether A.'s delay in not repudiating the shares until Nov. 27 would not, in the case of a going concern, having disintitiled him to any relief.—*Re SCOTTISH PETROLEUM CO.* (1883), 23 Ch. D. 413; *sub nom. Re SCOTTISH PETROLEUM CO., WALLACE'S CASE*, 49 L. T. 348; 31 W. R. 846, C. A.

Annotations:—As to (1) *Appld.* *Re Bank of Syria, Owen & Ashworth's Claim, Whitworth's Claim*, [1901] 1 Ch. 115. *Consd.* *Re Sly, Spink*, [1911] 2 Ch. 430. *Re Id.* *Re Florence Land & Public Works Co., Nicols' Case, Tufnell & Ponsonby's Case* (1885), 29 Ch. D. 421; Faure Electric Accumulator Co. v. Phillipart (1888), 58 L. T. 525. As to (3) *Re Id.* *Re Metropolitan Coal Consumers Assocn., Wainwright's Case* (1889), 62 L. T. 30. As to (4) *Consd.* *Re London & Leeds Bank, Ex p. Carling, Carling v. London & Leeds Bank* (1887), 56 L. J. Ch. 321. *Appld.* *Re Briton Medical & General Life Assocn.* (1889), 5 T. L. R. 502. *Consd.* *Re Lennox Publishing Co., Ex p. Storey* (1890), 62 L. T. 791; *Re Snyder Dynamite Projectile Co., Skelton's Case* (1893), 68 L. T. 210. *Appld.* *Re Central Klondyke Gold Mining & Trading Co., Thomson's Case* (1898), 5 Mans. 282. *Re Id.* *Aaron's Reefs v. Twiss*, [1896] A. C. 273; *Re General Ry. Syndicate, Whiteley's Case*, [1900] 1 Ch. 365; *First National Reinsurance v. Greenfield*, [1921] 2 K. B. 260.

1660. — — — Directors improperly constituted.]—R. applied for & was allotted shares in a co., the prospectus of which stated that there were three directors, of whom F. was one. The arts. of assocn. of the co. provided that the number of directors should not be less than three, nor more than seven; & three names—including that of F.—were given as the first directors. It was also provided that two directors should form a quorum. The co. having been subsequently ordered to be wound up, R.'s name was placed on the list of contributories. It came to R.'s knowledge that F. never authorised his name to be used as a director of the co., nor ever acted in that capacity. Accordingly R. objected that there had been no duly constituted board of directors; that two directors could not consider themselves a quorum; & that no acts by them were valid. He therefore claimed that the allotment to him of shares was void; & that he was entitled to have his name removed from the list of contributories, & the money paid by him refunded:—*Held*: (1) the want of a properly constituted board of directors when the shares were allotted to R. rendered the allotment invalid; & the defect was not cured by the provision of the co.'s arts. of assocn. that two directors might form a quorum; (2) R.'s name must be struck off the list of contributories.—*Re BRITISH EMPIRE MATCH CO., LTD., Ex p. Ross* (1888), 59 L. T. 291.

Annotation:—As to (1) & (2) *Consd.* *Re Sly, Spink*, [1911] 2 Ch. 430.

1661. — — —.]—*Re GREAT NORTHERN SALT & CHEMICAL WORKS, Ex p. KENNEDY*, No. 1539, ante.

1662. — — —.]—The arts. of assocn. of a co. provided that the number of directors

general meeting of the shareholders of pltf. co., incorporated under the Ontario Cos. Act, it was resolved that a board of three directors should be elected to manage the affairs of the co., & three of the five provisional directors were elected as directors. The three directors met & adopted

bye-laws, one of which provided that the affairs of the co. should be managed by a board of five directors, & another provided for the terms upon which stock subscriptions should be received. About ten months later, a document in the form of an agreement to purchase stock was signed by pltf., & the words

"accepted by" written at the foot over the signature of one of the three directors, who had been elected president & general manager; & at a meeting of the directors a resolution was passed giving to the president full power to deal with deft.'s "application." On the following day the pre-

should not be less than four or more than eight; that the two vendors should be the first directors; that the first directors should have power before the first general meeting to appoint additional directors but so that the number should not exceed seven; that continuing directors might act notwithstanding any vacancy; that three directors should be a quorum. The two first directors appointed a third, & the three held board meetings & allotted shares, including 2,000 shares which were allotted as fully-paid by way of commission to M., the promoter of the co. M. had transferred some of his shares to H., the solr. of the co., partly as a gift & partly in payment of his costs, & others to *bonâ fide* purchasers. The co. never really commenced business & was ordered to be wound up compulsorily on the petition of shareholders. The vendors, who had acted honestly, paid all the debts of the co. & repaid the *bonâ fide* shareholders what they had paid, taking transfers of their shares. The liquidator took out a summons in the name of the co. to rectify the register by striking off the names of M. & H. M. & H. had full notice & knowledge of the arts. & the circumstances, but the effect of striking off their names would be to leave the vendors the only shareholders of the co. & enable them to take back their property:—*Held*: (1) there never having been a properly constituted board of directors, the allotments made by the three directors could not be justified either because they were a quorum or because they were continuing directors; (2) the original allotment to M. was bad; (3) the liquidator, on behalf of the co., was not estopped from disputing the validity of the allotment.—*Re SLY, SPINK & Co.*, [1911] 2 Ch. 430; 105 L. T. 364; *sub nom. Re SLY, SPINK & Co.*, *HERTSLET'S CASE*, *MACDONALD'S CASE*, 81 L. J. Ch. 55; 19 Mans. 65.

1663. ——— Subsequent ratification—*After withdrawal of application.*—The arts. of assocn. of a co., which was incorporated on Oct. 20, 1888, provided that there should be not more than ten nor less than three directors; that the first directors should be appointed by the subscribers of the memorandum of assocn.; that the directors should hold meetings for the despatch of business at such times & places, & might adjourn & otherwise regulate such meetings as they thought fit, & might determine the quorum necessary for the transaction of business; & that a resolution in writing signed by all the directors should be as valid as if passed at a meeting duly called & constituted. They also provided that the shares should be allotted by the directors to such persons at such times & on such terms as they should think fit. On Oct. 22, 1888, the subscribers of the memorandum of assocn. duly appointed five directors, one of whom was not to take his seat at the board until after allotment. On Oct. 24, a meeting was held at which only two directors were present. The two directors passed a resolution that two directors should be a quorum, & proceeded to allot a number of shares. Among others, they allotted to S. 100 £5 shares, for which he had applied. On Oct. 25, S. withdrew his application. On the same day a third director signed a resolution appointing two directors a

quorum; & on Oct. 26, a fourth director handed in his written assent to the same resolution. At the meeting on Oct. 26, the previous allotments were confirmed. S. applied to have his name struck off the register:—*Held*: (NORTH, J.) (1) there was no properly appointed quorum of directors present at the meeting of Oct. 24, when the allotments were made; the allotment of S. was therefore invalid, & the confirmation on Oct. 29, would only take effect as a fresh allotment on that date, which, being after withdrawal, was ineffectual; S.'s name was therefore removed from the register; (2) on appeal, without deciding the other points, there was no evidence that, I.—a director, who was not present at the meeting of Oct. 24, but who signed the document on Oct. 26—received proper notice of the meeting; he had not waived his right to the notice which he ought to have received; the meeting was a bad one; & the decision of North, J. must be affirmed.—*Re PORTUGUESE CONSOLIDATED COPPER MINES, LTD.* (1889), 42 Ch. D. 160; *sub nom. Re PORTUGUESE CONSOLIDATED COPPER MINES, LTD.*, *STEELE'S CASE*, 58 L. J. Ch. 813; 62 L. T. 88; 5 T. L. R. 522; 1 Meg. 246, C. A.

Annotations:—As to (1) *Distd. Re Portuguese Consolidated Copper Mines, Ex p. Badman, Ex p. Bosanquet* (1890), 45 Ch. D. 16. As to (2) *Refd. Young v. Ladies' Imperial Club*, [1920] 2 K. B. 523.

1664. ——— ——— ——— ———.]—The arts. of assocn. of a co. provided that the shares should be allotted by the directors & that the first directors should be appointed by the subscribers to the memorandum of assocn. On Oct. 22, 1888, the subscribers to the memorandum appointed four persons directors. On Oct. 24, a meeting of directors was held, at which two only attended, & they allotted shares to A. & B. who had sent in applications. The ct. subsequently held that this meeting was irregular, & that the allotments were invalid. Notice of the allotments was sent on the following day to A. & B. A. refused to pay the allotment money on his shares; B. paid his to the bankers under protest; but the evidence failed to prove that either of them revoked his application or repudiated his shares on the ground of the allotment being invalid. On Dec. 24, the co. brought an action against A. for his allotment money & recovered judgment. On Jan. 7, 1889, another meeting of directors was held, at which two only attended, & they passed a resolution that the certificates of the shares allotted should be sealed & issued to the allottees. B. refused to accept the certificates of his shares, but did not distinctly repudiate the allotment. On Jan. 16, another meeting of directors was held, at which all four directors attended, & the chairman signed the minutes of the last meeting. On Mar. 7, a resolution was passed, at a duly constituted meeting of the directors, formally confirming the allotment of the shares made on Oct. 24. Afterwards A. & B. moved for a rectification of the register by striking out their names:—*Held*: (1) although the original allotment of shares was invalid, it had been ratified by the co., & was binding on the allottees; with respect to A., such ratification was complete on Dec. 24, 1888, when the action against him was commenced; & with

sident wrote to deft. notifying him that calls had been made upon the shares subscribed for by him, "which have this day been allotted to you by bye-law of this co." Nothing further was done in the way of allotting shares to deft., & his name did not appear in the register of shareholders. About

two weeks after the receipt of the president's letter, deft. wrote to the co. withdrawing & cancelling his application:—*Held*: in an action for the amount of calls alleged to be due, the directors had no power to delegate to the president their authority as to the allotment of shares or their

authority to accept the offer of deft.; there was, therefore, no valid allotment, & the withdrawal was effectual.—*TWIN CITY OIL CO. v. CHRISTIE* (1909), 18 O. L. R. 324; 13 O. W. R. 756.—CAN.

r. Irregularly constituted board.]—

Sect. 17.—The contract to take shares: Sub-sect. 3, C. (b) & (c), & D. (a) & (b) i.]

respect to both A. & B. there was a valid ratification on Jan. 16 & Mar. 7, 1889; (2) having regard to the fact that neither A. nor B. had repudiated their shares on the ground of the invalidity of the allotment, the ratification in both cases was made within a reasonable time.—*Re PORTUGUESE CONSOLIDATED COPPER MINES, LTD., Ex p. BADMAN, Ex p. BOSANQUET* (1890), 45 Ch. D. 16; 63 L. T. 423; 39 W. R. 25; 2 Meg. 249, C. A.

Annotations:—As to (1) Reff. Molineaux v. London, Birmingham & Manchester Insee., [1902] 2 K. B. 589. Generally, Mentd. Dibbins v. Dibbins, [1896] 2 Ch. 348.

1865. ——— Notice of meeting not served on one director.]—*Re PORTUGUESE CONSOLIDATED COPPER MINES, LTD., No. 1664, ante.*

See, also, No. 1668, post.

1866. ——— Directors never properly appointed.]—E. applied for shares in a co. of which no directors had been appointed. B. had been nominated manager by the arts. of assocn., & held a meeting with R., which was treated by them as a directors' meeting, & at which E.'s shares were allotted. E.'s name was also entered upon a register of shareholders, after which he paid further moneys in respect of his shares. The co. having gone into liquidation, E.'s name was sought to be placed upon the list of contributories:—*Held*: the proceedings carried on at the office of the co. could not be treated as the proceedings of the co., & E. was not a contributory, inasmuch as no act had been done by any duly constituted authority to make him one.—*Re CITY & DISTRICT BANK OF LONDON, LTD., EWINGTON'S CASE* (1884), 1 T. L. R. 6.

Shares issued at a discount.]—*See Sect. 20, sub-sect. 1, post.*

— As defence to action for calls.]—*See No. 1533, ante.*

(c) Other Cases.

1667. Allotment in pursuance of void agreement for amalgamation.]—By the arts. of assocn. of a co. the directors were to be elected by the shareholders, & power was given to purchase the business of any other co. Power was also given by any extraordinary meeting of the co. to amalgamate with any other co. An agreement was made for the amalgamation of this co. with another co. on the terms that the second-named co. should sell their assets to the first-named co.; that the directors of the amalgamated board should consist of the present five directors of the purchasing co., & of seven of the directors of the selling co. This agreement was acted upon, but was never confirmed by an extraordinary meeting of the purchasing co.:—*Held*: this agreement was void, & two of the directors of the selling co., who had been allotted shares in the purchasing co. in exchange for shares in the selling co., & had acted as directors of the amalgamated co., were not liable to be put on the list of contributories to the purchasing co.—*Re LONDON & NORTHERN INSURANCE CORPN., STACE & WORTH'S CASE* (1869), 4 Ch. App. 682; 21 L. T. 182; 17 W. R. 751, L. JJ.

Annotations:—Reff. Bank of Hindustan v. Alison (1870), L. R. 6 C. P. 54; *Re Patent Paper Manufacturing Co., Addisons' Case* (1870), 5 Ch. App. 294; *Re Paraguassu Steam Tramroad Co., Black's Case* (1872), 8 Ch. App. 254.

1668. Director voting on allotment of own shares—Construction of articles—Allotment a "contract, arrangement or dealing in which director interested."—*QUINN v. ROBB* (1916), 147 L. T. Jo. 6.

Annotation:—Reff. Neal v. Quinn, [1916] W. N. 223.

Proof of invalidity—Onus of proof.]—*See No 1539, ante.*

An allotment of shares in a joint-stock co. made by an irregularly constituted board of directors is *prima facie* invalid. But this defect may sometimes be cured if the arts. of assocn. of the co. provide for the validation of an act done by a *de facto* director in a *bond fide* manner.—*CHANGA MAL v. PROVINCIAL BANK, LTD.* (1914), 1 L. R. 36 All. 412.—IND.

PART III. SECT. 17, SUB-SECT. 3.—C. (c).

a. Joint application by two persons—Allotment to one person only.]—A. & B. applied for shares in a co. in the following terms: "I hereby subscribe for & require & request you to allot me five shares of stock," etc., both signing the one application. The minute book of the co. showed that the directors allotted five shares to B. only, although five shares were entered in the share ledger to A. & B. jointly, & a share certificate for five shares was issued to them jointly but never delivered, being held by the co. pending payment for the shares in full. Subsequently the co. went into liquidation, & A. & B. were both placed upon the list of contributories by the registrar whose report was affirmed by the ct.:—*Held*: there was no allotment of shares to A.; there was not a concluded contract between A. & the co.; & A.'s name must be removed from the list of contributories.—*Re FEDERAL MORTGAGE CORPN., LTD. & KIPP* (1917), 24 B. C. R. 12.—CAN.

t. Powers of company—In bond fide dispute.]—Where there is a bond fide dispute concerning the validity

of the holding, or the contract to take shares, a co. may compromise & may *bond fide* cancel the stock in question.—*Re ALBERTA LOAN & INVESTMENT CO., LTD. (IN LIQUIDATION), LAFFERTY'S CASE*, [1919] 1 W. W. R. 603.—CAN.

a. Erroneous apportionment of shares—Knowledge of allottee.]—The directors of a co. resolved to allot shares to appets. on a *pro rata* principle. By mistake of a director, entrusted with the apportionment, more shares were apportioned to pltf., an appet., than he was entitled to under the resolution. The secretary of the co. posted a letter of allotment of the shares so apportioned to pltf. & requested him to pay the amount due thereon. Pltf. received the letter with knowledge of the mistake, but sent a cheque for the amount claimed therein. On the discovery of the error by the co. which happened shortly after the posting of the letter of allotment, pltf. refused to allow the allotment to be rectified & sued the co. for delivery of the shares allotted to him under the said mistake or their value:—*Held*: as pltf. had had knowledge of the mistake he was not entitled to take advantage thereof.—*BETZ v. WORCESTER EXPLORATION & G. M. CO.* (1888), 6 S. C. 79.—S. AF.

b. Allotment before registration of company.]—Where the arts. of assocn. of a co. contain provisions that the directors—and until their election the subscribers to the memorandum of assocn.—should allot the shares, & a person has shares allotted to him before the registration of the co., & his name placed on the register, by persons who were not all directors nor subscribers

to the memorandum, & he pays the deposit & allotment money but take no further action in the affairs of the co., the acts of allotment & registration are nullities, & the shareholder entitled to have his name removed from the register.

Semble: a shareholder cannot repudiate his shares on the ground that the co. was registered under a different name to that mentioned in the prospectus, if before he takes any action the name of the co. has been altered to correspond with what it was when he applied for shares.—*Re RANGIORA LINSEED-OIL CAKE & FIBRE FACTURING CO. (LTD.), S' CASE* (1885), 3 N. Z. L. R. 21

c. Allotment to enemy at consideration.]—On June 12 deft. co. being indebted to pltf. sum of £102, by agreement with pltf. allotted him 102 shares in the consideration of a release of the debt. Pltf. was then to deft.'s knowledge an enemy alien. On a claim by pltf. for a declaration that the allotment of such shares was illegal & that he was entitled to recover the amount of the debt for which such shares were given, it was claimed by deft. that the allotment was legal. *In pari delicto potio est condonatio fendentis & Ex turpi causa non oritur actio*, prevented pltf. from succeeding.—*Held*: (1) the allotment of shares was illegal & void & therefore must be set aside; (2) as defts. only deft. was accord & satisfaction, & not pltf., & as accord & satisfaction not be relied on as being illegal, was no answer to pltf.'s claim.—*HUSHEER v. NEW ZEALAND TRADING CO.*, [1921] N. Z. L. R. 304.—N. Z.

D. Whether Allottee Bound.

(a) In General.

1669. Allotment of paid-up shares to contractor as remuneration—At option of company—Option exercised after winding up begun.]—A contractor with a co. was by his contract bound, at the option of the co., to accept payment to a certain amount in shares:—*Held*: after the co. had been ordered to be wound up, the contractor could not be called upon to accept payment in shares, the option not having been exercised till after the winding up.—*Re ALEXANDRA PARK CO., SHARON'S CLAIM* (1866), 12 Jur. N. S. 482; 14 W. R. 855.

Necessity for communication.]—See Sub-sect. 3, E. (a), post.

Necessity for entry in register.]—See Sect. 12, sub-sect. 3, ante.

(b) Variation between Application for or Acceptance of Shares and Allotment.

i. In General.

1670. Acceptance of definite number of shares—Allotment of less number.]—A's name was placed in the list of the provisional committee of a railway co. Soon after, he received a letter from the secretary of the co., containing an offer of 250 shares, or any less number he might choose. A. accepted the offer of the whole 250 shares. A month after, A. received a letter from the secretary to the effect that 100 shares had been allotted to him, & that the committee might find themselves in a position to allot the other 150. No notice was taken by A. of the last letter. The co. was ordered to be wound up:—*Held*: A. was not a contributory.—*Re OXFORD & WORCESTER EXTENSION & CHESTER JUNCTION RY. CO., Ex p. BARBER*

(1851), 20 L. J. Ch. 146; *sub nom. Re BARBER & OXFORD & WORCESTER EXTENSION & CHESTER JUNCTION RY. CO.*, 16 L. T. O. S. 338; *sub nom. Re OXFORD & WORCESTER EXTENSION & CHESTER JUNCTION RY. CO., Re BARBER*, 15 Jur. 51.

Annotations:—Reid. Re Brighton, Lewes & Tunbridge Wells Ry., Ex p. Conway (1851), 21 L. J. Ch. 461; *Re Direct Shrewsbury & Leicester Ry., Brittain's Case* (1851), 1 Sim. N. S. 281.

1671. ———.]—A. became a member of the provisional committee of a projected co. which was never completed. He signed the agreement required by the Registration Act; he applied for 100 shares, undertaking to accept them if allotted; instead of 100 shares being allotted to him, he in common with other committeemen, was requested to take up 25; he did not take them up. He was called upon to pay two successive payments, making together £105, on which he was assured he should be protected from the claims of creditors; he did in consequence pay £105:—*Held*: A. was not a contributory.

I am of opinion, on the whole, that neither on the ground of allotment & acceptance of shares, nor on the ground of payment, can A. be treated as a contributory (*KINDERSLEY, V.-C.*).—*Re WOLVERHAMPTON, CHESTER & BIRKENHEAD JUNCTION RY. CO., Ex p. ROBERTS* (1852), 1 Drew. 204; 22 L. J. Ch. 223; 20 L. T. O. S. 9; 61 E. R. 429.

1672. Allotment of shares other than those applied for—Nominal amount of shares increased.]

—(1) By the memorandum of assocn. the first issue of capital in a co. was stated to be £700,000, in 35,000 shares of £20 each, & power was given to the board of directors by the resolution of a majority of not less than two-thirds of the whole number to consolidate the shares into shares of a

PART III. SECT. 17, SUB-SECT. 3.—
D. (a).

d. Motion for issue invalidly passed.]—Pltf. sued deft. upon a note given for the amount given in respect of certain preferred shares alleged to have been allotted to him. The shares purported to have been allotted were in fact not validly issued, as the number of directors making the issue had been invalidly decreased & the motion for the issue of such shares had not been validly passed. There were therefore no shares to allot:—*Held*: there had been a total failure of consideration for the note & the action was dismissed.—*MANES TAILORING CO. v. WILLSON* (1907), 9 O. W. R. 209; 14 O. L. R. 89.—CAN.

e. Conditional allottee.]—A person who applies for shares in a co. registered under Cos. Acts, & authorises his name to be placed on the register of members, becomes on allotment of the shares & registration of his name in terms of his authority a shareholder of the co.; & is not entitled to have his name removed from the register by showing that he did not become a shareholder on his own account, but merely that he might by agreement with the directors place the shares among such persons as he found willing to take them.—*MILN v. NORTH BRITISH FRESH FISH SUPPLY CO.* (1887), 15 R. (Ct. of Sess.) 21; 25 L. R. 36.—SCOT.

f. Defective title to property—Deficient from statements in articles of association.]—Where certain leases co. had been formed to acquire old on account of their not been executed in compliance statutory requirements, & the at they were not properly appearing in the arts. of assocn., the co.'s incorporation, com-

plete legal title could have been acquired:—*Held*: a shareholder was not entitled to repudiate liability on account of the defects in the leases.—*OTTOSHOP PROPRIETARY MINES, LTD. (IN LIQUIDATION) v. REEVES*, [1907] T. H. 76.—S. AF.

g. Share certificate erroneously endorsed.]—C. sued the A. Co. for rescission of a contract to take shares & refund of the sum of £100 & interest paid by him under the contract. He alleged that a share certificate delivered by the A. Co. to him bore an endorsement that the nominal capital of the co. was £62,500, whereas in fact the registered nominal capital was less than £62,500 at the date of the issue of the certificate & claimed that the certificate was issued in contravention of s. 6 of Law No. 10, 1884, & of s. 1 Law No. 1, 1893:—*Held*: the summons disclosed no cause of action such as was claimed, though it did disclose a claim for issue of a certificate correctly reflecting the capital of the co.—*AGRICULTURAL CO-OPERATIVE UNION, LTD. v. CHADWICK* (1922), 43 N. L. R. 135.—S. AF.

h. When memorandum of association goes beyond objects set forth in prospectus.]—A shareholder, after allotment of shares, & after the commencement of winding-up proceedings, cannot object to have his name put on the list of contributories on the ground that the memorandum of assocn. registered goes beyond the objects mentioned in the prospectus which he signed.—*Re AUCKLAND CO-OPERATIVE DRAPERY & CLOTHING CO., LTD., FRASER'S CASE* (1887), 5 N. Z. L. R. 59.—N.Z.

k. Agreement with provisional directors of proposed company.]—An agreement made with persons calling themselves provisional directors of a proposed co., to take shares in the co. when formed, cannot be ratified by

the co., & is not enforceable by it.—*Re KAIAPOI GLASS CO., HOLLIER'S CASE* (1887), 5 N. Z. L. R. 287.—N.Z.

l. Irregular procedure by directors.]—A person had agreed to accept certain shares in a co. by allotment; his name was entered on the register of the co. as the transferee of the shares from an allottee; no transfer of the shares had been executed before the winding up of the co.; he had paid calls on such shares:—*Held*: he was not entitled to have his name struck off the list of contributories on the ground of irregularity of procedure on the part of the directors.—*Re NEW ZEALAND NATIVE LAND SETTLEMENT CO. (LTD.), Ex p. GREEN* (1889), 7 N. Z. L. R. 721.—N.Z.

m. Application made through provisional directors.]—When a person signs a form of application for shares in a co. he knows to be not then registered, addressed to the provisional directors & agreeing to accept shares in such co., he thereby makes the provisional directors his agents to apply for shares, & authorises the co. when formed to accept such application & to place him on the register of such co.; & notice of allotment of such shares is an acceptance, & not an offer by the co.—*Re WESTPORT CARDIFF COAL CO. (LTD.), Ex p. HARLEY* (1894), 12 N. Z. L. R. 410.—N.Z.

PART III. SECT. 17, SUB-SECT. 3.—
D. (b) i.

n. Allotment of shares other than those applied for—Contract to take original shares.]—Pltf. applied for shares in deft. co., & from the wording of such application, & other documents, the ct. found that he bargained for original shares in deft. co., which was not complied with by giving him shares already issued & held by a third party; the result being that the con-

Sect. 17.—The contract to take shares: Sub-sect. 3, D. (b) i. & ii.]

larger nominal value. A. applied for shares on the faith of the memorandum of assocn.; but before allotment a resolution was passed by a majority of two-thirds of the directors increasing the value of the shares from £20 to £40. This resolution was not registered. The letter of allotment received by A. did not specify the value of the shares, & no notice of the increase in nominal value was received by A., nor did he know of it until May, 1866, a year after executing a transfer of his shares:—*Held*: the increase was not binding upon A., & he was liable on his contract with the co. for £20 shares only.

(2) A co. is not bound to send notice to the transferor of their refusal to register a transfer, & accordingly A., who had executed in May, 1865, a transfer of his shares, which was sent to the secretary of the co. for registration, but was not registered, & had taken no further step & heard nothing more about them, remained liable for the shares.—*Re EUROPEAN CENTRAL RY. CO., GUSTARD'S CASE* (1869), L. R. 8 Eq. 438; 38 L. J. Ch. 610; 21 L. T. 196; 17 W. R. 875.

Annotation:—*As to* (2) *Reid*. *Union Debenture Co. v. Fletcher* (1895), 59 J. P. 708.

1673. — Contract to take fully-paid shares—Allotment of shares not fully-paid.]—An amalgamation was agreed on between the P. Co., Ltd., & the U. Co., which was an unlimited insurance co., under which the paid-up shareholders in the P. Co. were to have paid-up shares in the U. Co. to the like amount, & the other shareholders in the P. Co. were to have corresponding shares in the U. Co. It was also agreed that the P. Co. should assign all their assets to the U. Co., & that the U. Co. should indemnify them against all liabilities. An indenture in two parts, embodying these terms, was drawn up & executed by the two cos.; but the covenant of indemnity in the part executed by the U. Co. differed materially from the covenant in the part executed by the P. Co. W. was a paid-up shareholder in the P. Co., & made an application to the U. Co., in pursuance of the amalgamation, for paid-up shares of the same value as his former shares. He received a letter of allotment, signed by a person professing to be the managing director of the U. Co., giving him notice that the directors had allotted him the number of shares applied for, on which he was to be credited

with an amount proportionate to the assets of the P. Co. There was no evidence on what authority this letter was written, but W.'s name was placed on the register as an ordinary shareholder. W. received the letter at the end of Aug., while he was on a yachting cruise, & on his return to London, early in Oct., applied personally to the chairman & solr. of the co. for an explanation of the letter, & objected to take the shares, but was informed by them that his name was not on the register. On Oct. 15, he wrote to the secretary, formally repudiating the shares. On Nov. 9, the U. Co. was wound up on a petition presented on Oct. 7:—*Held*: (1) the variation in the two parts of the indenture rendered the indenture void, & the amalgamation was incomplete; (2) there was no contract between W. & the co. to take shares; (3) under the circumstances, W. was not bound by acquiescence to take shares in the co.; & his name was therefore removed from the list of contributories.—*Re UNITED PORTS & GENERAL INSURANCE CO., WYNNE'S CASE* (1873), 8 Ch. App. 1002; 43 L. J. Ch. 138; 29 L. T. 381; 21 W. R. 895, L. JJ.

Annotations:—*As to* (2) *Folld. Re United Ports & General Insee., Nelson's Case*, [1874] W. N. 197. *Reid. Re United Ports Co., Beck's Case* (1874), 43 L. J. Ch. 531. *As to* (3) *Folld. Re United Ports & General Insee., Nelson's Case*, [1874] W. N. 197. *Consd. Re Railway Time Tables Publishing Co. Ex p. Sandys* (1889), 42 Ch. D. 98.

1674. — — — — —.]—An amalgamation between two cos. was agreed upon, on the terms that the shareholders in the selling co. should receive in exchange for their shares in that co. shares credited with an equal amount in the purchasing co. In pursuance of this arrangement B., a shareholder in the selling co., applied for 200 shares in the purchasing co. The shares were allotted upon different terms, only an unascertained amount, proportionate to the assets of the selling co., being credited thereon. Notice of allotment upon these terms was sent to B., & his name was placed on the register in Aug. B. thereupon wrote for the share certificates. These were never sent to him, although repeatedly asked for. The co. was wound up in Nov. The amalgamation was afterwards held to have been altogether void:—*Held*: owing to the variation in the terms of the allotment from those of the application for shares, there never was any contract between B. & the co. to take these shares, & under the circumstances there had been no

tractual relation contemplated was never established, & pltf. having taken prompt steps on becoming aware of the facts, was entitled to recover back the moneys & securities given to the co. as a result of his application, notwithstanding the liquidation of the co., & to be removed from the list of contributories.—*BRYDGES v. DOMINION TRUST CO.*, [1919] 2 W. W. R. 510.—CAN.

o. Change made in amount of capital—Without subscriber's knowledge or acquiescence.]—D. signed his name as subscriber for a certain number of shares at the foot of a prospectus of a proposed co., in which it was stated that the capital was to be \$75,000. Without D.'s knowledge or acquiescence, the co., as afterwards incorporated, had a capital of \$150,000. In accordance with the terms of the subscription, & before the incorporation of the co., D. paid up half the amount of his shares. There was no allotment of stock to D., no entry of his name in any stockbook, & no acting on his part as shareholder. The co. being in process of liquidation, it was claimed that D. was a contributory:—*Held*: the change made in the capital

of the co. was a material one, & there being no acquiescence or laches on D.'s part, he was not liable as a contributory.—*STEVENS v. LONDON STEEL WORKS CO., DELANO'S CASE* (1887), 15 O. R. 75.—CAN.

p. Reduction in holding without shareholder's consent.]—Deft. subscribed for 50 shares in pltf. co., signed the share-list & paid a call. By the Act of Incorporation other calls were to be paid as called for. The co. made six other calls, but deft. did not pay them. Before making the calls sued for, the number of deft.'s shares was changed, without his consent, on the share-list from 50 to 25 shares, & the co. having brought this action for the amount of the calls, he pleaded *nunquam indebtedus*, & an equitable plea setting out the above facts, & contending that by the alteration his contract to become a shareholder was rendered void, & that he thereupon ceased to be a shareholder:—*Held*: the verdict must be for deft. on all the issues raised.—*STADACONA INSURANCE CO. v. HODGSON* (1882), 2 P. E. I. 480.—CAN.

q. Contract to take one share—Acceptance of three shares in form of

security.—Applt., who agreed to take one share in a co., received & accepted a certificate for five shares, expressed to be fully paid-up, four of which the managing director of the co. informed him were intended only as security for certain paper to which he had become a party for the accommodation of the co. No stock was subscribed for by or allotted to him, but a dividend on the one share was paid to him:—*Held*: he was a contributory in respect to the one share only.—*Re DAVIES (CHARLES H.), LTD., MCNICHOL'S CASE* (1909), 18 O. L. R. 240; 13 O. W. R. 579.—CAN.

r. Application for preference stock—Acceptance of ordinary stock.]—A person who has subscribed for preference stock, but has accepted & made part-payment for ordinary stock, & qualified by holding such stock as a director, & has known of a pledge for the unpaid balance on his stock to a bank, is estopped from denying that he is a shareholder who owes money on unpaid stock.—*UNION BANK v. GOURLEY*, [1917] 1 W. W. R. 935; 27 Man. L. R. 330.—CAN.

s. Contract for controlling interest—Impossible of performance.]—SMITH

acquiescence by B., in the allotment & his name must therefore be removed from the list of contributories.—*Re UNITED PORTS & GENERAL INSURANCE CO., BECK'S CASE* (1874), 9 Ch. App. 392; 43 L. J. Ch. 531; 30 L. T. 346; 22 W. R. 460, L. JJ.

Annotations:—Folld. Re United Ports & General Insee., Nelson's Case, [1874] W. N. 197. *Distd. Re Railway Time Tables Publishing Co., Exp. Sandys* (1889), 42 Ch. D. 98; *Re Hemp, Yarn & Cordage Co., Hindley's Case*, [1896] 2 Ch. 121; *Re Veuve Monnier et ses Fils, Ex p. Bloomenthal*, [1896] 2 Ch. 525.

1675. ———.—.]—(1) As between the co. & A., the duty of registering under 1867 Act, s. 25, an agreement that a sum of cash voted to A. shall be given to & accepted by him in fully paid-up shares is not specially thrown upon A., but falls upon the party seeking to enforce performance of the contract.

(2) Subject to confirmation by a meeting of shareholders it was agreed by directors of a co. to give, & by A. to accept, fully paid-up shares in satisfaction of his admitted claim against the co. for services rendered. At the shareholders' meeting it was subsequently resolved "that a sum of £—— be voted to A., which he agreed to take in fully paid-up shares." The agreement was not registered under 1867 Act, s. 25, & there was no sufficient evidence that there had been any distinctive allotment or acceptance of shares pursuant to the agreement. On application by the liquidator to place A. on the list of contributories as holder of unpaid shares to the extent agreed to be given:—*Held*: there had been nothing amounting to a payment in cash for the shares by A.; but as the only contract between the co. & A. was that fully paid-up shares should be given & accepted, a contract to take unpaid shares could not, in the absence of evidence of any assent on the part of A. to vary the original contract, be enforced against A. by the liquidator on behalf of the co.; & accordingly A. was not liable as a contributory for the number of shares mentioned in the agreement.—*Re BARANGAH OIL REFINING CO., ARNOT'S CASE* (1887), 36 Ch. D. 702; 57 L. J. Ch. 195; 57 L. T. 353; 3 T. L. R. 727, C. A.

Annotations:—As to (1) Consd. Re Macdonald Sons, [1894] 1 Ch. 89. *Reid. Re African Gold Concessions & Development Co., Markham & Darter's Case*, [1899] 1 Ch. 414. *As to (2) Distd. Re Railway Time Tables Publishing Co., Ex p. Sandys* (1889), 42 Ch. D. 98. *Consd. Re Macdonald Sons*, [1894] 1 Ch. 89. *Reid. Re Johannesburg*

Hotel Co., Ex p. Zoutpansberg Prospecting Co., [1891] 1 Ch. 119; *Re African Gold Concessions & Development Co., Markham & Darter's Case*, [1899] 1 Ch. 414.

1676. ———.—.]—*Re MACDONALD, SONS & Co.*, No. 1482, *ante*.

See, also, Nos. 1839, 1896, *post*, & compare Nos. 1373, 1374, *ante*.

1677. ———.— **Application for shares on amalgamation of companies—Amalgamation held void after allotment.**—*Re UNITED PORTS & GENERAL INSURANCE CO., NELSON'S CASE*, [1874] W. N. 197.

Annotation:—Consd. Reid v. London & North Staffordshire Fire Insee. (1883), 49 L. T. 468.

See, also, Nos. 1506, 1507, 1508, 1673, 1674, *ante*.

Application for "unallotted" shares.—*See* No. 1690, *post*.

1678. **Allotment accompanied by notice of resignation of directors named in prospectus.**—An appct. for shares in a co. received a letter of allotment, & at the same time a letter informing him that two of the four directors named in the prospectus had retired. Appct. on the same day wrote to the co. stating that he had applied for shares entirely in consequence of these two directors being directors, & asking to have the allotment cancelled:—*Held*: under the circumstances appct. was entitled to have his name removed from the register of shareholders.—*Re SCOTTISH PETROLEUM CO., ANDERSON'S CASE* (1881), 17 Ch. D. 373; 50 L. J. Ch. 269; 43 L. T. 723; 29 W. R. 372.

Annotations:—Apprvd. Re Scottish Petroleum Co. (1883), 23 Ch. D. 413. *Distd. Re Metropolitan Coal Consumers' Assocn., Karberg's Case*, [1892] 3 Ch. 1.

1679. ———.—.]—*Re SCOTTISH PETROLEUM CO.*, No. 1659, *ante*.

Change or withdrawal of directors named in prospectus.—*See* Nos. 784, 1659, *ante*.

Applications for & agreements to take shares subject to conditions.—*See* Sub-sect. 1, B. (a), *ante*.

Constitution of company changed between application & allotment.—*See* Sect. 8, sub-sect. 4, *ante*.

ii. Allotment subject to Condition.

1680. **Whether allotment introduces new condition—Payment of instalment by given date—Forfeiture on default.**—*WONTNER v. SHARP*, No. 1554, *ante*.

v. SCHON (1919), 46 D. L. R. 233.—**CAN.**

t. Invalid creation of preference shares.—A limited co. which, by the terms of its memorandum & original arts. of assocn., was precluded from creating preference shares, by special resolution resolved that the remaining unissued shares of the nominal capital should be preference shares subject to these conditions: that they should bear a fixed rate of dividend; that any failure of the annual profits to meet the dividend should be made good from the profits of subsequent years; that after ten years the co. had right to redeem these shares at par; that preference shareholders were not entitled to vote or take part in any meeting, or in the management of the co., or to share in the rights of ordinary shareholders. Preference shares were applied for & allotted. In a special case presented by an allottee of preference shares & the co., the co. contended that, although the preference given to these shares was invalid, the allottee was to be regarded as a holder of ordinary shares:—*Held*: as the allottee of preference shares had not applied for or agreed to take ordinary shares, he was not to

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be regarded as an ordinary shareholder, but as a creditor of the co., & he was entitled to repayment of the price of the shares, with interest at 4 per cent., less any dividend which he had received.—*WAVERLEY HYDROPATHIC CO., LTD. v. BARROWMAN* (1895), 23 R. (Ct. of Sess.) 136; 33 Sc. L. R. 131; 3 S. L. T. 161.—**SCOT.**

a. Promissory note discounted before date.—The agent of a co. having suggested to pltf. that he should apply for shares in the co.; pltf. signed a document on a printed form of agreement, & at the same time gave the agent a promissory note for £25 in favour of the latter, payable four months after date, the agent undertaking that the note should not in the meantime be discounted. The agent having discounted the note before it fell due & paid the purchase price of the shares to the co. before any letter of allotment had been sent to pltf., the latter wrote to the co. purporting to withdraw his application for shares:—*Held*: pltf. was entitled to withdraw the application before allotment & claim from the co. a refund of the amount paid by him to redeem the promissory note on its due date.—*AFRICAN FINANCE, ETC. v. VAN DER*

SPREY, [1920] C. P. D. 596.—**S. AF.**

b. Issue of shares paid for another person—Signatory to articles of association.—The contract to take shares, constituted by signature of the arts. of assocn., is not satisfied by the issue in the name of the signatory of shares paid up by another person, & where shares have been so issued the signatory is liable on the liquidation of the co. to be placed upon the lists of contributories for the amount of the shares so subscribed. The contract may, however, be satisfied by shares paid for by the signatory being issued at his direction to another person.—*Re ROSEMOUNT GOLD MINING SYNDICATE, LTD. (IN LIQUIDATION)*, [1905] T. H. 169.—**S. AF.**

PART III. SECT. 17, SUB-SECT. 3.—D. (b) ii.

c. Suspensive condition in letter of allotment.—In a petition to settle the list of contributories at the instance of an official liquidator subsequently appointed for the winding up of the co.:—*Held*: the letter of allotment contained a suspensive condition & did not render the allottees shareholders of the co. until it was purified.—*CONSOLIDATED COPPER CO. OF CANADA,*

Sect. 17.—The contract to take shares: Sub-sect. 3, D. (b) ii., (c) & (d).]

1681. ————.]—A banking co. having resolved to issue certain reserved shares, a circular was sent to each shareholder offering one new share for each five old ones at £30 a share, & asking whether, if any new shares remained over, the shareholder wished to have any of them allotted to him; it also stated that the amount must be paid before a certain day. A holder of twenty shares, in reply, agreed to take "his proportion of allotment," & "his proportion of shares in addition," if he could have them on the terms stated in the circular. The manager of the bank replied, that the four additional shares for which the shareholder had applied had been allotted to him, in addition to the four previously accepted by him, & that the amount must be paid on or before a certain day, or the shares would be forfeited. The shareholder sent no answer, & made no payment in respect of any of the shares before an order for winding up the bank was made:—*Held*: the first circular & the shareholder's reply constituted a valid contract with respect to the first four shares, viz., "the proportion of allotment," & the shareholder was therefore liable in respect of them; but as to the second four shares there was no contract, as the manager's reply accepting the shareholder's offer introduced a new term by the clause of forfeiture.—*Re LEEDS BANKING CO., ADDINELL'S CASE* (1865), L. R. 1 Eq. 225; 35 L. J. Ch. 75; 13 L. T. 456; 11 Jur. N. S. 965; 14 W. R. 72.

Annotation:—Reid. Jackson v. Turquand (1869), L. R. 4 H. L. 305.

1682. ———— *Repudiation on ground of misrepresentation before payment due on allotment.*—P. applied for ten shares in a co., the prospectus of which stated that £1 was to be paid on each share on application & £2 more on allotment. The directors accepted the application on Aug. 1, & on the 4th they wrote to P., stating that they allotted the shares on payment of the balance of the allotment money on or before the 11th. Before that day had arrived P. discovered that there were misrepresentations in the prospectus, & wrote to the directors repudiating the shares & claiming a return of the deposit. P.'s name was entered on the register as on Aug. 1, but it was doubtful at what time the entry was really made. The co. was soon afterwards wound up:—*Held*: the contract to take the shares was *in fieri* until Aug. 11, & P. had a right to repudiate them up to that date. His name, therefore, was removed from the list of contributories.—*Re WARREN'S BLACKING CO., PENTLOW'S CASE* (1869), 4 Ch. App. 178; 39 L. J. Ch. 8; 20 L. T. 50; 17 W. R. 267, L. J.

Annotation:—Expld. & Distd. Re Aberaman Ironworks, Peek's Case (1869), 4 Ch. App. 532.

1683. ———— *Notice of allotment forms complete contract.*—P. applied for shares according to a form of application which bound him to pay, in addition to the £1 per share which he had paid on

application, £4 per share "on allotment." On Sept. 6, he received a letter stating that the directors had allotted him eighty shares, "on which £5 per share must be paid on or before the 15th instant." On Sept. 10, before anything further had been done, P. wrote to the co. refusing to accept the shares:—*Held*: the application & the letter constituted a complete contract, & the repudiation of Sept. 10, was ineffectual.—*Re ABERAMAN IRONWORKS, PEEK'S CASE* (1869), 4 Ch. App. 532; 20 L. T. 340; 17 W. R. 508, L. J.

Annotations:—Reid. Re Imperial Land Co. of Marseilles, Harris' Case (1872), 7 Ch. App. 589, n.; *Re European Society Arbitration Acts, Ex p. British Nation Life Assoc. Assocn. Liquidators* (1878), 8 Ch. D. 679.

1684. ———— *Notice that interest charged on overdue instalments.*—*Re IMPERIAL LAND CO. OF MARSEILLES, HARRIS' CASE*, No. 1657, *ante*.

1685. ———— *Letter of allotment headed "Not transferable."*—A., by letter requested the committee of a railway co. to allot him a certain number of shares in the undertaking, & thereby undertook to receive the same, or any less number, & to pay the deposit & execute the parliamentary contract & agreement when required.

In answer to this application, he received a letter from the co. allotting him certain shares. This letter was headed, "Not transferable":—*Held*: this term qualified the acceptance, & the two letters did not together constitute any contract; & therefore, in an action by the co. against A. to recover the deposit, they were not entitled to recover.—*DUKE v. ANDREWS* (1848), 2 Exch. 290; 5 Ry. & Can. Cas. 496; 17 L. J. Ex. 231; 154 E. R. 502.

Annotations:—Reid. Willey v. Parratt (1848), 3 Exch. 211; *Clarke v. Chaplin* (1849), 13 L. T. O. S. 286.

1686. ———— *Statement that signature of memorandum & articles necessary.*—To an application for shares in a co. the secretary answered that the shares had been allotted to appct., & that he must sign the memorandum & arts. of assocn., or else that the shares & deposit would be forfeited. He did not comply with the condition, but was nevertheless placed upon the register:—*Held*: this was not a simple acceptance of the offer to take shares, & therefore a bill by the co. to compel appct. to take the shares & pay the calls on them was demurrable.—*ORIENTAL STEAM NAVIGATION CO., Ex p. BRIGGS* (1861), 4 De G. F. & J. 191; 45 E. R. 1157; *sub nom. ORIENTAL INLAND STEAM CO., LTD. v. BRIGGS*, 31 L. J. Ch. 241; 5 L. T. 477; 8 Jur. N. S. 201; 10 W. R. 125, L. C.

Annotations:—Distd. Imperial Land Co. of Marseilles, Harris' Case (1872), 7 Ch. App. 589, n. *Reid. Re General Provident Assoc. Co., Bridger's Case* (1869), L. R. 9 Eq. 74.

1687. ———— *Allotment accompanied by notification of change of directors.*—*Re SCOTTISH PETROLEUM CO., No. 1659, ante*.

1688. ———— *Agreement to allot to company or nominees—Allotment to company without opportunity of naming nominees.*—A co. sold its business, & all its assets, except uncalled capital, to another co., & the latter co. agreed to issue to the former or to its nominees certain shares which

LTD. v. PEDDIE (1877), 5 R. (Ct. of Sess.) 393.—SCOT.

d. Allotment made before subscription of whole capital—Discretionary powers vested in directors.—*BROWN v. STEWART* (1898), 1 F. (Ct. of Sess.) 316; 36 Sc. L. R. 221.—SCOT.

e. "Minimum subscription" provision in prospectus.—*GLASGOW PAVILION, LTD. v. MOTHERWELL* (1903), 6 F. (Ct. of Sess.) 116; 41 Sc. L. R.

f. Agreed stipulation as to mode of payment.—A. applied for shares in a co. & paid the amount due on application, on the express condition that the firm of which he was a member should be appointed to a certain office & that he should be at liberty to pay up the balance due upon his shares by fees to be earned by the firm. Before the balance had been paid the co. went into liquidation. The co. & its liquidator sued A. for the amount unpaid on his shares:—*Held*: It was

ultra vires of the directors to agree to the stipulation as to payment for the shares, & therefore defender was not a shareholder, & was entitled to *absolvitur*.—*NATIONAL HOUSE PROPERTY INVESTMENT CO., LTD. v. WATSON*, [1908] S. C. 888.—SCOT.

g. Effect of notice of pending action.—Where resps. were bound, in exchange for certain certificates of allotment, to register & issue new certificates, which should be free, un-

were to be in a precisely corresponding position as the shares of the selling co. in respect of being fully-paid or of having an uncalled liability. The purchasing co. purported to issue the shares on most of which there was a large liability, to the selling co. without giving it an opportunity of naming any nominees:—*Held*: the allotment of the shares in these circumstances was not warranted.—*Re NATIONAL STANDARD LIFE ASSURANCE CORPN., LTD.* (1911), 27 T. L. R. 271.

(c) *Allotments made malâ fide.*

1689. General rule.—Application for shares in a provisionally registered projected co. was made on Oct. 20, 1845. No answer was returned till Dec. 15, when a letter of allotment was sent to the appct., who took no notice of it. The circumstances of the projected co. had considerably changed in the interval. On an appeal from the decision of the Master, placing the appct. on the list of contributories, an issue was directed, to try whether the allotment was made *bonâ fide*; & a verdict having been found in the negative, the appct.'s name was removed from the list. *Semble*: the circumstance of some persons being advertised as provisional directors without their consent, is not sufficient ground, no fraudulent intent being proved, for removing from the list of contributories an allottee who was induced by the advertisement to apply for shares.—*Re DIRECT EXETER, PLYMOUTH & DEVONPORT RY. CO., MATHEW'S CASE* (1850), 3 De G. & Sm. 234; 16 L. T. O. S. 122; 14 Jur. 928; 64 E. R. 459.

Annotation:—*Consd.* *Re Direct Birmingham, Oxford, Reading & Brighton Ry., Ex p. Capper* (1851), 1 Sim. N. S. 178.

1690. Application for "unallotted" shares—Transfer to applicant of shares already allotted.—Pltf. & deft. were directors in a railway co. Pltf. was desirous of obtaining 1,000 "unallotted" shares, in order to promote its success. Deft. clandestinely caused 1,000 of his own "allotted" shares to be transferred to pltf. The transaction took place in July, 1853, but was discovered in June, 1854, & the bill was filed in Nov. following:—*Held*: the transaction was void, & there had been no laches.—*BLAKE v. MOWATT* (1856), 21 Beav. 603; 52 E. R. 993; *reversd.* on other grounds, *sub nom. MOWATT v. BLAKE* (1858), 31 L. T. O. S. 387, H. L.

Annotations:—*Mentd.* *Rodger v. Comptoir D'Escompte De Paris* (1871), L. R. 3 P. C. 465; *Armstrong v. Jackson*, [1917] 2 K. B. 822.

Collusive allotment.—*See Sub-sect. 1, C., ante.*

Allotment on inadequate application for shares—Whether misfeasance within 1908 Act, s. 215.—*See No. 3343, post, & generally, Sect. 36, sub-sect. 10, C., post.*

(d) *Delay in Allotment.*

1691. General rule.—On Aug. 1, A. wrote a letter to the provisional committee of a co., requesting them to allot him 100 shares in it, & adding that he agreed to accept such shares as might be allotted to him. On Aug. 11 he wrote a letter to the solrs. to the co. consenting to be a

provisional committeeman, & added that, if the solrs. would send him a printed form of application, he would fill it up with fifty or more. On Oct. 11, following, he gave his formal consent, in writing, to become a provisional committeeman, & to take one or more share or shares. One of the books of the co. contained an entry of 100 shares, having been allotted to him; & another contained an entry of his being an appct. for fifty shares. On Oct. 17, the secretary to the co. informed him that 100 shares had been allotted to him, & requested to be informed how many of them he intended to take:—*Held*: he had never bound himself to take any shares at all; & therefore, the Master had erred in placing his name on the list of contributories.

All such applications are made on an implied condition that they shall be answered promptly, or, otherwise, that the party applying shall not be bound by his application (*ROLFE, V.-C.*).—*Re IRISH WEST-COAST RY. CO., CARMICHAEL'S CASE* (1850), 17 Sim. 163; 20 L. J. Ch. 12; 16 L. T. O. S. 189; 14 Jur. 1014; 60 E. R. 1090.

Annotations:—*Refd.* *Re Direct Birmingham, Oxford, Reading & Brighton Ry., Ex p. Walstab* (1850), 20 L. J. Ch. 58; *Re Wolverhampton, Chester & Birkenhead Junction Ry., Ex p. Roberts* (1852), 1 Drew. 204; *Re Wolverhampton, Chester & Birkenhead Junction Ry., Ex p. Stocks* (1852), 22 L. J. Ch. 218; *Re New Theatre Co., Bloxam's Case* (1864), 4 De G. J. & Sm. 447.

See, also, No. 1689, ante.

1692. What delay sufficient—Over two months.—*Re IRISH WEST-COAST RY. CO., CARMICHAEL'S CASE*, No. 1691, *ante.*

1693. — Over five months.—(1) Deft. in one of these actions for non-acceptance of shares, applied for shares on June 8, but no allotment was made till Nov. 23. On Nov. 8, he withdrew his application.

(2) The facts in the other action were the same, except that deft. had never withdrawn his application:—*Held*: the allotment must be made within a reasonable time; it was not so made; & therefore, neither deft. was bound to accept the shares allotted.—*RAMSGATE VICTORIA HOTEL CO. v. MONTEFIORE, RAMSGATE VICTORIA HOTEL CO. v. GOLDSMID* (1866), L. R. 1 Exch. 109; 4 H. & C. 164; 35 L. J. Ex. 90; 13 L. T. 715; 12 Jur. N. S. 455; 14 W. R. 335.

Annotations:—*As to (1) & (2) Foll.* *Re Bowron, Baily, Baily's Case* (1868), L. R. 5 Eq. 428. *Distd.* *Re Land Loan Mortgage & General Trust Co. of South Africa, Boyle's Case* (1885), 54 L. J. Ch. 550. *Refd.* *Re Peruvian Rys. Co., Ex p. Wallis* (1868), 18 L. T. 676; *Re Land Shipping Colliery Co., Ex p. Harwood, Gull, Geary, & Stafford* (1869), 20 L. T. 736; *Re Universal Non-Tariff Fire Insce., Ritso's Case* (1877), 4 Ch. D. 774; *Re Portuguese Consolidated Copper Mines, Ex p. Badman, Ex p. Bosanquet* (1890), 45 Ch. D. 16.

1694. — Four months.—On Oct. 6, 1865, B. saw the prospectus of a co. which proposed to start without the delay of a day, & to allot shares on Oct. 14, & he thereupon applied for & paid the deposit on ten shares. The co. was registered in Dec., & then issued a different prospectus, which was sent to B. in Jan. On Feb. 3, he received notice that ten shares had been allotted to him, & on Feb. 7 he wrote to decline them, & asked for a return of his deposit, which was refused. After

conditional, & without restriction of any kind, & where they did in fact issue such new certificates, but notified the party to whom they were issued that, as legal proceedings were pending, he would be regarded as affected by the notice of such proceedings:—*Held*: such notice did not make the certificates conditional or subject to a reservation, & resps. had fulfilled their undertaking.—*SPILLANE v. SUBURBAN MUNICIPALITIES* (1909), 19 C. T. R. 868.—S. AF.

PART III. SECT. 17, SUB-SECT. 3.—D. (d).

1691 i. General rule.—An allottee of shares in a co. who does not receive notice of the allotment until after the expiration of a reasonable time after his application must be vigilant, if he wishes to repudiate, in the exercise of his right of repudiation, & on his failure to act promptly will be bound, *a fortiori*, if the rights of creditors have intervened, by a winding up.—

BARRETT v. BANK OF VANCOUVER, [1917] 3 W. W. R. 53; 36 D. L. R. 158; 24 B. C. R. 241.—CAN.

1691 ii. —.—Shares must be allotted within a reasonable time after application, or appct., even after notice of the allotment, may refuse to accept them. But he must within a reasonable time inform the co. of his refusal.—*Re SEED & AGRICULTURAL CO. OF NEW ZEALAND (LTD.), TRUE-LOVE'S CASE* (1894), 12 N. Z. L. R. 255.—N.Z.

Sect. 17.—The contract to take shares: Sub-sect. 3, D. (d) & (e), & E. (a).]

this he made no application to have his name taken off the register until Dec. 1867, when a call had been made:—*Held*: after the delay in allotting the shares, B. was not bound by his application to take them; & he was not prevented by his subsequent delay from having his name struck off the register.—*Re BOWRON, BAILY, & Co., Ex p. BAILY* (1868), 3 Ch. App. 592; 37 L. J. Ch. 670; 19 L. T. 58; 16 W. R. 1093, L. C.

Annotations:—*Distd. Re Land Loan Mortgage & General Trust Co. of South Africa, Boyle's Case* (1885), 54 L. J. Ch. 550. *Reid. Re Peruvian Rys., Ex p. Wallis* (1868), 18 L. T. 676; *Re Cheltenham & Swansea Ry. Carriage & Waggon Co., Little's Case* (1869), 20 L. T. 162; *Re Portuguese Consolidated Copper Mines, Ex p. Badman, Ex p. Bosanquet* (1890), 45 Ch. D. 16.

1695. ———.]—*FORBES & Co., LTD. v. ORIENTA STEAM YACHTING ASSOCN., LTD.* (1894), 11 T. L. R. 86.

1696. — **Seven months.**]—R., the chairman of the board of directors of a co. in which he held fifty shares, signed a letter of application for 450 more, striking out the reference to the payment of the deposit which was required on application for shares. There was some evidence to show that this application was made in pursuance of a previous promise by R. to become a holder of 500 shares, & that on the faith of this promise he had been elected chairman. No notice was taken of the application till after seven months, when at a board meeting it was proposed & seconded that 450 shares should be allotted to R. R., who was present, handed in his letter withdrawing his application, & deposed that he had previously withdrawn it verbally. There was no proper evidence that the resolution to allot shares to R. had been carried, but a letter of allotment was sent him on the following day. The co. was at this time in a hopeless state, & a resolution for winding it up was passed a fortnight afterwards:—*Held*: the offer by R. to take shares was not shown to have been accepted by the co. before it was withdrawn by him, & he was not liable in respect of the 450 shares.—*Re UNIVERSAL NON-TARIFF FIRE INSURANCE CO., RITSO'S CASE* (1877), 4 Ch. D. 774, C. A.

1697. — **Notice of allotment nineteen months after application—Allotment seventeen months after application.**]—In July, 1882, B., who was a merchant resident in South Africa, at the request of C., the local agent of a projected co. which was to be established in England, signed an application for 100 shares in the co. B. heard nothing further of the matter until Feb. 1884, when he received notice that, on Dec. 20, 1883, 100 shares had been allotted to him. The co. was registered on Dec. 19, 1883, & the delay had arisen in consequence of the unsettled state of affairs in South Africa. On receiving the notice B. informed C. that he declined to accept the shares because of the lapse of time since his application. C. stated that he had received no instructions, so would do nothing in the matter. B. did not communicate with the co., but he proceeded to England, arriving on May 29, 1884, & on June 6, 1884, he took out a summons, asking that the co.'s register of shareholders might be rectified by striking out his name. In the meantime, on May 23, 1884, a petition for the winding up of the co. had been presented, & a winding-up order—relating back to the date of the presentation of the petition—was made on June 13, 1884:—*Held*: if B., on receiving the notice of allotment, had forthwith written to the co. repudiating the shares, he would

undoubtedly have had a right to be taken off the list of contributories; but, as he had not done this, & before he repudiated, the winding-up order had intervened, whereby the rights of creditors were made paramount, his application must be refused.—*Re LAND LOAN MORTGAGE & GENERAL TRUST CO. OF SOUTH AFRICA, BOYLE'S CASE* (1885), 54 L. J. Ch. 550; 52 L. T. 501; 33 W. R. 450; 1 T. L. R. 331.

1698. Whether withdrawal condition precedent to relief.]—*RAMSGATE VICTORIA HOTEL CO., LTD. v. MONTEFIORE, RAMSGATE VICTORIA HOTEL CO., LTD. v. GOLDSMID*, No. 1693, *ante*.

(e) Allotments to Infants.

See, generally, INFANTS & CHILDREN.

1699. Right to repudiate—Before attaining majority.]—Pltf., while an infant, applied for shares in a co. & paid the amount due on application. The shares were duly allotted to her, & she paid the amount due on allotment. No dividends were received by her, nor did she attend any meetings of the co. Six weeks after allotment, while still under age, she repudiated the contract, & asked for repayment of the money paid by her to the co. She subsequently brought an action to recover the money. The co. then went into liquidation, & the liquidator removed her name from the register of shareholders:—*Held*: having derived no advantage under the contract, the consideration had wholly failed, & she was entitled to prove in the winding up for the amount paid by her in respect of the shares.—*HAMILTON v. VAUGHAN-SHERRIN ELECTRICAL ENGINEERING CO.*, [1894] 3 Ch. 589; 63 L. J. Ch. 795; 71 L. T. 325; 43 W. R. 126; 10 T. L. R. 642; 38 Sol. Jo. 663; 8 R. 750.

Annotation:—*Dbtd. Steinberg v. Scala* (Leeds), [1923] 2 Ch. 452. *STIRLING, J.*, did not correctly interpret the earlier authorities which he professes to follow in *Hamilton v. Vaughan-Sherrin Electrical Engineering Co.*, when he said that the question was not (he did not put it in the negative form, but I do so) whether the consideration had wholly failed, but whether the infant had derived any real advantage (*YOUNGER, L.J.*).

See, also, No. 1773, post, & compare, No. 1773, post.

1700. Right to claim repayment of deposit—No advantage taken under contract.]—*HAMILTON v. VAUGHAN-SHERRIN ELECTRICAL ENGINEERING CO.*, No. 1699, *ante*.

1701. Ratification—What amounts to—Non-repudiation after attaining majority.]—An infant applied for shares in a co., shares were allotted to him, & he was entered on the register. He attained his majority on Apr. 8, 1864, & the co. went on till June, 1865, when an order for winding it up was made. During this period, though he did not appear to have acted as a shareholder, he never took any step to repudiate the shares:—*Held*: he was bound by his acquiescence, & must be placed on the list of contributories.—*Re CONSTANTINOPLE & ALEXANDRIA HOTEL CO., EBBETTS' CASE* (1870), 5 Ch. App. 302; 39 L. J. Ch. 679; 22 L. T. 424; 18 W. R. 394, L. J.

Annotations:—*Folld. Re Yeoland Consols* (No. 2) (1888), 58 L. T. 922. *Reid. Re Constantinople & Alexandria Hotel Co., Reidpath's Case* (1870), L. R. 11 Eq. 86; *Re Imperial Mercantile Credit Asscn., Richardson's Case* (1875), L. R. 19 Eq. 588; *Carter v. Silber* (No. 2) (1892), 36 Sol. Jo. 362.

1702. ———.]—Shares were allotted to an infant who had never applied for them, but was immediately made aware of the allotment. He disclaimed all liability, but over a year afterwards he executed a transfer of the shares, but the directors refused to accept the transferee. Nearly four years after the allotment he attained his

majority. Between that time & the date of the winding up, a period of twenty months, he took no steps to obtain the removal of his name from the register:—*Held*: notwithstanding Infants Relief Act, 1874 (c. 62), s. 2, he was bound by acquiescence.—*Re YEOLAND CONSOLS, LTD. (No. 2) (1888)*, 58 L. T. 922; *sub nom. Re YEOLANDS CONSOLS, WHITE'S CASE*, 1 Meg. 39.

Compare No. 7849, post.

1703. Liability of parent—Application by infant sons of director—On advice of their father—Director liable for losses by non-payment of calls.]—A director of a co. induced three of his children, who were minors, to apply for shares. Shares were allotted to each, & he gave them money to pay the sums payable on allotment. All the shares in the co. were allotted. The co. never paid any dividend, & an order for winding it up was made before any of the children had attained 21. The infants were placed on the list of contributories, & an order was made against each for payment of an arrear of calls, but, their infancy having been discovered, no attempt was made to enforce it:—*Held*: the father was liable to pay the amount of these calls, as a loss occasioned to the co. by his breach of duty as director in having shares allotted to infants.—*Re CRENVER & WHEAL ABRAHAM UNITED MINING CO., Ex p. WILSON (1872)*, 8 Ch. App. 45; 42 L. J. Ch. 81; 27 L. T. 597; 21 W. R. 46, L. JJ.

Annotations:—Re Montrotier Asphalte Co., Perry's Case (1876), 34 L. T. 716. *Mentd. Re Newman*, [1895] 1 Ch. 674.

E. Communication.

(a) Necessity for.

1704. General rule.]—Re SALOON STEAM PACKET CO., Ex p. FLETCHER, No. 1477, *ante*.

1705. —.]—PERUVIAN RYS. CO., WALLIS'S CASE (1868), 4 Ch. App. 325, n., L. JJ.

Annotation:—Apld. Re Peruvian Rys., Crawley's Case, Robinson's Case (1869), 4 Ch. App. 322.

1706. Verbal agreement to take shares—No formal application for shares—Duty on allottee to apply—Not necessary.]—A. agreed, verbally, to take 100 shares in a limited co., paying £1 per share as deposit, & stipulating for the return of the £100 if he did not get the shares in a few days. By the terms of the prospectus for launching the co., £2 per share was payable upon allotment, in addition to the deposit. The shares were allotted in a few days, but no notice of allotment was given to A., who, on his part, did not apply for the shares. Shortly after the co. became defunct:—*Held*: the contract to accept the shares became complete on allotment; it was the duty of A. to have applied for the shares & paid the £2 per share; neither his default in this respect, nor the omission by the co. to give notice of the allotment, exonerated him; & consequently, A. was liable as a contributory.—*Re NEW THEATRE CO., LTD., BLOXAM'S CASE (1864)*, 4 De G. J. & Sm. 447; 4 New Rep. 416; 33 L. J. Ch. 574; 10 L. T. 772;

10 Jur. N. S. 833; 12 W. R. 995; 46 E. R. 991, L. JJ.

Annotations:—Consd. Re Universal Banking Corp., Gunn's Case (1867), 3 Ch. App. 40. *Apld. Re Peruvian Rys., Ex p. Wallis (1868)*, 18 L. T. 676; *Re United Ports Co., Adams' Case (1872)*, L. R. 13 Eq. 474. *Re Adelpi Hotel Co., Best's Case (1865)*, 13 W. R. 762; *Re Life Assocn. of England, Thomson's Case (1865)*, 13 W. R. 852; *Re Llanharry Hematite Iron Co., Tothill's Case (1865)*, 1 Ch. App. 85; *Ramsgate Victoria Hotel Co. v. Montefiore, Ramsgate Victoria Hotel Co. v. Goldsmid (1866)*, L. R. 1 Exch. 109; *Re Rolling Stock Co. of Ireland, Shackelford's Case (1866)*, 1 Ch. App. 567; *Re Richmond Hill Hotel Co., Pellatt's Case (1867)*, 2 Ch. App. 527; *Re Saloon Steam Packet Co., Ex p. Fletcher (1867)*, 37 L. J. Ch. 49.

1707. On application for shares—Necessary.]—Re ROLLING STOCK CO. OF IRELAND, SHACKLEFORD'S CASE, No. 1517, *ante*.

1708. —.]—Re RICHMOND HILL HOTEL CO., PELLATT'S CASE, No. 1514, *ante*.

1709. —.]—Re LAND SHIPPING COLLIERY CO., LTD., Ex p. HARWOOD, GULL, GEARY & STAFFORD, No. 1524, *ante*.

1710. —.]—(1) C. applied, in May, 1865, for shares in co. A., at the instigation of P., the brother of the managing director of co. B., who assured him that he would be indemnified by co. B. from all liability. C. handed the application to P., who sent it in & paid the deposit. The shares were allotted to C., & his name was placed on the register, but the notice of allotment was not sent to him, but to the office of co. B. The allotment money which, with the deposit, amounted to £3 per share, was paid by co. B. In July, 1866, C. executed a blank transfer of the shares which had been allotted to him, at the request of P., in order to enable co. B. to deal with them. In the transfer the shares were described as fully paid-up, but in reality no more than the allotment money had been paid. Co. A. was afterwards wound up:—*Held*: although C. might have repudiated the shares in July, 1866, on the ground of his having received no notice of the allotment, yet by executing the transfer he had accepted the shares, & he was placed on the list of contributories for the number of shares allotted to him, with £3 only paid up.

(2) R. applied for shares in co. A. at the instigation of the managing director of co. B., who gave him a letter on behalf of co. B., indemnifying him against all responsibility. R. sent in the application himself from his own address, & paid the deposit by a cheque on his own banker, although the money was supplied by co. B. The shares were allotted to R., & his name was placed on the register; no notice of allotment was sent to him, but the notice was sent to the office of the co. B. Co. A. was afterwards wound up:—*Held*: there was no contract to take the shares, & R.'s name was removed from the list of contributories.

(3) The rule that, to make a binding contract to take shares, there must be application, allotment by the co., & communication to the allottee of that allotment, applies as strongly to a person who applies as trustee for a third person, as to one

PART III. SECT. 17, SUB-SECT. 3.—E. (a).

1707 i. On application for shares—Necessary.]—ROBERT v. EASTERN TOWNSHIP BANK (1907), 4 E. L. R. 123.—CAN.

1707 ii. —.]—If no notice of allotment of shares in a co. is given to an appct. before the co. goes into liquidation, such appct. is not liable to be placed on the list of contributories.—*CHANGA MAL v. PROVINCIAL BANK, LTD. (1914)*, 1 L. R. 36 All. 412.—IND.

1707 iii. —.]—Where a prop-

visional committee of a society had been formed in Mar., 1895, & the society subsequently registered in June, & the required shares having been subscribed for, an allotment was made in Aug., but no notice whatever given to defts. who repudiated their call:—*Held*: the society could not recover the amount of the call from defts. solely on the ground that no notice of the allotment had been given to them.—*CLONDROHID CO-OPERATIVE DAIRY SOCIETY v. LUCEY & KELLEHER (1896)*, 30 L. L. T. Jo. 150.—IR.

1707 iv. —.]—Allotment of

shares to an appct. without communication to him of the fact of such allotment does not constitute him a shareholder. R. applied for shares in a co. & at the same time made a certain deposit as security with the secretary. No notice of allotment was ever given to him & he made no claim for the return of the deposit. On the co. being liquidated:—*Held*: he was entitled to have his name removed from a list of contributories.—*RISSIK v. OLIFANT'S VLEI GOLD MINING CO.'S LIQUIDATORS (1894)*, 1 O. R. 255.—S. AF.

Sect. 17.—The contract to take shares: Sub-sect. 3, E. (a) & (b).]

who applies simply on his own behalf.—*Re PERUVIAN RYS. CO. CRAWLEY'S CASE, ROBINSON'S CASE* (1869), 4 Ch. App. 322; *sub nom. Re PERUVIAN RYS. CO., CRAWLEY'S CASE, ROBINSON'S CASE, INTERNATIONAL CONTRACT CO.'S CASE*, 20 L. T. 96; 17 W. R. 454, L. J.J.

Annotations:—As to (1) Distd. Re British & American Steam Navigation Co., Ward's Case (1870), L. R. 10 Eq. 659. *Refd. Re Land Shipping Colliery Co., Ex p. Harwood, Gull, Geary & Stafford* (1869), 20 L. T. 736. *As to (2) Expld. Re Disderi* (1870), 23 L. T. 694. *Distd. Re International Contract Co., Lovita's Case* (1870), 39 L. J. Ch. 673.

1711. ———.]—R. having applied for shares in a co., wrote to the co. requesting that the letter of allotment might be handed to H., who was one of the promoters of the co. Shortly after, the shares were allotted to R., & on H.'s applying for the allotment, a bundle which contained numerous letters of allotment was handed to him. It was disputed whether the allotment to R. was amongst these, but it was proved that when H. received the bundle, R.'s letter to the co. had not been posted, but it was afterwards sent by R. to H., & by him produced to the co. R. never paid anything in respect of the shares:—*Held*: the letter, though not in H.'s hands when he received the allotment, was a ratification of what he did, & the evidence showing that the allotment letter of R.'s shares was in the bundle handed to H., R. had notice of the allotment, & must be settled on the list.

(2) An allottee of shares or his agent is entitled to notice of allotment; & the absence of sufficient notice is a ground for not placing him upon the list of contributories on the winding up of the co.

(3) The burden of proof that sufficient notice of allotment has been given lies upon the official liquidator who asks to have the name of the allottees placed upon the list.—*Re LAFFITTE (CHARLES) & CO., LTD., DE ROSAZ'S CASE* (1869), 21 L. T. 10, L. J.J.

1712. ———.]—At the instance of the promoters of a limited co., & as he was told *pro formâ*, W. signed an application for 200 shares, & at the same time executed a blank transfer. He paid nothing, never executed the arts. of assocn., received no notice of allotment, & heard nothing about the co. till he received notice from the liquidator, appointing a day to settle the list of past members:—*Held*: he was entitled to be taken off the list, though it appeared that the shares had been, in fact, allotted to him, that deposits & calls had been paid on them by some persons without his knowledge, & that, by the transfer executed by him in blank, & subsequently filled up, the shares had been transferred to one of the promoters.—*Re BRITISH & AMERICAN STEAM NAVIGATION CO., WARD'S CASE* (1870), L. R. 10 Eq. 659; 22 L. T. 695; 18 W. R. 910.

1713. ———.]—H., the manager of a co., being indebted to P., agreed to transfer to him 25 fully paid-up shares in the co. H. however represented to P. that it would be necessary for him to make a formal application for the shares, which P. did, & 25 fully paid-up shares were accordingly transferred to P., who became a director of the co. The co. was ordered to be wound up, & on referring to the share register 25 unpaid-up shares were found standing in P.'s name beside the 25 fully paid-up shares. P. never received any letter of allotment of the unpaid-up shares, & was not aware until the winding up that they were standing in his name:—*Held*: P. had incurred no liability in respect of the 25 unpaid-up shares.—*Re HORNER*

& SONS, LTD., PLIMSOLL'S CASE (1871), 24 L. T. 653.

1714. ———.]—Application on behalf of another.]—*Re PERUVIAN RYS. CO., CRAWLEY'S CASE, ROBINSON'S CASE*, No. 1710, *ante*.

1715. ———.]—Before winding up.]—A co. was incorporated in Oct., 1865. On Nov. 9, 1865, before any shares in the co. were allotted, an agreement in writing was entered into between the subscribers of the memorandum of assocn. of the co. & S. & C. to the effect that the co. should appoint S. & C. their agents at certain ports; that S. & C. should enter upon their agencies on the eighth day after the allotment of shares in the co.; that C. should be one of the first directors of the co., & that S. & C. should subscribe for sixty shares in the co. The arts. of assocn. gave the directors power to adopt this agreement, & on Jan. 16, 1866, it was adopted & confirmed by the board of directors. C. acted as a director of the co. until Aug. 27, 1866, when he resigned. S. & C. never acted as agents of the co. under this agreement. The shares of the co. were allotted in July, 1866, but no allotment was then made to S. or C. On June 22, 1866, an agreement was entered into between the co. & S. & C. by which the former agreement was rescinded & in lieu thereof it was stipulated that the co. should appoint S. & C. their agents at the same ports; that S. & C. should enter on their agencies so soon as certain arrangements entered into between the co. & another specified co. should be completed, & that S. & C. should, during the continuance of the new agreement & so long as they should be the agents of the co. hold at least sixty shares in the co. The arrangements with the other co. were never completed, & S. & C. never acted as agents for the co. On Sept. 4, 1866, the directors resolved to allot sixty shares to S. & C., & sixty shares were accordingly registered to their names. No notice of this allotment was given to them, & they did not in fact know of it until after the winding up of the co. commenced, which was in Nov. 1866:—*Held*: S. & C. were improperly entered on the register of the co., & they were not liable as contributories, as (1) the agreement of Nov. 1865, required, in order to constitute S. & C. owners of shares in the co., an appropriation of shares by the co. to S. & C. & notice to them of such appropriation; & (2) the second agreement only required that S. & C. should hold shares so long as they were agents of the co., & this they never were.—*Re ANGLO-DANISH & BALTIC STEAM NAVIGATION CO., SAHLGREEN & CARRALL'S CASE* (1868), 3 Ch. App. 323; 16 W. R. 497, L. J.

Annotation:—As to (1) Refd. British & American Telegraph Co. v. Colson (1871), L. R. 6 Exch. 108.

———.]—Whether formal notice necessary.]—*See Sub-sect. 3, E. (b), post*.

1716. ———.]—Application by director.]—I. applied for a thousand shares in a co., as trustee for M.; no letter of allotment was sent to I., but his name was put upon the register in respect of those shares & advertised as a director; he attended a meeting of directors, & took no steps to have his name removed for two years:—*Held*: he was a contributory in respect of the thousand shares.—*Re INTERNATIONAL CONTRACT CO., LEVITA'S CASE* (1867), 3 Ch. App. 36; 17 L. T. 337; 16 W. R. 95, L. J.

Annotations:—Expld. & Distd. Re Universal Banking Corp'n. Gunn's Case (1867), 3 Ch. App. 40. *Distd. Re Anglo-Danish & Baltic Steam Navigation Co., Sahlgreen & Carrall's Case* (1868), 3 Ch. App. 323. *Consd. Re Land Shipping Colliery Co., Milford Haven* (1868), 18 L. T. 786. *Follid. Re Peruvian Rys., Ex p. Wallis* (1868), 18 L. T. 676. *Distd. Re London & Northern Insee. Corp'n., Stace & Worth's Case* (1869), 4 Ch. App. 682. *Consd.*

Re Peruvian Rys., Crawley's Case, Robinson's Case (1869), 4 Ch. App. 322; *Re Great Oceanic Telegraph Co., Harward's Case* (1871), L. R. 13 Eq. 30. *Follid. Re Home Assee. Assocn., Ex p. Richards* (1871), 40 L. J. C. P. 290. *Distd. Re Hercules Insce., Pugh & Sharman's Case* (1872), L. R. 13 Eq. 566. *Apld. Re United Ports Co., Adams' Case* (1872), L. R. 13 Eq. 474. *Reid. Re Disdèri* (1870), 23 L. T. 694; *Re Metropolitan Carriage & Repository Co., Brown's Case* (1873), 29 L. T. 562.

1717. On amalgamation of company—Assented to by shareholder—Amalgamation declared void—Necessary.]—Where an agreement for an amalgamation between A. & B. cos. was declared void & set aside by the ct.:—*Held*: a shareholder in A. co., whose name had, in pursuance & on the faith of the void agreement, been placed by the cos., without communication to the shareholder, on the register of B. co., was entitled, as against the creditors of B. co., to have his name struck off the list of contributories of that co., though an order for the winding up of B. co. had been made.—*Re ORIENTAL COMMERCIAL BANK, ALABASTER'S CASE* (1868), L. R. 7 Eq. 273; 38 L. J. Ch. 32; 17 W. R. 134.

Annotations:—*Reid. Re London & Northern Insce. Corpn., Stace & Worth's Case* (1869), 4 Ch. App. 682; *Empire Assee. Corpn., Dougan's Case* (1873), 8 Ch. App. 540; *Re Brinsmead, Tomlin's Case*, [1898] 1 Ch. 104. *Mentd. Railway Time Tables Publishing Co.* (1889), 1 Meg. 208.

1718. ——— Not necessary.]—B. co. with limited liability, carrying on the business of marine insurance only, & having no power to sell its business, entered into an agreement with P. co., being an unlimited co. & carrying on the business of life, fire & marine insurance, for the transfer of its business to that co., in consideration of a sum of money, & of so many shares in P. co., to be issued to members of B. co. In order to carry out this agreement, B. co. was wound up voluntarily under an order of the ct., & the sanction of the ct. was obtained to the agreement. Letters were sent by the manager of P. co. to the shareholders of B. co., asking them to exchange their shares in B. co. for shares in P. co., in pursuance of the agreement, & enclosing forms of application for shares in P. co.:—*Held*: (1) shareholders of B. co., who signed & returned such forms of application to the manager of P. co., had entered into a binding contract to take shares in that co., notwithstanding they had received no notice of allotment of the shares; (2) the agreement for the amalgamation between the two cos. having been sanctioned by the ct. under the winding up of B. co., was not *ultra vires*, & therefore not invalid.—*Re UNITED PORTS & GENERAL INSURANCE CO., BROWN'S*

CASE, TUCKER'S CASE (1871), 41 L. J. Ch. 157; 25 L. T. 654; 20 W. R. 88.

Annotation:—*As to* (1) *Reid. Re Metropolitan Fire Insce., Wallace's Case* (1900), 69 L. J. Ch. 777.

See, also, No. 1507, ante.

1719. On reconstruction of company—Application by liquidators of old company—Not necessary.]

—Upon the contract between the liquidators of A. co. & the promoters of B. co. for the transfer of the property of A. co. to B. co., part of the consideration agreed upon was that the liquidators of A. co. should receive for themselves or their nominees shares in B. co., which should import a liability of 10s. per share; & it was also agreed that in case of these shares not being taken up, the liquidators of A. co. might re-transfer them to B. co. without incurring any liability. The arts. of B. co. further provided that no person should be deemed to have accepted shares unless he had testified his acceptance in writing or paid a deposit. The contract was registered with the arts. The liquidators of A. co. sent in their application in writing for shares, requesting an allotment to their joint names of 3919 shares, importing a liability of 10s. each. Those shares were allotted to them, & their names registered in respect thereof, but no notice of allotment was sent to them, nor did they ever formally testify acceptance, except by recital & acknowledgment in the deed of assignment whereby the transfer to B. co. was carried out. No re-transfer to B. co. was ever made by them:—*Held*: the provision in the arts. of B. co. as to acceptances of allotment did not apply, no formal notice of allotment being requisite under the circumstances; & the names of the liquidators of A. co. were rightly registered as members, & their names being still on the register at the winding up of B. co., they must be settled upon the list of contributories to the extent to which the shares allotted to them were unpaid.—*Re BASYE CONSOLIDATED SILVER MINING CO., LTD., DYETT & LOUITT'S CASE* (1880), 43 L. T. 85.

(b) *Sufficiency of.*

1720. Form of notice—Formal notice not necessary.]—Where a person applies for shares in a co., & shares are allotted to him, he will not be constituted a member of the co. unless he has notice of the fact of the allotment. It is not, however, necessary that there should be a formal notice sent to him, if it appears that he was made aware

PART III. SECT. 17, SUB-SECT. 3.—
E. (b).

1720 i. Form of notice—Formal notice not necessary.]—Formal notice of allotment is not necessary, if it be shown that the applt. for shares in a co. has been made aware that the co. has accepted his application for shares.—*Re GAMBRINUS LAGER BEER BREWERY CO., LTD.* (1886), 12 V. L. R. 446.—AUS.

1720 ii. ———.]—Resps. signed an application for one £25 share in applt. co. & forwarding £1 deposit undertook to pay the balance by instalments with interest. Under the arts. of assocn. the sum of £10 ought to have been paid on allotment. No notice of allotment was sent to resps., although in fact it had been made & their names had been entered on the register of the co. as the holders of one share. Nearly two and a half years after the date of application, a notice of call in respect of such share was sent to the resps., as was also, after a lapse of a further two years, a notice of another call. Subsequently a meeting of shareholders & creditors, of which resps. were sent notice, having resolved to wind up the

co. voluntarily, the list of contributories was settled by the liquidator including the resps.' names as holders of one share. A notice of a further call made by the liquidator was sent to the resps. All the notices above referred to were ignored by resps. In an action by the co. to recover the balance of application money, the calls & interest in respect of such share the ct. dismissed the claim on the ground that no notice of allotment had been sent & that resps. were entitled to assume that their application had lapsed. This decision was affirmed by the full ct., but on a different ground:—*Held*: the proper inference to be drawn from the undisputed facts was that resps. had agreed to become, & the co. had accepted them as, members of the co., & they were liable as shareholders to the co.—*FARMERS' MERCANTILE UNION & CHAFF MILLS, LTD. v. COADE* (1921), 30 C. L. R. 113.—AUS.

1720 iii. ———.]—In an action against deft. as the holder of ten shares of unpaid stock, it appeared that deft. signed the stock book, which was headed with an agreement by the subscribers to become holders of the

stock for the amounts set opposite their respective names, & upon allotment by the co. "of my or our said respective shares," to pay the co. 10 per cent. of the amount of said shares, & all future calls. The co. subsequently passed a resolution instructing the secretary to issue allotment certificates to each shareholder for the shares held by him. The secretary accordingly prepared such certificates, which respectively represented that the co., "in accordance with your application for shares, have allotted to you shares amounting to," etc. These were handed to the co.'s broker to deliver to the shareholders & collect the 10 per cent. It did not appear that the certificate was ever delivered to deft., or that he was ever expressly notified of the allotment, but he was, with the rest of the shareholders, from time to time notified of the calls, to which he paid no attention, & had never paid anything on the stock; & some years afterwards, on being requested by the secretary to pay up his stock, he stated that he did not consider that he ought to pay anything, but gave no reason why:—*Held*: there was sufficient evidence of

Sect. 17.—The contract to take shares: Sub-sect. 3, E. (b), (c) & (d).]

that the co. had accepted his application. The mere entry of his name on the register of shareholders is not sufficient for this purpose.—*Re UNIVERSAL BANKING CORPN., GUNN'S CASE* (1867), 3 Ch. App. 40; 37 L. J. Ch. 40; 17 L. T. 365; 16 W. R. 97, L. J.

Annotations:—*Apld. Re Peruvian Rys., Crawley's Case, Robinson's Case* (1869), 4 Ch. App. 322. *Consd. British & American Telegraph Co. v. Colson* (1871), L. R. 6 Exch. 108. *Foll'd. Richards v. Home Assce. Assocn.* (1871), L. R. 6 C. P. 591. *Reid. Re Peruvian Rys., Ex p. Wallis* (1868), 18 L. T. 676; *Re United Ports & General Insee., Ex p. Brown, Jenkins & Tucker* (1871), 20 W. R. 88; *Re United Ports Co., Adams' Case* (1872), 41 L. J. Ch. 270.

1721. — Statement that shares allotted—Coupled with inquiry as to how many allottee will take.]—*Re IRISH WEST-COAST RY. CO., CAR-MICHAEL'S CASE*, No. 1691, *ante*.

1722. — Notice of appointment to office—Appointment conditioned on application for shares.]—Upon an application to rectify the register of shareholders of a co. by removing therefrom the name of the appct. under 1862 Act, s. 35, it appeared that appct. had been appointed a district manager for the co. on condition that he took 25 shares. He formally applied for the shares, & paid a deposit; the shares were accordingly allotted to him, & on the same day he was informed of his appointment, but no notice of the allotment was sent to him. A month afterwards without having transacted any business, he refused to accept the appointment, & requested that no shares should be allotted to him:—*Held*: appct.'s name was rightly upon the list of shareholders.—*RICHARDS v. HOME ASSURANCE ASSOCN.* (1871), L. R. 6 C. P. 591; *sub nom. Re HOME ASSURANCE ASSOCN., LTD., Ex p. RICHARDS*, 40 L. J. C. P.

notice to deft. of the allotment.—*DENISON v. LESSLIE* (1878), 43 U. C. R. 22; 3 A. R. 536.—CAN.

1720 iv. ——M. being solicited by an agent of the bank to take stock, by a writing over his signature, & declared to be over his seal also, subscribed for & agreed with the bank to accept thirty shares & to pay therefor \$125 per share. Part of the price was to be paid upon allotment & the balance by instalments; but M. reserved the right to pay for the shares in full upon the allotment on the terms of the prospectus. He made a promissory note for \$3,750, payable on demand, to the order of the agent, & took from the agent a receipt for the demand note "in payment of thirty shares, M. to be a provincial director." The note was endorsed by the agent to the bank, & sent to the provisional directors, who duly allotted thirty to M. No formal or direct notice of allotment was given to M., but he was notified by the bank in writing that his note was due & asked to give it his prompt attention. Nothing was paid upon the note; an order was made for the winding-up of the bank; & in the proceedings thereunder the liquidator sought to make M. liable as a contributory:—*Held*: assuming that allotment & notice of allotment were necessary to bind the bargain, allotment was duly made, & the written demand made upon M. for payment of the note was sufficient notice; he had knowledge of the allotment, & that was all that was necessary.—*Re MONARCH BANK OF CANADA, MURPHY'S CASE* (1919), 45 O. L. R. 412.—CAN.

1720 v. ——Where a circular is sent by a co. to its shareholders, & they act upon a reasonable construction thereof, the ct., in the event of a controversy afterwards arising between the shareholders & the liquidators of the co. as to the meaning of the cir-

cular, will adopt the view taken by the shareholders. Such a circular was sent by the co. to G., who reasonably treated it as merely an offer of shares:—*Held*: he could not be put on the list of contributories, for the reason that in its terms it was a notice that shares had been allotted to him.—*Re BRUCE'S PATENT OATMEAL & MILLING CO. (LTD.), GUILD'S CASE* (1893), 11 N. Z. L. R. 158.—N.Z.

1720 vi. ——In Jan. 1891, a person applied for shares in a public co. & in Aug. withdrew his application. In a petition presented by him for removal of his name from the register of shareholders he alleged that he had received no letter of allotment. There was no conclusive evidence that he had received such a letter, but it was proved that shares had been allotted to him in Jan., & that in Feb. he had received a circular to attend the first general meeting of the co. & that in Mar. he had been orally informed by the secretary of the co. that the shares had been allotted:—*Held*: petitioner had received sufficient notice that his application had been granted to preclude him from withdrawing his application, & his name was properly on the register.—*CHAPMAN v. SULPHITE PULP CO., LTD.* (1892), 19 R. (Ct. of Sess.) 837; 29 Sc. L. R. 755.—SCOT.

h. — Certificate handed to broker for delivery—Notice published by broker in newspaper.]—Pltf., a creditor of a railway co., sued deft., as a shareholder therein, for unpaid stock. Deft. had signed the stock-book which was headed with an agreement by the subscribers to become stockholders for the amount set opposite their respective names, & upon allotment by the co. "of my or our said respective shares," they covenanted to pay the co. 10 per cent. of the amount of said shares & all further calls. A resolution was subsequently passed by the co. in-

290; *sub nom. Re RICHARDS & HOME ASSURANCE CO.*, 24 L. T. 752; 19 W. R. 893.

1723. — Request for payment of balance of price.]—*FORGET v. CEMENT PRODUCTS CO. OF CANADA*, [1916] W. N. 259, P. C.

1724. First notice unstamped—Second notice stamped.]—S. applied for fifty shares in a co., which were allotted, & notice of allotment sent to him by letter on Oct. 15, 1874. This allotment letter was unstamped. On Oct. 19 & Nov. 14, S. wrote to the co. declining to pay calls till certain information as to the position of the co. was afforded him. On Dec. 12 a duplicate letter of allotment duly stamped was sent by the co. to S. On Dec. 15, S. wrote to the co. that it was his intention to withdraw his application for shares, & he returned the allotment letters, with a request for the return of his deposit. On Dec. 22, S. was informed by the secretary that his name was entered on the register for fifty shares. From that date till Oct. 1875, several letters were sent by S. to the co., by which he repeated his refusal to take up the shares, & asked for a cancellation of the allotment, & a return of the deposit. The co., however, did not cancel the allotment, nor return the deposit, & S.'s name remained on the register at the date of the winding-up order in Oct. 1875. Upon an application by S. that his name might be removed from the list of contributories:—*Held*: (1) the first allotment letter, though unstamped, was receivable as evidence that S. had received notice of the allotment, & at any rate, the defect, if any, was cured by the second stamped letter; (2) S. having taken no actual steps for the removal of his name from the register, & allowed it to remain there at the date of the winding-up order, must remain on the list.—*Re WHITLEY PARTNERS, LTD., STEEL'S CASE*

structing their secretary to issue allotment certificates to each shareholder for the shares held by him. The secretary accordingly prepared such certificates, the one for deft. representing that the co. "in accordance with your application for fifty shares," etc., "have allotted you shares amounting to \$5,000." These certificates were not sent to the shareholders, but were handed to the co.'s brokers for delivery to them. The brokers published a notice in a daily paper that these certificates were lying at their office, but did not send written notices to the subscribers. Deft. never called for or received his certificate of allotment & never paid the 10 per cent. The only evidence of the notices being sent to deft. was the general statement of the secretary, that he directed notices to be sent ten months after the allotment, to those shareholders likely to pay, that their calls were due:—*Held*: deft. was not liable as the evidence was not sufficient to prove notice of allotment to him.—*NASMITH v. MANNING* (1881), 5 S. C. R. 417.—CAN.

k. — Secondary evidence of notice—Press copy of letter.]—Upon the settlement of the list of contributories to the assets of a co. in course of liquidation, one of the persons named in the list denied that he had agreed to become a member of the co. or was liable as a contributory. The District Ct. admitted as evidence on behalf of the liquidator a press copy of the letter addressed to the objector for the purpose of proving that a notice of allotment of shares was duly communicated. No notice to the objector to produce the original letter appeared on the record; but at the hearing of the appeal it was alleged by the liquidator & denied by the objector that such a notice had in fact been given. There was no evidence as to the posting of

(1879), 49 L. J. Ch. 176; 42 L. T. 11; 28 W. R. 241.

1725. To whom given—Agent—If agent authorised.]—*Re* PERUVIAN RYS. CO., CRAWLEY'S CASE, ROBINSON'S CASE, No. 1710, *ante*.

1726. ——— Authority to communicate to agent received by company after notice given.]—*Re* LAFFITTE (CHARLES) & CO., LTD., DE ROSAZ'S CASE, No. 1711, *ante*

——— **Authority of agent.]—***See* No. 1757, *post*.

1727. Whether direct notice necessary.]—PERUVIAN RYS. CO., WALLIS'S CASE (1868), 4 Ch. App. 325, n., L. J.J.

*Annotation:—***Fold.** *Re* Peruvian Rys., Crawley's Case, Robinson's Case (1869), 4 Ch. App. 322.

(c) *Proof.*

1728. Proof of knowledge sufficient.]—*Re* UNIVERSAL BANKING CORPN., GUNN'S CASE, No. 1720, *ante*.

1729. Notice of allotment handed to agent with others.]—*Re* LAFFITTE (CHARLES) & CO., LTD., DE ROSAZ'S CASE, No. 1711, *ante*.

1730. Statement by secretary—Instructions to send to all allottees.]—WARD v. LONDESBOURGH (LORD), No. 1537, *ante*.

1731. Letter posted to allottee—Presumed to contain notice of allotment.]—S. had agreed to take shares in the N. Co. & place them among his friends. He did so, & never paid anything on them himself. They were registered in his name, a fact which he alleged he was not aware of till a call was made on him. He then wrote, saying he had never actually been a shareholder, & desiring to have his name removed, but took no further steps. The co. was wound up, & S. made a contributory, & it was proved that a letter had been sent to S. on the day the allotments were sent round, which the secretary believed did contain a notice of the allotment of the shares to S.:—*Held*: the presumption was that it did contain such a notice, & S. could not now escape his liability.—*Re* NATIONAL FUNDS ASSURANCE CO., SPARLING'S CASE (1877), 26 W. R. 41.

1732. Onus of proof.]—*Re* LAFFITTE (CHARLES) & CO., LTD., DE ROSAZ'S CASE, No. 1711, *ante*.

1733. Unstamped notice—Receivable as evidence of notice.]—*Re* WHITLEY PARTNERS, LTD., STEEL'S CASE, No. 1724, *ante*.

(d) *Communication by Post.*

See, generally, CONTRACT, Vol. XII., pp. 75 et seq.

1734. Receipt by allottee necessary—Posting insufficient.]—F. applied for fifty shares in a co. The shares were allotted to him & registered in his name, & it was proved that notice of the allot-

ment had been posted to him at his registered place of abode. F. deposed that he had never received the notice, & gave a reasonable explanation of its non-delivery:—*Held*: there had not been sufficient notice, & F.'s name must be removed from the list of contributories. *Semble*: notice of allotment cannot safely be served by post, as the appct. for shares does not become a member till he has received notice of the allotment, & consequently 1862 Act, Table A, ss. 95 & 97, are not applicable to him.—*Re* CONSTANTINOPLE & ALEXANDRIA HOTELS CO., FINUCANE'S CASE (1869), 20 L. T. 729; 17 W. R. 813.

*Annotations:—***Consd.** *British & American Telegraph Co. v. Colson* (1871), L. R. 6 Exch. 108; *Household Fire Insce. v. Grant* (1879), 4 Ex. D. 216.

1735. ———.]—Mere posting of a letter of allotment of shares in a co. to an appct. at the proper address is not such a communication of the allotment as to bind appct.—*Re* CONSTANTINOPLE & ALEXANDRIA HOTEL CO., REIDPATH'S CASE (1870), L. R. 11 Eq. 86; 40 L. J. Ch. 39; 23 L. T. 834; 19 W. R. 219.

*Annotations:—***Refd.** *British & American Telegraph Co. v. Colson* (1871), 40 L. J. Ex. 97. **Mentd.** *Re Universal Non-tariff Fire Insce., Ritsos Case* (1876), 34 L. T. 644.

1736. ———.]—Deft. applied for shares in pltf.'s co.; shares were allotted to him, & a letter of allotment was posted to his address, but was never received by him:—*Held*: deft. was not a shareholder.—*BRITISH & AMERICAN TELEGRAPH CO. v. COLSON* (1871), L. R. 6 Exch. 108; 40 L. J. Ex. 97; 23 L. T. 868.

*Annotations:—***Consd.** *Re Imperial Land Co. of Marseilles, Townsend's Case* (1871), L. R. 13 Eq. 148; *Re Imperial Land Co. of Marseilles, Wall's Case* (1872), L. R. 15 Eq. 18. **Dbtd.** *Re Imperial Land Co. of Marseilles, Harris' Case* (1872), 7 Ch. App. 587. **N.F.** *Household Fire Insce. v. Grant* (1879), 4 Ex. D. 216. **Refd.** *Byrne v. Van Tienhoven* (1880), 49 L. J. Q. B. 316; *Henthorn v. Fraser*, [1892] 2 Ch. 27.

1737. Receipt by allottee immaterial—Posting sufficient.]—When a person has applied for shares, & they have been allotted to him, & notice of the allotment has been posted to & received by the allottee, the date at which the contract to take the shares is completed is the time of the posting the notice; & if the allottee sets up a revocation, he must prove that the letter of revocation was posted before the notice of allotment.—*Re* IMPERIAL LAND CO. OF MARSEILLES, TOWNSEND'S CASE (1871), L. R. 13 Eq. 148; 41 L. J. Ch. 198; 25 L. T. 692; 20 W. R. 164.

*Annotation:—***Consd.** *Re Imperial Land Co. of Marseilles, Wall's Case* (1872), L. R. 15 Eq. 18.

1738. ———.]—Where an application for shares in a co. has been sent by post, the contract to take shares is complete & binding from the moment that the letter announcing the allotment is put into the post, whether such letter

the original letter or of the address which it bore; but the press copy was contained in the press-copy letter book of the co., & was proved to be in the handwriting of a deceased secretary of the co., whose duty it was to dispatch letters after they had been copied in the letter book. The objector denied having received any letter or any notice of allotment:—*Held*: the ct. should not draw the inference that the original letter was properly addressed or posted; the press-copy letter was inadmissible in evidence; & there was no proof of the communication of any notice of allotment.—*RAM DAS CHAKRABATI v. COTTON GINNING CO., LTD., CANNANPORE (OFFICIAL LIQUIDATOR)* (1887), 1 L. R. 9 All. 366.—**IND.**

1. Notice of calls — Whether sufficient.]—A contract between a co. & a person who makes application for shares must be dealt with as ordinary

contracts; there must be an offer by the one to take shares, & an acceptance of such offer by the co. H. subscribed for shares in a co., but no shares were formally allotted to him by the directors. Calls were made by the general manager, & notices of such calls were sent by the secretary to, & received by H., but the calls had never been authorised by the directors:—*Held*: the unauthorised acts of the officers named could not be construed to be an allotment, or a notification of an allotment of stock, so as to bind the co. or prove an acceptance of H.'s subscription for stock.—*Re BOLT & IRON CO., HOVEDEN'S CASE* (1884), 10 P. R. 434.—**CAN.**

m. ———.]—Notice of a call cannot be regarded as equivalent to notice of allotment.—*Re CANADIAN TIN PLATE DECORATING CO., MORTON'S CASE* (1906), 12 O. L. R. 594; 8

O. W. R. 531.—**CAN.**

n. ———.]—A person applied for thirty shares in a co., & paid the application money. The co. never in any way informed him that any shares had been allotted to him, nor did he ever in any way act as a shareholder. A short time after application he told the secretary of the co. that he would have nothing more to do with the co. Notices, however, of calls, purporting to be made in respect of thirty shares in the co., were served upon him, to which he paid no heed:—*Held*: the liquidators were not entitled to have appct.'s name placed upon the list of contributories; mere notices of calls forwarded to appct. are not sufficient notification that the shares have been allotted to him, in respect of which they purport to be made.—*Re ROSEVILLE DAIRY FACTORY CO. (LTD.), GOODLET'S CASE* (1891), 9 N. Z. L. R. 169.—**N.Z.**

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subsequently reaches the allottee or not.—*Re IMPERIAL LAND CO. OF MARSEILLES, WALL'S CASE* (1872), 1 L. R. 15 Eq. 18; 42 L. J. Ch. 372.

1739. ———.]—*Re IMPERIAL LAND CO. OF MARSEILLES, HARRIS' CASE*, No. 1657, *ante*.

1740. ———.]—Deft. applied for shares in plfts.' co. The co. allotted the shares to deft., & duly addressed to him, & posted a letter containing the notice of allotment, but the letter never was received by him:—*Held*: deft. was a shareholder.—*HOUSEHOLD FIRE INSURANCE CO. v. GRANT* (1879), 4 Ex. D. 216; 48 L. J. Q. B. 577; 41 L. T. 298; 44 J. P. 152; 27 W. R. 858, C. A.

Annotations:—*Folld. Carta Para Gold Mining Co. v. Fastnedge* (1882), 30 W. R. 880. *Reid. Byrne v. Van Tienhoven* (1880), 49 L. J. Q. B. 316; *Henthorn v. Fraser*, [1892] 2 Ch. 27. *Mentd. Reed v. Harvey* (1880), 5 Q. B. D. 184; *Fry v. Raggio* (1891), 40 W. R. 120.

1741. ———.]—Deft. filled up an application for shares in pltf. co. which stated that 1s. per share was paid upon application. This he did at the request of B.—not an agent of the co.—who asked deft. to do it to enable the directors to go to allotment, at the same time telling him that if the application was made use of he would be held harmless. The amount payable upon application was paid into the co.'s bank, but not by deft. The co. sued for unpaid calls, & a clerk of the co. swore by affidavit that a letter of allotment was duly posted to deft. Deft. swore that the letter was never received. On an application by the co. to sign judgment under order 14, a Div. Ct. gave deft. unconditional leave to defend. On appeal:—*Held*: there was no defence to the action if the letter of allotment was posted.—*CARTA PARA GOLD MINING CO., LTD. v. FASTNEDGE* (1882), 30 W. R. 880, C. A.

1742. What constitutes posting—Not handing to postman.]—J. applied for shares in a co. but before the letter of allotment was posted—except by being delivered to a postman in a London street to be posted by him—a letter withdrawing his application was delivered at the co.'s registered office & opened by the secretary. By the rules of the Post Office town postmen are forbidden to take charge of letters for the post:—*Held*: the withdrawal was received by the co. before the allotment letter was posted, & there was no contract by J. to take the shares.—*Re LONDON & NORTHERN BANK, Ex p. JONES*, [1900] 1 Ch. 220; 69 L. J. Ch. 24; 81 L. T. 512; 7 Mans. 60.

Proof of posting.—*See* No. 1731, *ante*.

F. Acquiescence in Allotment.

(a) By Directors.

1743. Conduct amounting to acceptance—Resolution for allotment to members of managing committee—Allotment reported to meeting of committee

though no allotment—Minute of resolution signed by chairman.]—A. was one of the provisional committee & also one of the managing committee of a railway co., directed to be wound up under 1844 Act. By a resolution of the committee, it was resolved that the committee of allotment should make an allotment, according to a scheme, under which each of the managing committee should have 500 shares. By a minute made at a meeting of the managing committee, signed by A. as chairman, it was reported that the committee had completed the allotment of shares according to the above-mentioned scheme. Nothing further, however, was done as to this allotment:—*Held*: A. was properly put on the list of contributories in respect of 500 shares.—*Re OXFORD & WORCESTER EXTENSION & CHESTER JUNCTION RY. CO., Ex p. MORRISON* (1851), 20 L. J. Ch. 296; 16 L. T. O. S. 434; 15 Jur. 346.

Annotation:—*Distd. Re Oxford & Worcester Extension & Chester Junction Ry., Ex p. Sharp & James* (1852), 21 L. J. Ch. 767.

1744. ——— Members present at meeting.]—B. & D. were members of the managing committee of a provisionally registered railway co., & as such had allotted to them & accepted 100 shares in the co.: at a meeting of the managing committee, an instruction was given for the allotment of shares according to a scheme by which 500 shares were reserved to each member of the managing committee; a report was made by the secretary of the co. at a subsequent meeting, at which B. & D. were both present, that shares had been allotted according to the scheme; but no further evidence appeared of allotment of shares to, or acceptance of shares by, the members of the committee; B. & D. subsequently executed the Parliamentary contract in respect of 100 shares only:—*Held*: on the winding up of the co., the liability of B. & D. as contributories was limited to the 100 shares, & was not affected by the proposed reservation of the 500 shares.—*Re OXFORD & WORCESTER EXTENSION & CHESTER JUNCTION RY. CO., SHARP & JAMES'S CASE* (1852), 1 De G. M. & G. 565; 21 L. J. Ch. 767; 19 L. T. O. S. 193; 16 Jur. 579; 42 E. R. 671, L. C.

1745. ——— Resolution reciting allotment of shares—No evidence of knowledge of director of minute of resolution.]—A director of a railway co. signed the arts. of assocn. as a holder of 25 shares, but applied for fifty shares, which was the qualification of a director under the arts. No allotment of shares was made:—*Held*: he was a contributory for 25 shares only.

A resolution was passed at a meeting of directors, reciting a list of shareholders, in which applt., who was a director, was put down for 50 shares. Applt. was not present at the meeting, & denied all knowledge of the resolution, although he was present at the next subsequent meeting:—*Held*:

PART III. SECT. 17, SUB-SECT. 3.—F. (a).

o. Conduct amounting to acceptance—Acquiescence in election as director—& insufficient repudiation of invalidly allotted shares.]—An allotment of shares having been made to H. at a meeting of directors in July, 1892, his name was entered on the share register for the shares. The allotment was in fact void, as there had not been a quorum at the meeting. H. was subsequently elected a director as the holder of these shares, & he acquiesced in his election at the time:—*Held*: (1) there was evidence of a contract to take shares apart from the allotment, & H.'s name must be put on the list of contributories for the shares unless he had been induced to take the shares

by misrepresentation & had repudiated the contract previously to the liquidation.

After H. had acquiesced in his election as director he became suspicious that misrepresentations had been made to him, & a week after his election he wrote requesting that his name should be removed from the list of directors & the list of shareholders, without stating the grounds for that request. He took no further step previously to the liquidation:—*Held*: that did not amount to sufficient repudiation of his contract to take shares, as what was done did not amount to a fresh agreement binding on H. so as to disentitle him to claim any benefit from the shares, & on the co. so as to preclude them from making any claim

on H. as a shareholder.—*Re NEW SOUTH WALES REFRIGERATING & MEAT EXPORT CO., LTD., HEAD'S CASE* (1894), 15 N. S. W. Eq. 121.—**AUS.**

p. — Presence at meeting at which shares allotted—& consent to entry of name in register.]—A form of application for new shares to be issued by a co. was headed "Conditional on 7,500 shares being allotted." On this form of application T. applied for 1,000 shares, & other persons for various small parcels. M., a director of the co., under the belief that the words of the condition meant conditional on 7,500 shares in all, not 7,500 shares of the new issue being allotted, applied for so many shares of the new issue as would, with the shares originally issued, & those of the new issue already

in the absence of proof that the minutes of the previous meeting were duly read & confirmed at the subsequent meeting—which it appeared was not always done—applt. was not bound by the insertion of his name for fifty shares.—*Re LLANHARRY HEMATITE IRON CO., TOTHILL'S CASE* (1865), 1 Ch. App. 85; 35 L. J. Ch. 120; 13 L. T. 485; 11 Jur. N. S. 1009; 14 W. R. 153, L. JJ.

Annotation:—*Distd. Re British & American Telegraph Co., Fowler's Case* (1872), L. R. 14 Eq. 316.

1746. — — — — —.]—A director of a co. is not necessarily bound to know the contents of all the books & documents of the co.

In Apr., 1877, H. became a director of a co., which was subject to 1862 Act, Table A., by which no share qualification is necessary for a director. On May 1, a resolution was passed by the board, H. not being present, "that the 608 shares applied for be allotted, & that letters of allotment be at once sent out." Fifty of these 608 shares were subsequently entered in the name of H. on the register of shareholders. H. never applied for any shares, & never received any letter of allotment, & never knew that his name was on the register until after the commencement of the winding up of the co., when he at once repudiated his liability:—*Held*: H. was not bound, as director, to know the contents of the register of the shareholders, & his name must be removed from the list of contributories.—*Re WINCHAM SHIP-BUILDING, BOILER & SALT CO., HALLMARK'S CASE* (1878), 9 Ch. D. 329; 47 L. J. Ch. 868; 38 L. T. 660; 26 W. R. 824, C. A.

Annotations:—*Apld. Re Patent Davit & Boat Detaching Co., Ranken's Case* (1879), 39 L. T. 664. *Re Denham* (1883), 25 Ch. D. 752; *Re Printing Telegraph & Construction Co. of Agence Havas, Ex p. Cammell*, [1894] 1 Ch. 528; *Dovey v. Cory*, [1901] A. C. 477.

1747. — *Acting as director—Before receipt of notice of allotment.*]—A. on being invited to become a director of a banking co. about to be established gave a verbal assent, provided he should be satisfied that a certain proportion of the capital had been subscribed, & that certain persons named in the prospectus would actually join the board. He attended one board meeting, & so far took part in the business as on that occasion to sign a cheque together with one of the directors. On receiving, a few days afterwards, a letter of allotment of the shares necessary to qualify him, he at once returned it, declining at the same time to act as director, as he was not satisfied upon the two points stipulated for by him. The secretary wrote back, stating that A.'s resignation had been accepted. A. had nothing more to do with the bank:—*Held*: he was not liable as a contributory.

applied for, make a total number of 7,500 shares issued in the co. The directors, in purported compliance with applications therefor, subsequently allotted to T. 1,000 shares, & on a later date allotted to M. & to the other appcts. respectively the shares applied for by them, & the names were placed on the register. M. was himself present at, & as a director took part in, the allotment of shares to himself, & he paid the application & allotment moneys in respect thereof but made no further payments. The co. then went into voluntary liquidation. Four months later M. having applied to the ct. to have his name removed from the register & list of contributories in respect of shares allotted to him:—*Held*: his name having been placed on the register with his consent, he was a person who had agreed to become a member of the co. in relation to those shares, & continuing as such up to the date of liquidation, he was now too late in applying.—*MURRAY v. LEONARD HEAT*

—*Re PENINSULAR, WEST INDIAN, & SOUTHERN BANK, AUSTIN'S CASE* (1866), L. R. 2 Eq. 435; 15 L. T. 140; 14 W. R. 1010.

Annotations:—*Consd. Re Great Oceanic Telegraph, Harward's Case* (1871), L. R. 13 Eq. 30; *Re Freehold & General Investment Co., Green's Case* (1874), L. R. 18 Eq. 428. *Refd. Re Colombia Chemical Factory Manure & Phosphate Works, Hewitt's Case, Brett's Case* (1883), 25 Ch. D. 283.

1748. — — — — — *No letter of allotment sent.*]—*Re INTERNATIONAL CONTRACT CO., LEVITA'S CASE, No. 1716, ante.*

1749. — *Attendance at meeting at which calls made—Receipt of notice of calls.*]—N. became one of the original directors of a railway co. at the solicitation of R., the promoter of, & subsequently solr. to, the co. The qualification of a director was twenty shares, but R. promised N. that he should have twenty fully paid-up shares given to him as his qualification. The co. was not bound by this promise, & had no power to allot paid-up shares except for value received. N. acted as a director of the co., & received fees for his services. He was from time to time present at the sealing of the register, on which his name was entered as the holder of twenty unpaid shares, & at directors' meetings when calls were made. He also received notices of calls due on these shares, but he took no notice of the applications. He also concurred in a report, which spoke of him as eligible for election as director. Subsequently R. procured twenty fully paid-up shares to be transferred to N., & N.'s name then stood on the register as the holder of twenty fully paid-up shares, & twenty other shares on which nothing had been paid. No letter of allotment was ever sent to N.:—*Held*: N. was holder as well of the twenty unpaid shares as of the twenty fully paid-up shares.—*ILFRACOMBE RY. CO. v. NASH* (1870), 22 L. T. 209; 18 W. R. 431.

1750. — *Election as chairman in consideration of agreement to take shares.*]—*Re UNIVERSAL NON-TARIFF FIRE INSURANCE CO., RITSO'S CASE, No. 1696, ante.*

1751. — *Attendance at meeting at which allotment confirmed.*]—Pltf. co. was constituted by seven persons signing the memorandum of assocn. Afterwards they all were summoned to attend a meeting, but only four attended & they elected three directors. These three elected three other directors. The three original directors resigned, & afterwards one of the remaining directors sent in his resignation. Deft. then applied for fifty shares. The two remaining directors resolved that fifty shares should be allotted to deft., that he should be appointed a director, &

ELECTRIC CO., LTD. (IN LIQUIDATION), [1922] V. L. R. 728.—AUS.

q. — — — — — *& acceptance of director's fee.*]—A director, one of the founders of a co. who was one of the subscribers to its memorandum & arts. of assocn. & who was present at the meeting at which shares were allotted to him, & joined in the proceedings & received a director's fee for doing so, sought to repudiate his liability upon his shares upon the ground that they had been allotted in breach of Companies Act, 1908, s. 95:—*Held*: he was estopped from so doing.—*SHORTLAND FLAT GOLD-MINING CO., LTD. v. KNEEBONE* (1912), 31 N. Z. L. R. 1039.—N.Z.

r. *Agreement between directors to take up unaccepted balance of issue—Subsequent decease of assenting director.*]—The directors of a co. submitted a report in which it was stated that they had agreed to take up amongst themselves an unaccepted balance of a new issue of shares which had been issued

at a premium. The report was approved at a general meeting of shareholders. One of the directors, C., was present at the meetings of the directors when the report was prepared & adjusted & also at the meeting of the shareholders when the report was adopted. After his death, which occurred about 11 months after that meeting, the shares having fallen in value considerably in the meantime, the co. placed his name on the register as holder of an eighth part, there being 8 directors, of the unaccepted shares & demanded payment of the issue price thereof from his representative. In a petition for rectification of the register by the deletion of the entry, on the ground that C. had never agreed to take the shares, it was admitted by the co. that he had never accepted in writing & that no notice of allotment had been sent to him. It appeared that at the time when the report was issued C. held a larger number of shares than any other director:—*Held*: the statement in the report constituted a

Sect. 17.—The contract to take shares: Sub-sect. 3, F. (a) & (b).]

that the resignation of the retiring director should be accepted. Deft. afterwards attended a meeting of the directors, confirmed the allotment to himself, & joined in passing a resolution, that the shares allotted to himself should be paid up in full forthwith. Deft. subsequently withdrew his application & refused to pay the amount of the shares allotted to him. By the arts. of assocn. the number of the directors was to be not less than three, & any casual vacancy occurring in the board might be filled up by the board, & the continuing board might act notwithstanding any vacancy in their body:—*Held*: deft. was liable to pay the amount of the shares.—*YORK TRAMWAYS CO. v. WILLOWS* (1882), 8 Q. B. D. 685; 51 L. J. Q. B. 257; 46 L. T. 296; 30 W. R. 624, C. A.

Annotations:—*Reid. Re London & Southern Counties Freehold Land Co.* (1885), 31 Ch. D. 223; *Faure Electric Accumulator Co. v. Phillipart* (1888), 58 L. T. 525. *Mentd. Municipal Freehold Land Co. v. Pollington* (1890), 59 L. J. Ch. 734; *Dawson v. African Consolidated Lands & Trading Co.*, [1898] 1 Ch. 6; *Re Fireproof Doors, Umney v. Fireproof Doors*, [1916] 2 Ch. 142.

Compare No. 1513, *ante*.

(b) By Others.

See, also, Sect. 12, sub-sect. 3, C., *ante*.

1752. Conduct amounting to acquiescence—Acting as shareholder—With knowledge that shares invalidly issued.]—*Re RAILWAY TIME TABLES PUBLISHING CO., Ex p. SANDYS*, No. 1841, *post*.

1753. ———.]—On June 17, 1892, H. signed & delivered to the promoters of a co. a letter agreeing that upon the public issue of its shares he would, in consideration of a percentage, subscribe for 400 shares. If the whole issue was *bonâ fide* subscribed for by the public, no allotment was to be made to H. The letter also contained an authority to the promoters, in the event of H. not applying for shares, to apply for them in his name, & an authority to the directors to allot them to him, "This engagement is binding on me for two months from this date." The shares were offered to the public on June 20, 21 & 22, but very few applications were made. On July 1, when the public subscription list was closed, the promoters signed a memorandum at the foot of

the letter, dated July 1, 1892, & accepting H.'s offer. The letter with the memorandum thereon & an application by the promoters in H.'s name were on the same day sent to the co., & the shares were thereupon allotted to H. His name was put on the register of shareholders. He knew of this, & he paid the co. the allotment money in respect of the shares, received his certificates & on two occasions voted by proxy; but it was not shown that he knew when the offer was accepted. The name was still on the register when the co. went into liquidation nearly two years afterwards:—*Held*: (1) (VAUGHAN WILLIAMS, J.) the promoters could not wait to see the result of the invitation to the public, & after it had failed, accept H.'s offer, & he was not liable as a contributory; (2) (LOPES & KAY, L.J.J., LINDLEY, L.J., *dubitante*) the expression "This engagement is binding on me for two months" meant that the offer made by the letter was to be open for acceptance for two months; the shares, therefore, were properly applied for in H.'s name, & the allotment to him was valid; (3) whether the application for shares was authorised or not, H., having accepted them without inquiry, & having acted as a shareholder for nearly two years up to the time of the winding up, could not now be heard to contend that he was not a shareholder.—*Re HEMP, YARN & CORDAGE CO., HINDLEY'S CASE*, [1896] 2 Ch. 121; 65 L. J. Ch. 591; 74 L. T. 627; 44 W. R. 630; 12 T. L. R. 366; 40 Sol. Jo. 478; 3 Mans. 187, C. A.

Annotation:—*As to* (2) *Reid. Re Consort Deep Level Gold Mines, Ex p. Stark*, [1897] 1 Ch. 575.

1754. ——— Non-repudiation of allotment—Application for certificates—Amalgamation of companies void.]—*Re UNITED PORTS & GENERAL INSURANCE CO., BECK'S CASE*, No. 1674, *ante*.

1755. ——— Execution of transfer.]—*Re PERUVIAN RYS. CO., CRAWLEY'S CASE, ROBINSON'S CASE*, No. 1710, *ante*.

1756. ——— In belief that necessary for cancelling name in register.]—In May, 1866, S., the managing director of a co., caused L.'s name to be signed to an application for 300 shares in the co. L. heard nothing about this till Sept. 1866, when he was applied to for a call on these shares, which had been allotted to him & registered in

contract between the directors & the co. which the former were bound to fulfil; that equality of division being the most favourable view for C., the co. were at least entitled to enter one-eighth part against his name.—*CURROR'S TRUSTEE v. CALEDONIAN HERITABLE SECURITY CO.* (1880), 7 R. (Ct. of Sess.) 479; 17 Sc. L. R. 301—SCOT.

PART III. SECT. 17, SUB-SECT. 3.—F. (b).

a. Conduct amounting to acquiescence—Acting as shareholder—Payment of calls.]—An original shareholder in the O. Co. having, after 16 Vict. c. 51, paid the calls before then made on his shares, & voted at a meeting of shareholders, was precluded from claiming the repayment of his instalments under sect. 4 of the Act.—*BARROW v. ONTARIO, SIMCOE & HURON RY. CO.* (1853), 11 U. C. R. 124.—CAN.

t. ———.]—A person in whose name shares are applied for without his authority, but who receives notice of allotment & pays calls, cannot afterwards repudiate the shares.—*SOUTHLAND FROZEN MEAT & PRODUCE EXPORT CO. (LTD.) v. POTTER* (1885), 3 N. Z. L. R. 208.—N.Z.

a. ——— Non-repudiation of allotment.]—C. had subscribed for two shares in a co. There was no evidence

that any shares were allotted to him or notice of allotment given; but he had received notices of three meetings of shareholders &, although he did not attend, he never repudiated or withdrew his subscription:—*Held*: he must be taken to have accepted the notices as sufficient intimation that his subscription had been accepted & he had become a shareholder, & he could not escape liability.—*Re MANCHESTER STORES, LTD.* (1922), 69 D. L. R. 669; 51 O. L. R. 637.—CAN.

b. ——— Payment of dividend.]—Subscribers for shares in the stock of a co. who have already paid one call cannot be heard to deny the allotment of their shares.—*MORDEN WOOLLEN MILLS CO. v. HECKELS* (1908), 7 W. L. R. 715; 17 Man. L. R. 557.—CAN.

1755 i. ——— Execution of transfer.]—A. having agreed to take from a limited co. in part payment of the price of his interest in an estate sold to the co. shares & debentures to the value of £430, a certificate for an allotment of 300 £5 shares on which £1 per share had been paid up, & a debenture for £130 were sent to him. A. refused to accept the shares & intimated to the secretary that he would incur no liability & would only take payment in cash or debentures. A. was put on the register as holder of the 300 shares

without his knowledge or consent. Subsequently A. while refusing to take the shares arranged with the secretary that 430 shares on which £1 had been paid up should be given to B., his servant. The secretary then sent to A. a transfer by a stranger in favour of B. of 130 shares on which £1 had been paid up, & a transfer to be signed by A. in favour of B. of the 300 shares standing in A.'s name. A. signed the latter transfer & both transfers were in terms of the rules, approved by the directors & B. entered in the register as holder of the 430 shares. At this date the co. was in good repute, but three years after it went into liquidation. In a note by the liquidator praying to have the register rectified by removing B.'s name & inserting A.'s name:—*Held*: as A. had never agreed to be a shareholder of the co., the entry of his name on the register & his signing the transfer merely for the purpose of having it removed did not make him a shareholder. Note refused.—*FLORIDA MORTGAGE & INVESTMENT CO. v. BAYLEY* (1890), 17 R. (Ct. of Sess.) 525; 27 Sc. L. R. 419.—SCOT.

a. ——— Company formed to purchase land—Defendant member of company—No knowledge of contents of articles of association.]—Certain persons, including deft., who had formed

his name. On asking for an explanation, he was informed by S. that it was all a mistake, & that if he would execute a transfer he would be freed from all liability. L. accordingly executed a transfer in blank, which was sent to S. who filled it up with only 200 of the shares. In Mar. 1867, L. was applied to for a call on the remaining 100 shares, & he then wrote to the secretary of the co., stating that he had never applied for the shares, & requesting that his name might be removed from the register. This request & a subsequent one having been disregarded, L. now made an application to the ct., under 1862 Act, s. 35, that the register of members might be rectified by omitting his name:—*Held*: (1) the execution of the transfer was not an act of acquiescence on L.'s part, & he was entitled to have his name removed.

In Apr. 1867, he informed the directors of the circumstances for the first time, & asked them to remove his name from the register, which was not done, & calls were made on him from time to time down to Oct. 1868, which he did not pay, & for which he was not sued. In Feb. 1869, he moved, under sect. 35, to have the register rectified by the omission of his name.

(2) He was not too late in asserting his right to have his name removed.—*Re CHELTENHAM & SWANSEA RAILWAY CARRIAGE & WAGGON CO., LITTLE'S CASE* (1869), 20 L. T. 162; 17 W. R. 461.

1757. — Application after allotment—Allotment unknown to allottee—Authority of agent to accept allotment.—Shares were allotted to L. without his knowledge, on the application of M. Afterwards L., at M.'s request, sent in a formal application for the shares. No notice of allotment was sent to him. M. paid the deposit on the shares & received the share certificates, & also a dividend which was subsequently declared. L.'s name was on the register when the co. was ordered to be wound up:—*Held*: L. had constituted M., his agent, to accept the shares, & he was properly placed on the list as a contributory of the co.—*Re INTERNATIONAL CONTRACT CO., LEVITA'S CASE* (1870), 5 Ch. App. 489; 39 L. J. Ch. 673; 22 L. T. 395; 18 W. R. 476, L. J.

Annotations:—*Re* *Disderi* (1870), L. R. 11 Eq. 242; *Re Hercules Insee., Pugh & Sharman's Case* (1872), L. R. 13 Eq. 566.

1758. — Application subsequently withdrawn.—Where a co. allotted shares to A., who at the time, had not applied for them, & who, when he subsequently did apply, was unaware of the previous allotment:—*Held*: the allotment previous to application was invalid; & as A. had withdrawn his subsequent application, his name must be removed from the register of the members.—*Re NORTHERN ELECTRIC WIRE & CABLE MANUFACTURING CO., LTD., Ex p. HALL* (1890), 63 L. T. 369; 6 T. L. R. 437; 2 Meg. 288.

1759. — On amalgamation of companies—Acknowledgment of new certificates.—A co.

agreed, under circumstances which made it doubtful whether the agreement was binding on the shareholders, to transfer its business to a new co., one of the terms of the agreement being, that each shareholder in the old co. should become a shareholder in the new co. The shareholders in the old co. were accordingly registered as having transferred their shares to the new co., & share certificates in the new co. were sent to each shareholder in the old co. Both the cos. were afterwards wound up:—*Held*: (1) a shareholder who had acknowledged the receipt of the certificates, & had retained them, was a shareholder in the new co.; (2) a shareholder who had taken no notice of the communication, & had done nothing in relation to the agreement, was not a shareholder in the new co.—*Re EMPIRE ASSURANCE CORPN., CHALLIS'S CASE, SOMERVILLE'S CASE* (1871), 6 Ch. App. 266; 23 L. T. 882; *sub nom. Re EMPIRE ASSURANCE CORPN., CHALLIS'S CASE, FORDYCE'S CASE, SOMERVILLE'S CASE*, 40 L. J. Ch. 431; 19 W. R. 453, L. C.

Annotations:—*As to* (1) *Folld. Re Bank of Hindustan, China & Japan, Campbell's Case, Hippisley's Case* (1873), 9 Ch. App. 1. *Distd. Re Empire Asscc. Corpn., Dougan's Case* (1873), 8 Ch. App. 540.

1760. — Retention of new certificates without acknowledgment.—*Re EMPIRE ASSURANCE CORPN., CHALLIS'S CASE, SOMERVILLE'S CASE*, No. 1759, *ante*.

1761. — Non-acknowledgment of allotment.

—On Oct. 3, 1889, at a meeting of the directors of a co. "it was resolved that 9242 shares be & are hereby allotted to the following, being the nominees of the vendor." R. was named in the list of nominees as allottee of ten shares. On Oct. 7, 1889, the secretary of the co. by letter informed R. that ten fully paid-up shares had been allotted to him. R. did not reply to this letter. The agreements under which these shares were allotted were not filed with the Registrar of Joint-Stock Cos. No shares were issued under the allotment. On Oct. 28, 1889, an agreement was entered into between the co. & B., the vendor, which provided for the issue to the vendor or his nominees of 60,000 fully paid-up shares. On Nov. 20, 1889, the allotment of the 9242 shares was cancelled, & in pursuance of the agreement of Oct. 28, 1889, the shares were re-allotted to the vendor & his nominees, including R. The agreement of Oct. 28, 1889, was filed with the Registrar of Joint-Stock Cos. In Nov. 1890, the co. was ordered to be wound up, & R. was placed on the list of contributories in respect of ten wholly unpaid shares. On summons to vary the certificate of the chief clerk:—*Held*: (1) the contract of Oct. 28, 1889, was a sufficient contract in writing within 1867 Act, s. 25; (2) the shares being issued after that date must be regarded as fully paid-up shares; (3) the non-reply by R. to the letter of Oct. 7, 1889, did not constitute acceptance by R. to become a member of the co.

a syndicate to purchase & had purchased a particular piece of land, met together & agreed to form a limited co. to take over the land, certain scrip in the co. to be allotted to each member of the syndicate. At such meeting the question of drawing up the memorandum & arts. of assocn. were discussed, & it was agreed that it should be left to the solr. of the syndicate to draw them up & register the co. The solr. accordingly did so, & included in the objects for which the co. was formed, power to purchase land in any of the Australasian Colonies, & other powers not necessary for a land co. Immediately after the registration, scrip for debt's proportion of shares

was sent to him. He did not know of the provisions of the memorandum of assocn. or arts., or make any inquiries as to them for over three years, during which the co. went on dealing with strangers. Meanwhile instalments on his shares became due, which he did not pay. When the co. becoming a failure, eventually pressed him for payment, he refused to pay on the ground that the co. registered was not the co. he had agreed to join, which was a co. to purchase this particular piece of land only. On action brought by the co. for such instalments:—*Held*: the solr. was the agent of debt., among others, to draw up the memorandum & arts. of assocn., & it was

debt's duty to see, within a reasonable time, that the agent had not exceeded his authority & as he had allowed an unreasonable time to go by without objection, he was liable.—*OSBORNE PARK LAND & INVESTMENT CO., LTD. v. PEGG* (1892), 18 V. L. R. 515.—AUS.

d. — No formal allotment before receiving certificate of shares.—Where a person whose name is upon the register of a co. which has gone into liquidation receives no formal notice of allotment of the shares in respect of which his name is upon the register, but receives a certificate of these shares, which he retains, & only

Sect. 17.—The contract to take shares: Sub-sect. 3, F. (b) & G. Sect. 18: Sub-sects. 1, 2 & 3, A.]

in respect of the shares.—*Re* STAFFORDSHIRE GAS & COKE CO., LTD., RUSHWORTH'S CASE (1891), 66 L. T. 48.

Annotation:—Generally, Re Staffordshire Gas & Coke Co., Ex p. Nicholson (1892), 66 L. T. 413.

See, also, No. 1759, ante.

1762. — Delay—Four days.]—Re BOWRON, BAILY & Co., Ex p. BAILY, No. 1694, ante.

1763. — Allottee on yachting cruise.]—Re UNITED PORTS & GENERAL INSURANCE CO., WYNNE'S CASE, No. 1673, ante.

1764. — Repudiation—No further steps taken till after winding up.]—Re MONARCH INSURANCE CO., GORRISSEN'S CASE, No. 1480, ante.

1765. — — —.]—Re WHITLEY PARTNERS, LTD., STEEL'S CASE, No. 1724, ante.

1766. — — —.]—S., being appointed auditor of a co., whose office was at the place of business of the firm of accountants of which he was a member, he keeping the key of the safe in which the books were kept, assisted in making up the minute-book, & his name was entered for twenty shares on the register, the memorandum of assocn. being signed by H. for him. He, however, never applied for shares, paid nothing & never acted as auditor, except as to the minute-book, & when he received a letter of allotment, repudiated his liability. He swore that he never looked into the books, never authorised H. to sign for him, & knew nothing of his name appearing as a shareholder:—*Held*: he was not liable as a contributor.—*Re* LAND SHIPPING COLLIERY CO., MILFORD HAVEN, LTD. (1868), 18 L. T. 786.

Loss of right to rectification of register.]—See, generally, Sect. 13, sub-sect. 5, B. (f), ante.

G. Avoidance of Allotment.

See, now, 1908 Act, s. 86.

1767. Who may avoid—Whether company or shareholder.]—BURTON v. BEVAN, No. 1652, ante.

1768. — Liquidator—On behalf of company.]—Re SLY, SPINK & Co., No. 1662, ante.

— Infant.]—See Sub-sect. 3, D. (e), ante.

See, also, No. 1649, ante.

1769. Time for—Conditional allotment—Before condition fulfilled.]—Re WARREN'S BLACKING CO., PENTELOW'S CASE, No. 1682, ante.

1770. — — —.]—FINANCE & ISSUE, LTD. v. CANADIAN PRODUCE CORPN., LTD., No. 1649, ante.

1771. — Statutory period—Whether notice of avoidance within period sufficient.]—Re NATIONAL MOTOR MAIL-COACH CO., LTD., ANSTIS' & McLEAN'S CLAIMS, No. 1651, ante.

repudiates when the co. considering it necessary so to do, makes a formal allotment of the shares, & calls upon him for the payment of the allotment money, the ct. will not order his name to be removed from the register.—*Re* NENTHORN PUBLIC BATTERY CO. (LTD.), STRONG'S CASE (1891), 9 N. Z. L. R. 197.—N.Z.

e. — Delay—Two years.]—An alleged misrepresentation in a prospectus on which deft. relied as ground for rescission of his agreement to take shares having been brought to his notice shortly after the contract to take shares had been made, & he having taken no steps in the matter till two years afterwards, when he had been sued on the contract:—*Semle*: even if the misrepresentations had originally furnished a good ground of defence, deft. would have been estopped from raising it by the presumption of acquiescence arising from lapse of time.—ADAMANTA DIAMOND MINING

CO. v. WEGE (1883), 2 H. C. 172.—S. AF.

PART III. SECT. 17, SUB-SECT. 3.—G.

f. Grounds for—Deed of association not executed.]—GUIDING STAR GOLD MINING CO. v. LUTH (1867), 4 W. W. & A'B. 94.—AUS.

g. — Provisions of Companies Ordinance, North-West Territories, not complied with by company.]—Under the Cos. Ordinance, North-West Territories, either the amount mentioned in the memorandum & arts. of assocn. as the minimum subscription, or the whole amount of the share capital offered, must be subscribed for before allotment is proceeded with.

Deft. co. proceeded to allotment when neither of these conditions had been complied with:—*Held*: plffs. were entitled to have the allotments declared void & the money paid by them for the shares returned.—

Grounds for—Allotment invalid.]—See Sub-sect. 3, C., ante.

— Allotment not binding on allottee.]—See Sub-sect. 3, D., ante.

— Application induced by misrepresentation.]—See Sub-sect. 1, G., ante.

— In prospectus.]—See Sect. 8, sub-sect. 3, ante.

1772. Notice of avoidance—Sufficiency—Whether grounds must be stated.]—Re NATIONAL MOTOR MAIL-COACH CO., LTD., ANSTIS' & McLEAN'S CLAIMS, No. 1651, ante.

— Notice to agent.]—See No. 1697, ante.

1773. Effect of avoidance—By infant—Shares saleable—Whether failure of consideration.]—On the issue of the prospectus of a co., pltf., who was an infant, applied for shares, & she paid the amounts due on application & on allotment. Being unable to pay any further calls, she rescinded the contract & sued the co. for the money that she had paid, as being money paid for a consideration that had wholly failed:—*Held*: though pltf., being an infant, was entitled to rescind the contract, yet, as she could have sold her right to the shares, there had not been a total failure of consideration, & the action failed.—STEINBERG v. SCALA (LEEDS), LTD., [1923] 2 Ch. 452; 92 L. J. K. B. 944; 129 L. T. 624; 39 T. L. R. 542; 67 Sol. Jo. 656, C. A.

Liability of director.]—See No. 1652, ante, & generally, Sect. 28, sub-sect. 6, post.

Loss of right—By acquiescence in allotment.]—See Sub-sect. 3, F., Sect. 8, sub-sect. 3, E. (b), ante.

— By winding up of company.]—See Nos. 1480, 1564, 1697, ante.

Compare Sect. 8, sub-sects. 3, E., 4, C., & Sect. 13, sub-sect. 5, B. (f), ante.

1774. — Adverse judgment in action for calls—Subsequent decision that allotment void.]—Re UNITED PORTS & GENERAL INSURANCE CO., NELSON'S CASE, [1874] W. N. 197.

Annotation:—Reid v. London & North Staffordshire Fire Insee. (1883), 49 L. T. 468.

Cancellation of allotment—Whether valid.]—See Nos. 2713, 2714, 2718, post.

SECT. 18.—SHARE CERTIFICATES AND SCRIP.

SUB-SECT. 1.—NATURE OF.

Mere admission that shares registered in name of holder.]—See No. 2412, post.

1775. Prima facie evidence of title only.]—HENDERSON v. COULSON, WAGNER v. COULSON (1889), 6 T. L. R. 28.

1776. — — —.]—BURKINSHAW v. NICOLLS, No. 1953, post.

PIERSON v. CRYSTAL ICE CO., LTD., [1917] 2 W. W. R. 1175.—CAN.

PART III. SECT. 18, SUB-SECT. 1.

h. Whether "goods" within Contract Act, s. 108.]—Share certificates are moveable property & are "goods" within Indian Contract Act, s. 108.—FAZAL v. MANGALDAS (1921), 1 L. R. 46 Bom. 489.—IND.

k. What amounts to "issue"—Certificates retained in safe.]—Where a co. retained in its safe documents so worded as to certify that certain individuals were registered proprietors of so many shares in the co.:—*Held*: the certificates had not been issued in terms of Act 39 of 1908.—R. v. BRAND (1911), 2 C. P. D. 136.—S. AF.

l. Where affixing of company's seal unauthorised.]—Where a certificate of shares in proper form has been issued, but the affixing of the co.'s seal was unauthorised, such certificate is void,

1777. — Not warranty of title.]—*Re OTTOS KOPJE DIAMOND MINES, LTD., No. 2423, post.*

1778. — —.]—(1) If a co., having a certificate of shares in its possession, certificates a transfer of those shares to a proposing transferee, no duty is thrown on the co. with regard to the custody of the certificate, towards any person other than the proposing transferee, or any person claiming through him.

(2) A share certificate is, under 1862 Act, s. 31, *prima facie* evidence only of the title of the registered holder of the shares specified therein: it is not a negotiable instrument, nor is it a warranty of title on the part of the co. issuing it. If the co., having had a certificate lodged with it together with the transfer for certification, subsequently returns the certificate to the transferor in error, for instance, by a mistake on the part of the secretary, & so enables the transferor fraudulently to deal afresh with the shares comprised therein & to obtain an advance thereon from a person ignorant of the circumstances under which the certificate had come to the hands of the transferor, that person cannot maintain against the co. an action to recover the loss sustained by the fraud of the transferor on the ground that the co. was bound to have retained the certificate when lodged; for the co. owes no duty of safe custody to the public at large.

(3) The secretary of a co. does not, when giving a transferee of shares the usual receipt for the transfer upon its being lodged for registration, thereby bind the co. either to recognise the transferee's title to the shares or to issue the corresponding share certificate.—*LONGMAN v. BATH ELECTRIC TRAMWAYS, LTD., [1905] 1 Ch. 646; 74 L. J. Ch. 424; 96 L. T. 743; 53 W. R. 480; 21 T. L. R. 373; 12 Mans. 147, C. A.*

Annotation:—As to (2) Rejd. Rainford v. Keith & Blackman Co. (1905), 74 L. J. Ch. 531.

1779. Covenant by company in certificate—Whether binding—Covenant not to alter articles.]—*Re LADIES' DRESS ASSOCN., LTD., PULBROOK v. LADIES' DRESS ASSOCN. (Prior to 1903), cited in [1903] 2 Ch. at p. 513, C. A.*

Annotation:—Consd. Punt v. Symons, [1903] 2 Ch. 506.

See, further, Sub-sect. 3, post, & compare Part IX., Sect. 8, sub-sect. 3, post.

Whether negotiable instruments.]—*See BILLS OF EXCHANGE, PROMISSORY NOTES & NEGOTIABLE INSTRUMENTS, Vol. VI., p. 451 et seq.*

Whether "goods"—Within Factors Act, 1842 (c. 39).]—*See AGENCY, Vol. I., p. 335, No. 491.*

SUB-SECT. 2.—RIGHT OF SHAREHOLDER TO.

1780. Under 1844 Act, s. 51.]—A person who has subscribed for shares in a joint stock co. completely registered under the above Act, is not

& the issue does not operate as a warranty of genuineness.—*FIRE VALLEY ORCHARDS, LTD. v. SLY (1914), 20 B. C. R. 23.—CAN.*

*m. Whether shareholder must actually hold certificate.]—*A shareholder in a co. need not be the actual holder of a stock certificate.—*Re KOOTENAY VALLEY FRUIT LANDS Co. (1911), 18 W. L. R. 145.—CAN.*

*n. Whether non-compliance with statutory requirements invalidates contract to take shares.]—*GRAHAM ISLAND COLLIERIES, LTD. v. McLEOD (1914), 27 W. L. R. 227.—*CAN.*

*o. —.]—*AGRICULTURAL CO-OPERATIVE UNION, LTD. v. CHADWICK (1922), 43 N. L. R. 135.—*S. AF.*

PART III. SECT. 18, SUB-SECT. 2. p. Exchange of existing certificates

*— Sub-division of shares.]—*H., the holder of 178 shares in the E. Co. under three share certificates of 100, 48, & 30 shares respectively, applied to the co. to issue to him in exchange for his existing certificates, six certificates of 20 shares each, two of 25 shares each & 8 of one share each. The directors refused to authorise any subdivisions of less than 100 shares each:—*Held:* in the absence of any express powers in the arts., giving the directors the right to dictate the minimum amount of a sub-division of shares, H. was entitled to the certificates he asked for.—*HYMAN v. ELANDSLAAGETE COLLIERIES, LTD. (1921), 42 N. L. R. 43.—S. AF.*

PART III. SECT. 18, SUB-SECT. 3.—A. 1783 i. Certificate inaccurate.]—

entitled to certificates under sect. 51 till he has executed the deed of settlement or a deed referring thereto. To state in a declaration that pltf. executed the deed of settlement, except as to a certain specified clause, is not equivalent to alleging that he executed the deed.—*WILKINSON v. ANGLO-CALIFORNIAN GOLD MINING Co. (1852), 18 Q. B. 728; 7 Ry. & Can. Cas. 511; 21 L. J. Q. B. 327; 19 L. T. O. S. 181; 17 Jur. 230; 118 E. R. 275.*

Annotations:—Rejd. Stewart v. Anglo-Californian Gold Mining Co. (1852), 18 Q. B. 736; Murray v. Bush (1873), L. R. 6 H. L. 37; Exchange Bank of Yarmouth v. Blethen (1885), 10 App. Cas. 293.

1781. Within reasonable time—Effect of statement in prospectus.]—Pltf. applied for 1,763 shares on May 18, & paid the application moneys, & on May 20, received notice of allotment of all the shares applied for. On May 23, pltf. paid the other 10s. per share due on his shares, which were therefore fully paid up. Pltf. being unable to obtain his certificate at the expiration of six months sued the co. claiming a declaration that he was entitled to a certificate:—*Held:* pltf. was entitled to a certificate within a reasonable time, & in considering what was reasonable the ct. was not bound to take into account the fact that the prospectus referred to certain contracts under which certificates for shares taken as fully paid could not be issued for six months.—*BURDETT v. STANDARD EXPLORATION Co., LTD. (1899), 16 T. L. R. 112.*

See, now, 1908 Act, s. 92 (1).

1782. Form of certificate—In same form as predecessor's certificate—Bankruptcy of shareholder—Lien claimed by company.]—Where a shareholder of a co. becomes bkpt. & the transmission clause in its arts. of assocn. is in the form of 1862 Act, Table A. art. 13, the trustee is entitled to be registered in respect of & to have a certificate of the shares, & the co. has no right to enter in the register of members or in his certificate any statement as to the co.'s claim under its arts. to a lien on the shares for the liabilities of the bkpt. to the co.

Primâ facie, the right of a person taking by transmission is to be entered on the register in the same way as his predecessor in title was entered, & to have the certificate in the same form as that of his predecessor in title (*BYRNE, J.*).—*Re KEY (W.) & SON, LTD., [1902] 1 Ch. 467; 71 L. J. Ch. 254; 86 L. T. 374; 50 W. R. 234; 18 T. L. R. 263; 46 Sol. Jo. 231; 9 Mans. 181.*

SUB-SECT. 3.—EFFECT BY WAY OF ESTOPPEL.

A. In General.

1783. Certificate inaccurate.]—*DIXON v. KEN-NAWAY & Co., No. 1788, post.*

applied for fifty shares which were allotted to him, & accepted by his agent. The certificate sent to him was returned by him for correction. He was placed on the list.—*Re GLOBE FIRE ASSURANCE Co., ROBERTSON'S CASE (1909), 11 W. L. R. 45; affd. 11 W. L. R. 293.—CAN.*

*q. Certificate subject to memorandum & articles of association—Balance unpaid on shares—Interest.]—*Where a co.'s memorandum of assocn. gives the directors power to fix a rate of interest on the balance unpaid on shares, a shareholder whose certificate provides that he holds the shares subject to the memorandum & arts. of assocn. is liable for such interest.—*CANADA WEST LOAN Co. v. VIRTUE, [1921] 1 W. W. R. 730.—CAN.*

Sect. 18.—Share certificates and scrip: Sub-sect. 3, B.]

B. As to Title to Shares.

1784. General rule.]—The power of giving certificates is for the benefit of the co. in general, & it is a declaration by the co. to all the world that the person in whose name the certificate is made out, & to whom it is given, is a shareholder in the co. (COCKBURN, C.J.).—*Re BAHIA & SAN FRANCISCO RY. Co.*, No. 2466, *post*.

1785. In favour of registered holder—Shares previously sold by former owner.]—Pltf. bought & paid for shares in defts.' co. & received duly executed transfers & share certificates, but was not registered as holder of the shares. The seller of the shares, being afterwards compelled to pay a call upon them, demanded repayment of pltf. who required to have the transfers completed by registration. Pltf.'s name was thereupon entered on the register & he received from the co. a certificate certifying that he was owner of the shares. After & on the faith of such registration, & the delivery of the certificate, he repaid to the seller the amount of the call. Defts. afterwards discovered that before pltf. bought the shares they had been sold by a previous owner, by a duly executed transfer, to F., & they accordingly removed pltf.'s name from the register, & substituted F.'s name. In an action by pltf. against defts. for the removal of pltf.'s name:—*Held*: by the registration of pltf. & the delivery to him of the certificate, followed by the payment by him of the call, defts. were estopped from denying his title to the shares & were liable to him for their value.—*HART v. FRONTINO & BOLIVIA SOUTH AMERICAN GOLD MINING Co., LTD.* (1870), L. R. 5 Exch. 111; 39 L. J. Ex. 93; 22 L. T. 30.

Annotations:—Consd. Simm v. Anglo-American Telegraph Co., Anglo-American Telegraph Co. v. Spurling (1879), 5 Q. B. D. 188. *Refd. R. v. Shropshire Union Ry. & Canal Co.* (1873), L. R. 8 Q. B. 420; *Waterhouse v. L. & S. W. Ry.*, *Coates v. L. & S. W. Ry.* (1879), 41 L. T. 553; *R. v. Charnwood Forest Ry.* (1884), Cab. & El. 419; *Low v. Bouverie*, [1891] 3 Ch. 82; *Balkis Consolidated Co. v. Tomkinson*, [1893] A. C. 396; *Sheffield Corpn. v. Barclay*, [1903] 2 K. B. 580.

1786. ———.]—P., the owner of numbered shares in a joint-stock co. transferred them to persons who were registered in the co.'s books as proprietors of the shares. P. afterwards fraudulently executed a transfer of the shares for value to T., who sent the transfer to the co., & received from them a certificate under their common seal stating that he was the proprietor of the shares. T., acting *bonâ fide* on the faith of the certificate, sold the shares; but the co. refused to register the purchaser as the proprietor, on the ground that after granting the certificate to T. they had discovered that he was not the real owner of the shares. T. then, to fulfil his contract with the purchaser, bought other shares in the market & sued the co. for the price:—*Held*: the co. were estopped by their certificate from denying that

T. was the proprietor of the shares, & he was entitled to recover from the co. the damages which he had in fact sustained owing to their refusal to register the purchaser.—*BALKIS CONSOLIDATED Co. v. TOMKINSON*, [1893] A. C. 396; 63 L. J. Q. B. 134; 69 L. T. 598; 42 W. R. 204; 9 T. L. R. 597; 37 Sol. Jo. 729; 1 R. 178, H. L.; *affg. S. C. sub nom. TOMKINSON v. BALKIS CONSOLIDATED Co.*, [1891] 2 Q. B. 614, C. A.

Annotations:—Apld. Dixon v. Kennaway, [1900] 1 Ch. 833. *Refd. Re Concessions Trust, McKay's Case* (1896), 65 L. J. Ch. 909; *Sheffield Corpn. v. Barclay*, [1903] 2 K. B. 580; *Ruben v. Great Fingall Consolidated*, [1906] A. C. 439; *Malcolm, Brunker v. Waterhouse* (1908), 24 T. L. R. 854; *Lloyd v. Grace, Smith*, [1911] 2 K. B. 489. *Mentd. Rainford v. Keith & Blackman Co.*, [1905] 2 Ch. 147.

1787. ——— Based on forged transfer—Registered holder a bare trustee.]—C. owned stock in a co. incorporated under 1862 Act. His clerk, P., contracted to sell stock in the co. to S., who was the nominee of B. In order to carry out the contract, P. forged a transfer from C. to S., which was left by S. at the office of the co. for registration. The co. sent a letter to C. inquiring whether the transfer was correct, & as they received no answer from him, they registered the transfer. B. borrowed money from a bank, & by way of security for the loan the stock was transferred by S. at the request of B. to I. as trustee for the bank, & the co. registered I. as owner & issued a certificate accordingly. The money borrowed by B. was afterwards repaid by him to the bank, & the stock was held by I. as a bare trustee for B. The forgery was discovered, & the co. then refused to acknowledge I. as the holder of the stock. In an action brought by B. & I. to compel the co. to recognise their title:—*Held*: although I., as trustee for the bank, might have acquired a good title by estoppel against the co., yet that title ceased when the loan by the bank was paid off, & no estoppel existed in favour of B. against the co.; for B. in contracting, through S., to buy the stock belonging to C. had acted on the faith of the forged transfer, & had not relied upon any act of the co., & by sending the forged transfer to the co. had induced them to recognise his nominee as the holder, & the action would not lie.—*SIMM v. ANGLO-AMERICAN TELEGRAPH Co., ANGLO-AMERICAN TELEGRAPH Co. v. SPURLING* (1879), 5 Q. B. D. 188; 49 L. J. Q. B. 392; 42 L. T. 37; 44 J. P. 280; 28 W. R. 290, C. A.

Annotations:—Consd. Foster v. Tyne Pontoon & Dry Docks Co. & Renwick (1893), 63 L. J. Q. B. 50. *Expld. & Distd. Balkis Consolidated Co. v. Tomkinson*, [1893] A. C. 396; *Dixon v. Kennaway*, [1900] 1 Ch. 833. *Distd. Ruben v. Great Fingall Consolidated*, [1904] 1 K. B. 650. *Consd. Sheffield Corpn. v. Barclay*, [1905] A. C. 392. *Refd. Kingston-upon-Hull Corpn. v. Harding*, [1892] 2 Q. B. 494; *Smith v. Reynolds* (1892), 66 L. T. 808; *Bank of England v. Cutler*, [1908] 2 K. B. 208; *Platt v. Rowe* (Trading as Chapman & Rowe) & Mitchell (1909), 26 T. L. R. 49.

1788. ——— Transfer lodged by registered holder.]—(1) The duty of examining & checking share certificates issued by a co. may as

PART III. SECT. 18, SUB-SECT. 3.—B.

r. In favour of registered holder.]—A co. is not estopped from denying that a certificate under seal, signed by officers empowered to sign stock certificates, in favour of a person who is declared therein to be the holder, was issued by its authority even if one of the officers signing it was acting fraudulently in doing so.—*MACKENZIE v. MONARCH LIFE ASSURANCE Co.* (1911), 21 O. W. R. 98; 45 S. C. R. 232; 15 D. L. R. 695.—CAN.

s. ———.]—Delivery of the share certificates with the transfers executed in blank passes not the property in the

shares but a title legal & equitable which will enable the holder to vest himself with the shares without the risk of his right being defeated by the registered owner or any other person deriving title from the registered owner.—*FAZAL v. MANGALDAS* (1921), 1 L. R. 46 Bom. 489.—IND.

t. ———.]—Where a co. issues a certificate for shares which were not paid for, but are represented by such certificate as fully paid up, the co. is estopped from denying against a *bonâ fide* holder that the shares were not paid up, & on liquidation, he cannot be made a contributory in respect to

same. An original allottee must prove that he did not know the true facts.—*Re ROSEMOUNT GOLD MINING SYNDICATE, LTD. (IN LIQUIDATION)*, [1905] T. H. 169.—S. AF.

a. In favour of purchaser from registered holder—Purchaser unregistered—Subsequent sale by registered holder to third party.]—A co. issued a certificate that a shareholder was entitled to twenty-two shares. The shares were not numbered or identified, but the certificate was numbered & contained the words "Transferable only on the books of the co. in person or by attorney on the surrender of

a rule be properly left to the secretary. In that case a director is not estopped from denying the accuracy of a certificate passed at a board meeting at which he is present. *Qu.*: whether the same rule applies to a director who signs the certificate. A certificate, though inaccurate, estops the co. from denying its accuracy against any person relying on it, including, unless it is based on a forged transfer lodged by him, the person to whom it is issued, & that person, if put to rest by the certificate, so as to lose his remedy against his broker or transferor, is entitled to damages against the co.

(2) The *onus* of proving that there is no present effective remedy against the broker or transferor lies on the person put to rest by the certificate; the *onus* of proving that there was no effective remedy at the date of the certificate lies on the co. —DIXON v. KENNAWAY & Co., [1900] 1 Ch. 833; 69 L. J. Ch. 501; 82 L. T. 527; 16 T. L. R. 329; 7 Mans. 446.

Annotation:—As to (1) *Reid*. Sheffield Corpn. v. Barclay (1903), 9 Com. Cas. 53.

Forged transfers generally, see Sect. 23, sub-sect. 12, D. (a), *post*.

1789. In favour of purchaser taking transfer in name of nominee.]—SIMM v. ANGLO-AMERICAN TELEGRAPH CO., ANGLO-AMERICAN TELEGRAPH CO. v. SPURLING, No. 2468, *post*.

1790. In favour of purchaser from registered holder.]—*Re* OTTOS KOPJE DIAMOND MINES, LTD., No. 2423, *post*.

1791. — Fraudulent transfer by trustee.]—SHROPSHIRE UNION RAILWAYS & CANAL CO. v. R., No. 2412, *post*.

1792. Right of holder to registration—Two certificates issued in respect of same shares.]—A prerogative writ of *mandamus* will not lie to compel a co. to register as a holder of shares therein, a person to whom they have issued certificates in respect of such shares where the co. have issued prior certificates in respect of such shares to some one else, without clear proof that the person to whom the last certificates were issued has a better title than the person to whom the earlier ones were issued, even though the person holding the earlier certificates has not been entered in the co.'s register as the holder of such shares. When such a writ is asked for, the co. are not estopped from relying upon the actual facts.—*R. v. CHARNWOOD FOREST RY. CO.* (1885), 1 T. L. R. 501; 1 Cab. & El. 419, C. A.

1793. Certificate forged by secretary.]—It was the duty of a secretary of a co. to procure the execution of certificates of shares in the co. with all requisite & prescribed formalities, & to issue them to the persons entitled to receive the same. By a resolution of the directors of the co. it was provided that certificates of shares should be

signed by one director, the secretary, & the accountant. The secretary of the co. having executed a deed purporting to transfer certain shares in the co. to G., a purchaser of such shares, issued to G. a certificate stating that he had been registered as the owner of the shares. Such certificate was in the usual & authorised form, & sealed with the co.'s seal, but the signature of the director appended thereto was a forgery, & the seal of the co. was, in fact, affixed thereto without the authority of the directors. G. deposited the certificate with *pltf.* as a security for advances, & subsequently executed a transfer of the shares to *pltf.* Neither G. nor *pltf.* had any knowledge or reason to suspect that the certificate was otherwise than a genuine document, or that the matters stated therein were untrue. The co. refused to register *pltf.* as owner of the shares, stating that there were no such shares standing in G.'s name in their books:—*Held*: the co. were estopped by the certificate issued by their secretary from disputing *pltf.*'s title to the shares.—SHAW v. PORT PHILIP GOLD MINING CO. (1884), 13 Q. B. D. 103; 53 L. J. Q. B. 369; 50 L. T. 685; 32 W. R. 771, D. C.

Annotations:—*Consd.* British Mutual Banking Co. v. Charnwood Forest Ry. (1886), 55 L. J. Q. B. 399. *Dtd.* Ruben v. Great Fingall Consolidated, [1906] A. C. 439. *Reid*. *R. v. Charnwood Forest Ry.* (1884), Cab. & El. 419; *Staple of England* (Mayor, etc., of Merchants of) v. Bank of England (1887), 21 Q. B. D. 160; *Bishop v. Balkis Consolidated Co.* (1890), 25 Q. B. D. 512.

1794. —.]—Appls. advanced in good faith a sum of money to the secretary of resp. co. for his own purposes on the security of a share certificate of the co. issued to them by the secretary certifying that applts. were registered in the co.'s register of shareholders as transferees of shares. This certificate was, in point of form, in accordance with the co.'s arts. of assocn. inasmuch as it bore the seal of the co., & appeared to be signed by two of the directors & counter-signed by the secretary. The seal of the co. was, however, affixed to it by the secretary fraudulently & without authority, & the signatures of the two directors were forged by him. In an action against the co. for damages for refusing to register applts. as owners of the shares:—*Held*: in the absence of any evidence that the co. ever held out the secretary as having authority in this behalf to do anything more than the mere ministerial act of delivering share certificates, when duly made, to the owners of shares, the co. was not estopped by the forged certificate from disputing the claim of applts., or responsible to them for the wrongful action of their secretary.—RUBEN v. GREAT FINGALL CONSOLIDATED, [1906] A. C. 439; 75 L. J. K. B. 843; 95 L. T. 214; 22 T. L. R. 712; 13 Mans. 248, H. L.

Annotations:—*Mentd.* Malcolm, Brunner v. Waterhouse (1908), 24 T. L. R. 854; Russo-Chinese Bank v. Li Yau Sam, [1910] A. C. 174; Lloyd v. Grace, Smith, [1912] A. C. 716; Rand v. Craig, [1919] 1 Ch. 1.

this certificate." The shareholder assigned the shares to *pltf.* for value, & gave the certificate to him with an assignment indorsed thereon. *Pltf.* gave no notice to the co., & did not apply to be registered as a shareholder until several months had elapsed, & in the meantime the shareholder executed another transfer of the shares for value to an innocent transferee, who was registered by the co. as the holder of the shares without production of the certificate:—*Held*: the co. were not estopped from denying *pltf.*'s right to the shares.—SMITH v. WALKERVILLE MALLEABLE IRON CO. (1896), 23 A. R. 95.—CAN.

1790 i. —.]—Upon an application for an order requiring deft. co. to register *pltf.* as owners of shares:—

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Held: (1) the shares were legally & regularly issued; (2) *pltf.* were the real owners of the shares & entitled to a transfer thereof—their title appearing by a share-certificate indorsed with a transfer & power of attorney signed by the person named in the certificate as the owner of the shares, with a blank for the name of the transferee & attorney; (3) deft. co. required to register *pltf.* as owner of the shares.—LORSCH & CO. v. SHAMROCK CONSOLIDATED MINES, LTD. (1917), 39 O. L. R. 315.—CAN.

b. In favour of pledgee.—*Pledged by manager without authority.*—Share certificates belonging to a co. were indorsed in blank by the co.'s managers acting within their authority, & were left in the custody of one of them, who

pledged the certificates with defts. as security for a loan to him personally:—*Held*: the co. were estopped from reclaiming shares from defts.—AFRICAN MINING & FINANCIAL ASSOCN. v. DE CATELIN & MULLER (1897), 4 O. R. 344.—S. AF.

c. Certificate issued by secretary without authority.—*Fraud.*—A. advanced money to B. on security of share certificates bearing that B. had a number of fully-paid £10 shares in a ltd. co. The certificates bore the common seal of the co. & the signatures of two directors & the secretary.

In an action by the lender against the co. for damages arising from their refusing to register the shares in terms of the certificates, the co. pleaded that B. only paid £1 per share, that the

Sect. 18.—Share certificates and scrip: Sub-sect. 3, C.; sub-sects. 4, 5 & 6. Sect. 19.]

C. As to Amount Paid up on Shares.

1795. General rule.]—In the present case the co. has issued under the seal of the co. a certificate in the form which is set out in the case, in which the co. has asserted that these shares have been fully paid up. These certificates are issued under the directions of the Act of Parliament, & are made *prima facie* evidence of all that they state; only *prima facie* evidence. The certificates are given & issued for the very purpose of enabling the person who holds them to go to others for the purpose, amongst others, of selling the shares, & to say: "Here is the certificate; you see I am a shareholder, as the co. has so certified it. Act upon that, & bargain with me upon the supposition that I am." That is the very object with which they are issued under the co.'s seal. Now when the co. has so issued the certificate under the co.'s seal to enable a person to induce others to buy the shares, & more especially when the co. has registered the transfer solely in consequence of that, it would be in the highest degree an injustice to say that the co. shall, as against that person, be permitted to say, "There was a mistake or inaccuracy in the representations that the shares have been fully paid up." You would be fully entitled to say as against everybody else who had acted upon it that it worked an estoppel. I think the liquidator would be exactly in the same position (LORD BLACKBURN).—BURKINSHAW v. NICOLIS, No. 1953, *post*.

1796. Shareholder with notice that shares not fully paid.]—*Re LONDON CELLULOID Co., No. 1848, post.*

1797. —.]—*Re AFRICAN GOLD CONCESSIONS & DEVELOPMENT Co., MARKHAM & DARTER'S CASE, No. 1919, post.*

1798. — Director.]—CHRISTCHURCH GAS Co. v. KELLY, No. 2066, *post*.

Where no contract filed under 1867 Act, s. 25.]—*See Sect. 20, sub-sect. 3, C. (d) iv., post.*

See, also, No. 1850, post.

SUB-SECT. 4.—AS NOTICE TO SHAREHOLDER.

1799. Regulations of company—Reference on certificate.]—The constitution of a joint-stock co. required the rules & regulations to be signed by a person before he could become an adventurer in the concern. H. in 1853 applied verbally, for shares in the co. & received a certificate of shares containing a reference to the rules & regulations. He paid his deposit-money, but neither attended the meetings nor interfered with the management, & never signed the rules or regulations, of the co.

He brought an action to recover his deposit-money, which action was compromised. An order was made for the winding up of the co. & the chief clerk certified that H. was a contributory. On appeal from that certificate:—*Held*: H. was a member of the co. & therefore a contributory.—*Re GREAT CAMBRIAN MINING & QUARRYING Co., HAWKINS' CASE* (1856), 2 K. & J. 253; 25 L. J. Ch. 221; 27 L. T. O. S. 14; 2 Jur. N. S. 85; 4 W. R. 224; 69 E. R. 774.

Annotation:—Refd. Johnson v. Goslett (1856), 18 C. B. 728.

1800. Objects of company—Reference on certificate to memorandum & articles—Application for shares on strength of prospectus—Variation between memorandum & prospectus.]—A. was induced by the statements contained in the prospectus to apply, in Apr. 1865, for shares in a co., & in answer to his application received a letter of allotment. A. made the further payment required by the prospectus, & in June, 1865, received in exchange for the banker's receipt a certificate that he was the proprietor of fifteen shares in the co., "subject to the provisions of the memorandum & arts. of assocn., & to the rules & regulations of the said co." The objects of the co. as stated in the memorandum & arts. of assocn. were more extensive than those stated in the prospectus. A. never attended any meeting of shareholders, & did not see the memorandum or arts. of assocn. until May, 1866:—*Held*: he was entitled to have his name removed from the register, as the terms of the certificate did not amount to notice that he had entered into a new contract, or that the objects of the memorandum & arts. were more extensive than those of the prospectus on the faith of which he applied for shares.—*Re RUSSIAN (VYKSOUNSKY) IRONWORKS Co., WEBSTER'S CASE* (1866), L. R. 2 Eq. 741; 14 L. T. 728.

Annotation:—Refd. Oakes v. Turquand & Harding, Peek v. Turquand & Harding, Re Overend, Gurney (1867), L. R. 2 H. L. 325.

1801. Lien of company on shares—Notice on certificate of paramount lien.]—In Jan. 1878, B. was a customer of & a shareholder in deft. bank, & was also secretary of a club having an account there. B. fraudulently altered a cheque for £600, drawn by the club in favour of S. or order, by striking out the word "order," & adding the word "bearer"; & then induced the bank to place the £600 to the credit of his own account. In Nov. 1878, pltf. lent B. £1,000 upon the security of the deposit of a share certificate for fifty shares in the bank. The certificate gave the holder thereof notice that the bank had a paramount lien on the shares of any shareholder for whatever might be due from him to the bank. On Mar. 17, 1880, pltf. gave notice to the bank of the deposit of the certificate, & was told by the bank manager, in answer to his inquiry, that the bank had no claim on the shares. In May, 1880, the bank got

certificates had been issued by the secretary without the co.'s authority, & that he had fraudulently allowed them to remain in B.'s hands, & that B. was a party to the fraud:—*Held*: the objection could not be sustained.—CLAVERING, SON & Co. v. GOODWINS, JARDINE & Co. (1891), 18 R. (Ct. of Sess.) 652; 28 Sc. L. R. 457.—SCOT.

PART III. SECT. 18, SUB-SECT. 3.—C.

d. Shares purchased as fully-paid—Whether company estopped from asserting that shares not paid for.]—A co. may, by issuing share certificates as fully paid, be estopped from alleging that the shares are not paid up in cash, not only as against a transferee of shares but as against an original

allottee, if the circumstances are such that the allottee was entitled to assume that the shares had been paid for.—*Re BONANG GOLD MINING Co., LTD., CHIPPENDALE'S CASE* (1897), 18 N. S. W. Eq. 141.—AUS.

e. —.]—A portion of the shares in a joint stock co., purporting on the face of their certificates to be of a certain par value, & paid up, were allotted to three promoters. One of them sold part of his allotment at a discount, & had them transferred by the co. direct to the purchasers, who were not aware that the shares were not really paid up. In action by the co.:—*Held*: the purchasers were not liable for the discount on such shares, inasmuch as the co. was bound by its statement in the certificates that the

shares were "fully paid & non-assessable."—KITTLE RIVER MINES, LTD. v. BLEASDEL (1900), 7 B. C. R. 507.—CAN.

f. —.]—Where shares in a co. had been allotted to resp. under a contract in writing which had not been registered, & a certificate had been granted to him which stated that the said shares were fully paid, on the winding up of the co.:—*Held*: the liquidator was not estopped from denying that the shares were not fully paid up & claiming that resp. should be placed on a list of contributories for the full amount of the shares.—MECCA CAFES, LTD. (IN LIQUIDATION) v. WEBNER (1904), 21 S. C. 227; 1 C. T. R. 360.—S. AF.

notice of B.'s fraud. They then settled with the club, debited B.'s account with the £600, which they had paid to him on the irregular cheque; & gave pltf. notice that they claimed a lien on the shares for that amount. In an action by pltf. claiming a declaration that the shares were subject to an equitable mtge.:—*Held*: (1) the bank, on discovering B.'s fraud, were entitled to set the account right as between themselves & him, by debiting him with the amount of the cheque; (2) as pltf. was in no way prejudiced by the statement made by the bank manager on Mar. 17, 1880, the bank were not estopped from setting up their lien on the shares.—*HORSFALL v. HALIFAX & HUDDERSFIELD UNION BANKING CO.* (1883), 52 L. J. Ch. 599.

Liability on shares—Certificate marked "bonus."—*See* No. 1851, *post*.

Whether shareholder affected with notice that shares not fully paid-up.—*See* Sect. 20, sub-sect. 2, B. (b), *post*.

Notice by co., generally, *see* Sect. 31, sub-sect. 6, B., *post*.

SUB-SECT. 5.—PRODUCTION ON TRANSFER OF SHARES.

See Sect. 23, sub-sect. 6, *post*.

SUB-SECT. 6.—SCRIP.

Sec, generally, BANKERS & BANKING, Vol. III., p. 270 et seq.; BILLS OF EXCHANGE, PROMISSORY NOTES & NEGOTIABLE INSTRUMENTS, Vol. VI., p. 451 et seq.

1802. Nature of—Whether "goods, wares, or merchandise"—*Within Stamp Act, 1815 (c. 184).*—*KNIGHT v. BARBER*, No. 2280, *post*.

1803. Whether person scrip holder or shareholder—Company with option to allot scrip or shares—Application for shares—Allotment of scrip notified but not made.—A co. had two classes of shareholders, scrip holders, who were not liable to contribute, & members who were liable. The directors had the option of allotting either kind of shares. A. applied for shares, & received a notice that scrip would be allotted. This was not done, & his name was entered by the directors on the list of members:—*Held*: he was not entitled to have his name taken off the list of members, & therefore was liable as a contributory.—*Re LITTLEHAMPTON S.S. CO., LTD., GREGG'S CASE* (1866), 15 W. R. 82.

Annotation:—Refd. Re Littlehampton, Havre & Honfleur S.S. Co., Ormerod's Case (1867), 37 L. J. Ch. 111.

1804. Whether scrip holders liable as members—Provisionally registered company afterwards fully registered.—*Re UNIVERSAL SALVAGE CO., SHARPUS'S CASE* (1849), 3 De G. & Sm. 49; *Re UNIVERSAL SALVAGE CO., Ex p. MANSFIELD (EARL)* (1850), 2 Mac. & G. 57; *Re ELECTRIC TELEGRAPH CO. OF IRELAND, BUNN'S CASE* (1860), 2 De G. F. & J. 275.

1805. —Effect of provision in articles.—The arts. of assocn. of a limited co. formed under 1862 Act, provided that the directors, instead of entering allottees of shares on the register of members, might issue to them scrip certificates entitling the holders to the shares therein named, subject to the payment of the instalments at the times therein mentioned; that the word "share-

holder" should include scrip holder; that the shares for which scrip was issued should be transferable by delivery of the scrip, & the holder of the scrip should be the only person recognised as entitled to the shares; & that the scrip holder, on surrendering his scrip, should be entitled to be entered on the register of members in respect of the shares mentioned in the scrip certificate. The co. being wound up:—*Held*: a scrip holder was not a contributory.—*Re LITTLEHAMPTON, HAVRE & HONFLEUR S.S. CO., ORMEROD'S CASE* (1867), L. R. 5. Eq. 110; 37 L. J. Ch. 111; 16 W. R. 240.

Provisionally registered public company afterwards incorporated by statute.—*See* Part IX., Sect. 8, sub-sect. 3, *post*.

Chartered company.—*See* Part X., Sect. 6, *post*.

1806. —Transferee.—A co. was formed without any deed or act of incorporation. Scrip certificates alone were issued; these were passed by delivery, without any other transfer. A stock-broker bought several on the Stock Exchange; he received dividends & paid calls, & he was the holder of certificates when a winding-up order was made against the co.:—*Held*: he must be placed on the list of contributories.

A party about to be put on the list of contributories is entitled to question the regularity of the winding-up order.—*Re MEXICAN & SOUTH AMERICAN MINING CO., BARCLAY'S CASE* (1858), 26 Beav. 177; 27 L. J. Ch. 660; 32 L. T. O. S. 46; 4 Jur. N. S. 1042; 53 E. R. 865.

Annotation:—Mentd. Re Overend, Gurney, Ex p. Oakes & Peek (1867), 36 L. J. Ch. 413.

From shareholder in cost-book company.—*See* Part VIII., Sect. 1, sub-sect. 6, C., *post*.

SECT. 19.—ISSUE OF SHARES GENERALLY.

1807. What constitutes issue.—The word "issue" was one which had no very definite legal import with reference to shares. It was found in 1867 Act, s. 25, & had given rise to some difficulty. As was shown by *Re Heaton's Steel & Iron Co., Blyth's Case*, No. 1929, *post*, shares might be issued within the meaning of that sect. although the certificates were not; & according to *Re Ambrose Lake Tin & Copper Co., Clarke's Case*, No. 1935, *post*, an issue took place, in the language of COTTON, L.J., when "the transaction is complete, when the allottee has become complete master of the shares" (STIRLING, J.).—*SPITZEL v. CHINESE CORPN., LTD.*, No. 1639, *ante*.

Under 1867 Act, s. 25.—*See* Nos. 1929, 1934–1936, *post*.

1808. Terms of issue—In discretion of directors.—(1) A subscriber of the memorandum of assocn. of a co. limited by shares is, in the absence of any provision in the arts. of assocn. or of an express agreement between him & the co., to the contrary, not liable to make any payment in respect of the shares for which he subscribes, except as & when calls are made upon him in accordance with the provisions of the arts.

(2) If directors issue other shares besides those which are taken by the subscribers of the memorandum, there is nothing to prevent them from offering those shares on such terms as regards payment to the co. on application & allotment

PART III. SECT. 19.

g. Unissued shares issued as preference—Necessity for consistency with memorandum—& alteration of articles.

—Where such course is not inconsistent with its memorandum of assocn. a co. has power, upon making the necessary alterations in its arts. of assocn., to issue as preference shares unissued

shares, forming part of its original capital.—*TURNBULL & JONES, LTD. v. TURNBULL* (1913), 32 N. Z. L. R. 670.—N.Z.

Sect. 19.—Issue of shares generally. Sect. 20: Sub-sect. 1, A.]

as the directors may think expedient. But if directors require other appcts. for shares to make payments on application & allotment, & issue their own shares for which they have subscribed the memorandum without requiring any such payments to be made, & without disclosing to the other shareholders this difference between their position & that of the directors, they commit a breach of duty, even though in so doing they act without fraud, & in the belief that they are doing nothing wrong.

(3) Directors who so use their powers as to obtain benefits for themselves at the expense of the other shareholders, without informing them of the facts, cannot be allowed to retain those benefits, but must account for them to the co., so that all the shareholders may participate in them.

(4) It was ascertained & admitted at the trial that, when this action was commenced, defts. held such a preponderance of shares that they could not be controlled by the other shareholders. Under these circumstances an action by some shareholders on behalf of themselves & others against defts. is in accordance with the authorities, & is unobjectionable in form (LINDLEY, M.R.).—ALEXANDER v. AUTOMATIC TELEPHONE CO., [1900] 2 Ch. 56; 69 L. J. Ch. 428; 82 L. T. 400; 48 W. R. 546; 16 T. L. R. 339; 44 Sol. Jo. 407, C. A.

1809. — Cannot be exercised in favour of directors.]—ALEXANDER v. AUTOMATIC TELEPHONE CO., No. 1808, ante.

1810. Power to issue—Directors empowered by articles to increase capital.]—One of the arts. of assocn. of a co. provided for the increase of its capital "in general meeting" by the creation of new shares. The art. was afterwards amended by the substitution of the words "by resolution of the directors" for the words "in general meeting." Another art. provided that "any new shares from time to time to be created may from time to time be issued," with provisions as to preferential or deferred rights, premiums & voting rights, on such terms as the co. may "from time to time by resolution of a general meeting declare":—*Held*: while the directors had power to pass a resolution creating new shares, such shares could not be issued without a resolution of the co. in general meeting.—KOFFYFONTEIN MINES, LTD. v. MOSELY, [1911] A. C. 409; 80 L. J. Ch. 668; 105 L. T. 115; 27 T. L. R. 501; 55 Sol. Jo. 551; 18 Mans. 365, H. L.; *affg.* S. C. *sub nom.* MOSELY v. KOFFYFONTEIN MINES, LTD., [1911] 1 Ch. 73, C. A.

1811. Effect of issue—Validity disputed by company—Estoppel.]—Re LONDON & NORTHERN BANK, LTD. (1902), 18 T. L. R. 320.

1812. Issue for improper purpose—Increase of voting power — Restraint.]—(1) A co. cannot validly by contract deprive itself of its statutory right under 1862 Act, s. 50, to alter its arts. of assocn.

(2) Where directors issue shares not *bonâ fide* for the advantage of the co., but for the purpose of altering the voting power of the co. & of controlling the holders of the greater number of shares, an

injunction will be granted for the purpose of restraining them from employing the votes of the shareholders so created for such purpose.—PUNT v. SYMONS & CO., LTD., [1903] 2 Ch. 506; 72 L. J. Ch. 768; 89 L. T. 525; 52 W. R. 41; 47 Sol. Jo. 619; 10 Mans. 415.

Annotations:—As to (1) Dbtd. British Murac Syndicate v. Alpertan Rubber Co., [1915] 2 Ch. 186. As to (2) Distd. Abbotsford Hotel v. Kingham (1909), 101 L. T. 777. Apld. Piercy v. Mills, [1920] 1 Ch. 77.

1813. — Control of company—Against wishes of shareholders.]—The directors of a co. are not entitled to use their power of issuing shares for the purpose merely of retaining control of the co.'s affairs or defeating the wishes of the majority of existing shareholders.—PIERCY v. MILLS (S.) & CO., [1920] 1 Ch. 77; 88 L. J. Ch. 509; 122 L. T. 20; 35 T. L. R. 703; 64 Sol. Jo. 35.

1814. — — — — —.]—The directors of a co. resolved to issue shares in exchange for debentures, one of the directors, B., dissenting. The co. & B. then brought this action to restrain the directors from acting upon the resolution without the consent of the shareholders in general meeting. Pltfs. applied for an *interim* injunction, & adduced evidence to prove that the intention & purpose of the directors was to secure control of a majority of shares of the co. & to oust B. & that they were not acting *bonâ fide* in the interest of the co.:—*Held*: in the circumstances an *interim* injunction until the trial of the action ought not to be granted.—ABBOTSFORD HOTEL CO., LTD. & BELL v. KINGHAM & MANN (1910), 102 L. T. 118, C. A.

See, also, No. 7964, post.

Issue of additional shares in excess of powers—Whether allottee bound.]—See No. 824, ante.

Issue of new shares—Right as between transferor & transferee.]—See No. 2223, post.

— By way of dividend.]—See Sect. 30, sub-sect. 7, G. (a), post.

SECT. 20.—SHARES ISSUED OR CREDITED AS FULLY OR PARTLY PAID.

SUB-SECT. 1.—SHARES ISSUED AT A DISCOUNT.

A. Power to Issue.

1815. Under power contained in articles.]—Re INCE HALL ROLLING MILLS CO. (1882), 23 Ch. D. 545, n.; 30 W. R. 945.

Annotations:—Consd. Re Addlestone Linoleum Co. (1887), 37 Ch. D. 191. N.F. Re Almada & Tinto Co. (1888), 57 L. J. Ch. 706.

1816. —.]—Re RAILWAY TIME TABLES PUBLISHING CO., *Ex p.* SANDYS, No. 1841, post.

1817. —.]—(1) It is not competent for a co. to issue its shares at a discount even for the limited purpose of adjusting the rights of contributories among themselves after the claims of creditors & the costs of winding up have been satisfied.

(2) (LORD WATSON). If proper means are employed it is a lawful condition that in the event of there being surplus assets when the co. is wound up, such surplus shall be apportioned according to any rule which may be agreed upon among the different classes of shareholders. But a condition

PART III. SECT. 20, SUB-SECT. 1.—A.

h. Validity of—Liability of holder for unpaid balance—Issue by no-liability company.]—The directors of a "no-liability" co. having a nominal capital of £30,000 in 60,000 shares of 10s. of which 10,000 shares had not been issued were authorised by the rules of the co. to issue any unissued shares at a discount, & the directors

pursuant to a recommendation contained in a resolution of shareholders resolved that the unissued shares be issued & allotted as paid, up to 5s. on payment of 3s. per share by 12 monthly instalments of 3d. per share. Deft. applied for certain shares on these terms & they were duly allotted to him. After deft. had paid 5 of the monthly instalments his liability to pay the further instalments as they

became due was suspended by the co. & the co. then made calls upon the whole of the shares. After paying 2 such calls deft. failed to pay a third call & the shares held by him were forfeited for non-payment of that call. The co. afterwards went into liquidation & upon application being made to deft. to pay the balance of the instalments which he had agreed to pay when he applied for the shares he refused to

that partly paid-up shares shall be issued as fully paid up cannot be split up into component elements so as to give effect to one stipulation only which might have been valid if it had been made in express terms & by a separate & substantive condition.

(3) (LORD MACNAGHTEN). The issue of shares at a discount is as much an unauthorised reduction of capital as the purchase by a co. of its own shares.

(4) (LORD DAVEY). The obligation to contribute to the assets of the co. in one way or another the nominal amount of the shares is part of the statutory constitution of every joint-stock co. limited by shares, embodied in its memorandum, & therefore not alterable by the co. or by the unanimous consent of the shareholders.

(5) It being *ultra vires* for a limited co. to issue shares at a discount or by way of bonus, although authorised to do so by the arts. of assocn., the holders of shares so issued are not thereby relieved from liability, in a winding up, to calls for the amount unpaid on their shares for the adjustment of the rights of contributories *inter se*, as well for the payment of the co.'s debts & the costs of winding up.—WELTON v. SAFFERY, [1897] A. C. 299; 66 L. J. Ch. 362; 76 L. T. 505; 45 W. R. 508; 13 T. L. R. 340; 41 Sol. Jo. 437; 4 Mans. 269, H. L.; *affg.* S. C. *sub nom.* Re RAILWAY TIME TABLES PUBLISHING Co., *Ex p.* WELTON, [1895] 1 Ch. 255, C. A.

Annotations:—As to (1) *Refd.* Mother Lode Consolidated Gold Mines v. Hill (1903), 19 T. L. R. 341; Mosely v. Koffyfontein Mines, [1904] 2 Ch. 108. As to (4) *Refd.* Welsh Whisky Distillery Co. (1900), 16 T. L. R. 246. As to (5) *Consd.* Randt Gold-Mining Co. v. New Balkis Eersteling (1901), 71 L. J. K. B. 346; Home & Foreign Investment & Agency Co., [1912] 1 Ch. 72. *Refd.* Bisgood v. Henderson's Transvaal Estates, [1908] 1 Ch. 743. *Generally, Mentd.* Re Peveril Gold Mines, [1898] 1 Ch. 122; Re Baring Gould & Sharplington Combined Pick & Shovel Syndicate (1899), 68 L. J. Ch. 429; Hickman v. Kent & Romney Marsh Sheep-Breeders' Assocn., [1915] 1 Ch. 881; Dibble v. Wilts & Somerset Farmers, [1923] 1 Ch. 342.

1818. — Contract registered under 1867 Act, s. 25.]—A limited co. may, where so authorised by its arts. of assocn., issue shares at a discount under a contract duly registered pursuant to sect. 25 of the above Act.—Re PLASKYNASTON TUBE Co. (1883), 23 Ch. D. 542.

Annotations:—*Dhld.* Re Addlestone Linoleum Co. (1887), 37 Ch. D. 191. N.F. Re Almada & Tinto Co. (1888), 57 L. J. Ch. 706.

1819. — — — — —.]—Re ALMADA & TIRITO Co., No. 1941, *post*.

1820. — — — — —.]—The liquidator of a co. in voluntary liquidation entered into an agreement, under 1862 Act, s. 161, for the sale of its property to a new co., part of the consideration being the issue to each shareholder of the old co. of one share of £1 in the new co., with 15s. credited as paid up thereon, in exchange for each fully paid-up share of £1 in the old co. held by such shareholder, & that the remaining £5 per share should be payable by the allottee at the times mentioned in the agreement. The whole of the shares in the new co., 500,000 in number, were issued to the shareholders in the old co. in the manner mentioned

in the agreement. Prior to their issue a contract providing for their being issued in that way was filed with the Registrar of Joint-Stock Cos., under 1867 Act, s. 25. The co. afterwards increased its capital by the creation of 500,000 more shares of £1 each, of which 50,000 were issued as fully paid up as the consideration for the purchase of other property by the co., & 240,000 were issued at a discount of 15s. per share, a contract being in each case filed, prior to the issue, with the Registrar of Joint-Stock Cos. After this had been done the co. passed a special resolution for the reduction of the capital by cancelling paid-up capital to the extent of 15s. per share, as having been lost or being unrepresented by available assets. The co. petitioned for the confirmation of the resolution by the ct. There was no evidence for any loss of capital otherwise than by reason of the issue of the shares at a discount:—*Held*: the issue of the shares at a discount was illegal, & the shareholders were still liable to the extent of 15s. per share & therefore the proposed reduction of capital could not be confirmed by the ct.—Re NEW CHILE GOLD MINING Co. (1888), 38 Ch. D. 475; 57 L. J. Ch. 1042; 59 L. T. 506; 36 W. R. 909; 4 T. L. R. 430.

1821. — — — — —.]—(1) A co. limited by shares under the Cos. Acts has no power to issue shares at a discount; nor does a registered agreement, filed under 1867 Act, s. 25, make such an issue good.

(2) (LORD WATSON & LORD HERSCHELL). Shareholders of a limited co. have power to resolve that no call shall be made upon new shares except in liquidation, & then only for the purpose of paying debts & expenses of liquidation.—OOREGUM GOLD MINING Co. OF INDIA v. ROPER, WALLROTH v. ROPER, [1892] A. C. 125; 61 L. J. Ch. 337; 66 L. T. 427; 41 W. R. 90; 8 T. L. R. 436; 36 Sol. Jo. 344, H. L.

Annotations:—As to (1) *Apld.* Re Eddystone Marine Insee., [1893] 3 Ch. 9; Welton v. Saffery, [1897] A. C. 299. *Consd.* Re Wragg, [1897] 1 Ch. 796; Bellerby v. Rowland & Marwood's S.S. Co., [1902] 2 Ch. 14. *Distd.* Chapman v. Great Central Freehold Mines (1905), 22 T. L. R. 90. *Refd.* Webb v. Shropshire Rys., [1893] 3 Ch. 307; Re Kharaskhoma Exploring & Prospecting Syndicate, [1897] 2 Ch. 451; Re Frost, [1899] 2 Ch. 207; Randt Gold-Mining Co. v. New Balkis Eersteling (1901), 71 L. J. K. B. 346; Hilder v. Dexter, [1902] A. C. 474; Jarrah Timber & Wood Paving Corp'n. v. Samuel (1903), 88 L. T. 106; Mother Lode Consolidated Gold Mines v. Hill (1903), 19 T. L. R. 341; Mosely v. Koffyfontein Mines, [1904] 2 Ch. 108; Rowell v. Rowell, [1912] 2 Ch. 609; Hong-Kong & China Gas Co. v. Glen, [1914] 1 Ch. 527. As to (2) *Consd.* Re Pioneers of Mashonaland Syndicate, [1893] 1 Ch. 731. *Refd.* Re Mayfair Property Co., Bartlett v. Mayfair Property Co., [1898] 2 Ch. 28. *Generally, Mentd.* Lock v. Queensland Investment & Land Mortgage Co., [1896] 1 Ch. 397; Larocque v. Beauchemin, [1897] A. C. 358; Re Innes, [1903] 2 Ch. 254; Dominion of Canada General Trading & Investment Syndicate v. Brigstocke, [1911] 2 K. B. 648; Corfield v. Buchanan, Cory v. Maritime Insee. (1913), 29 T. L. R. 258; I. R. Comrs. v. Blott, I. R. Comrs. v. Greenwood, [1921] 2 A. C. 171; Dibble v. Wilts & Somerset Farmers, [1923] 1 Ch. 342.

1822. — — — — —.]—Re WRAGG, LTD., No. 1928, *post*.

1823. Issue of bonus shares—To persons taking debentures.]—Re RAILWAY TIME TABLES PUBLISHING Co., LTD., No. 1943, *post*.

make any further payment:—*Held*: (1) the issue by a no-liability co. of shares at a discount is lawful; (2) a shareholder in such a co. is under legal obligation to pay the amount which he has agreed to pay in order to acquire the shares, for calls subsequently made upon him as shareholder; (3) the co. in liquidation was entitled to recover from deft. the unpaid instalment due in respect of the shares allotted to him.—NEW GOOD HOPE CONSOLIDATED GOLD MINES, NO LIABILITY v. STUTTERD, [1916] V. L. R.

580.—AUS.

k. — — — — — Issue by company incorporated under provincial Act.]—(1) The directors of a joint-stock co. incorporated in Manitoba have no powers under the provisions of The Manitoba Joint Stock Companies Incorporation Act to make allotments of the capital stock of the co. at a rate per share below the face value, & any bye-law or resolution of the directors assuming to make such allotment without the sanction of a general

meeting of shareholders of the co. is invalid.

(2) Where shares in the capital stock of a joint-stock co. have been illegally issued below par the holder of the shares is not thereby relieved from liability for calls for the unpaid balance of their par value.—NORTH WEST ELECTRIC Co. v. WALSH (1898), 29 S. C. R. 33.—CAN.

l. — — — — — Under power taken by memorandum.]—A co. incorporated under Companies Act, 1862, assumed

Sect. 20.—Shares issued or credited as fully or partly paid: Sub-sect. 1, A., B. & C.]

1824. Under reconstruction scheme.]—Where shareholders in an old co. which is being reconstructed do not apply for shares in the new, to which under the scheme they are entitled with a certain sum credited as paid up thereon, the directors cannot issue the unapplied for shares to the public credited as partly paid up.—*CLARKE v. SUNBURST GOLD MINING CO., LTD.* (1896), 12 T. L. R. 411.

Reconstruction, generally, see Sect. 37, sub-sect. 13, *post*.

B. What constitutes.

1825. Issue in respect of debt owing by company—Plus interest.]—An agreement was entered into between a joint-stock co. & C. whereby it was agreed that the money expended by C. upon certain works should be a debt from the co. to him, & should at his option be a debt payable on demand, with interest at 15 per cent. *per annum* on each item, or a debt agreed to be extinguished by the allotment to C. of fully paid-up shares of a nominal amount equal to the money expended up to Dec. 31, 1887, without interest, but with the addition of 15 per cent. of such sum. The agreement was filed with the Registrar of Joint-Stock Cos. C. elected to take shares equal in nominal value to the amount expended by him with 15 per cent. addition, & they were accordingly allotted to him. He subsequently moved that the register of shareholders of the co. might be rectified by the removal of his name, on the ground that the transaction amounted to an issue of shares at a discount, & was therefore unlawful:—*Held*: the shares having been issued with an addition of 15 per cent. beyond the amount expended by C. were issued in respect of something which was not entirely money due, & therefore were issued at a discount & the register must be rectified.—*Re MIDLAND ELECTRIC LIGHT & POWER CO., LTD.* (1889), 60 L. T. 666; 37 W. R. 471; 5 T. L. R. 373.

1826. Commission on underwriting.]—A. agreed by letter to "underwrite at 15 per cent. discount" a certain number of shares to be issued by a new co., the co. undertaking that all applications for shares received within a specified time should be allotted in full out of the shares underwritten by A.; & A. further agreed to pay within the specified time the application money on the balance of the shares not applied for by the public. The evidence of witnesses expert in such transactions showed that "underwrite" in that connection meant

"agree to take so many of the shares underwritten as were not applied for by the public," & that it did not mean merely "agree to place in the market." A. repudiated the allotment to him by the co. of that portion of the shares which was not taken by the public. On the co. shortly afterwards going into liquidation, A. was placed on the list of contributories in respect of the shares not taken by the public:—*Held*: (1) the true meaning of the contract was that A. was himself to take, without making any further application for allotment, all the shares not taken by the public, & he was to do this in consideration of receiving a commission of 15 per cent. on the whole number of shares he had agreed to underwrite; (2) the term "discount" was used inaccurately, & the agreement did not really mean that the shares were to be issued "at a discount," which would have been *ultra vires*, & A. was therefore rightly placed on the list of contributories in respect of that portion of those shares which were not taken by the public.—*Re LICENSED VICTUALLERS' MUTUAL TRADING ASSOCN., Ex p. AUDAIN* (1889), 42 Ch. D. 1; 58 L. J. Ch. 467; 60 L. T. 684; 37 W. R. 674; 5 T. L. R. 369; *sub nom. Re LICENSED VICTUALLERS' MUTUAL TRADING ASSOCN., HOLLOWAY'S CASE*, 1 Meg. 180, C. A.

Annotations:—As to (1) Distd. Re Harvey's Oyster Co., Ormerod's Case, [1894] 2 Ch. 474. *Appld. Re London-Paris Financial & Mining Corpn.* (1897), 13 T. L. R. 331. *Consd. Re Greater Britain Insce. Corpn., Ex p. Brockdorff* (1920), 124 L. T. 194. *Reid. Moir v. Marten* (1891), 7 T. L. R. 330; *Re Globe Blocks Gold Mining Co.* (1895), 12 T. L. R. 92; *Re Hemp, Yarn, & Cordage Co., Hindley's Case*, [1896] 2 Ch. 121; *Re London-Paris Financial Mining Corpn.* (1897), 13 T. L. R. 569. *As to (2) Reid. Re Greater Britain Insce. Corpn., Ex p. Brockdorff* (1920), 124 L. T. 194. *Generally, Mentd. Sangster v. Netter* (1893), 9 T. L. R. 441.

See, generally, Sect. 11, *ante*.

1827. Reorganisation of company—Acquisition of shares in new company—Special terms offered to dissenting shareholders.]—A new co. was incorporated for the purpose of acquiring the business & liabilities & assets of an old co. on the terms that for every five shares of 5s. in the old co. one of the shares of 30s. in the new co. should be allotted with 25s. credited as paid thereon, & a contract was duly registered. Some of the shareholders of the old co. having declined to exercise their option of taking shares in the new co., the new co. proposed to allow them to receive shares in the new co. credited as having 25s. paid up thereon, on their paying 10s. for each, & also a further 1s., such further sum to be taken as in reduction of 1s. of the 5s. unpaid on the 30s. share. No contract for the issue of the shares on these terms was ever registered. A shareholder in the new co. who had

power, by its memorandum of assocn., to issue shares at a discount:—*Held*: the power was invalid as contrary to law.—*TWIGG v. THUNDER HILL MINING CO.* (1895), 4 B. C. R. 61.—CAN.

PART III. SECT. 20, SUB-SECT. 1.—B.

m. Original subscription at full nominal value—Illusory payment of balance.]—*Pltf.*, a creditor of a co. incorporated by letters patent, sued *deft.*, a shareholder, who pleaded that there was nothing due upon his stock. There were nine shareholders, two of whom held a patent right under which the co. were to work. *Deft.* held \$5,000 stock, on which he had paid in cash \$1,000. It was arranged between the patentees & the other shareholders, that the latter should pay an additional 10 per cent on their stock, making 20 per cent, in consideration of which the patentees were to pay up the balance of the unpaid stock of the seven shareholders. Thereafter each of the seven gave his cheque to the

secretary for the balance of his unpaid stock, which the secretary passed on to the patentees, who accepted the cheques as part-payment of a claim they had against the co. & gave receipts to the co. for the amount. The patentees then handed the cheques & receipts to the secretary, who returned the cheques to the shareholders by whom they were given:—*Held*: this transaction was not a payment in full of the stock, & *deft.* was liable.—*SCALES v. IRWIN* (1874), 34 U. C. R. 545.—CAN.

n. — Subsequent allowance of discount.]—To attempt to make partially paid-up shares in the capital stock of a co. paid-up shares by an allowance of a discount to the holders thereof, is *prima facie* illegal, & a proviso in the Act of incorporation "that no bye-law for the allotment or sale of stock at any greater discount than that which has been previously authorised at a general meeting" is not wide enough impliedly to authorise

the allowance of such a discount on shares which were originally subscribed for at their full nominal value.—*Re ONTARIO EXPRESS & TRANSPORTATION CO.* (1894), 21 A. R. 646.—CAN.

o. — Part price returned at same time — As consideration for future services.]—Where shares in a co. incorporated under Dominion Joint Stock Cos. Act, R. S. C., c. 119, were applied for, & appets. paid to the co. an amount equal to the face value of the shares, but at the same time received from the co. a portion of the price as alleged consideration for services to be rendered by them to the co. at a future date:—*Held*: in a judgment creditor's action, the shares, to the extent of the amounts so allowed, must be treated as unpaid shares.—*UNION BANK v. MORRIS* (1900), 27 A. R. 396; 31 S. C. R. 594.—CAN.

p. Issue to, & transfer by promoter by same instrument—Advance to company by transferee as consideration — Transferee not shareholder at discount]

had shares allotted to him on the terms last mentioned, applied to have his name removed from the register of shareholders on the ground that the issue of the shares at a discount was illegal:—*Held*: the agreement under which the shares were issued to appct. was void, as the shares were issued at a discount; & therefore appct. was entitled to the relief which he claimed.—*Re ZOEDONE CO., LTD., Ex p. HIGGINS* (1889), 60 L. T. 383; 1 Meg. 158.

1828. Cancellation of shares subject to liability—Issue of share of like nominal value fully paid.]—A co. in order to encourage further subscription for its shares, & with the consent of all the shareholders, duly resolved to reduce its capital by cancelling all its deferred shares, to which onerous rights attached, & then, after increasing its ordinary share capital, to issue thereout to the holder of each deferred share so cancelled 100 ordinary shares as fully paid & of a nominal value per share equal to that of the cancelled share. Upon petition to the ct. to confirm the resolution:—*Held*: what the ct. was asked to sanction, although in form a reduction of capital, was in fact an increase of capital, & the scheme, regarded as a whole, involved an issue at a discount of 99 out of every 100 shares issued in respect of each cancelled share, & was *ultra vires*; & in the circumstances the ct. could not confirm the resolution.—*Re DEVELOPMENT CO. OF CENTRAL & WEST AFRICA*, [1902] 1 Ch. 547; 71 L. J. Ch. 310; 86 L. T. 323; 50 W. R. 456; 18 T. L. R. 337; 9 Mans. 151.

1829. Shares issued at par—70 per cent. commission allowed to subscribers.]—*KEATINGE v. PARINGA CONSOLIDATED MINES, LTD.* (1902), 18 T. L. R. 266; *sub nom. KEATINGE v. PARINGA CONSOLIDATED MINES, LTD., EDGCOMBE v. PARINGA CONSOLIDATED MINES, LTD.*, 46 Sol. Jo. 246.

1830. Sole right of supplying goods to company.]—*SERVAIS BOUCHARD v. PRINCE'S HALL RESTAURANT, LTD.* (1904), 20 T. L. R. 574, C. A.

1831. Issue of debentures at discount—Convertible into shares at par.]—A co. proposed to issue to its shareholders debentures at a discount of 20 per cent., repayable on Nov. 1, 1909, upon the terms of a circular whereby the registered holder was to have the right at any time prior to May 1, 1909, to exchange his debentures for fully-paid shares in the co. at the rate of one £1 fully-paid share for every £1 of the nominal amount of the debentures; & by the conditions of the debentures, in the event of the debenture-holder giving to the co. a written demand for shares in exercise of this

right, the principal moneys were to become immediately repayable:—*Held*: the proposed issue of debentures was void, inasmuch as it was capable of being used as a means of issuing shares at a discount.—*MOSELY v. KOFFYFONTEIN MINES, LTD.*, [1904] 2 Ch. 108; 73 L. J. Ch. 569; 91 L. T. 266; 53 W. R. 140; 20 T. L. R. 557; 48 Sol. Jo. 507; 11 Mans. 294, C. A.

See, generally, Sect. 34, sub-sect. 3, F. (c), post.

1832. Transfer of vendor's shares fully paid—In consideration of taking up other shares.]—A co. called the vendor co. sold a mining property to a limited co. called the G. Co. in consideration of fully-paid shares in the G. Co. A person acting with the authority of both cos. entered into an agreement with deft. whereby the latter agreed to take 5,000 £1 shares in the G. Co. at the price of £5,000, & in addition he was to have a transfer from the vendor co. of 15,000 fully-paid shares in the G. Co., being part of the shares belonging to the vendor co. as the purchase price of the mine:—*Held*: this was not an issue of shares by the G. Co. at a discount, & the transaction was valid.—*CHAPMAN v. GREAT CENTRAL FREEHOLD MINES, LTD.* (1905), 22 T. L. R. 90, P. C.

1833. Bonds repayable with bonus—Bonus extinguished by issue of fully-paid shares.]—*FAMATINA DEVELOPMENT CORPN., LTD. v. BURY*, No. 1860, *post*.

1834. Issue in consideration of advance to company.]—A director made a loan to his co. of £100 in consideration of his being allowed to take up 200 £1 shares in the co. at 10s. each. The shares were registered in his name, but he was unaware of the legal effect of the transaction:—*Held*: the transaction was a contract to issue shares at a discount, & therefore illegal, & the director, by assenting to the allotment, made himself liable to pay the full nominal amount of the shares in cash.—*Re PILKIN (JAMES) & CO., LTD.* (1916), 85 L. J. Ch. 318; *sub nom. Re PITKIN (JAMES) & CO., LTD.*, 114 L. T. 673; 60 Sol. Jo. 369.

C. Effect.

1835. Position of holder—On winding up—Shares in fact not fully paid up.]—The arts. of assocn. of a joint-stock co. stated that certain shares subscribed for by C. should be considered as paid up. By a deed of even date with the arts. of assocn., C. assigned his patent to the co. for a nominal consideration of 10s., there being also a parol agreement that the delivery of the paid-up shares was the consideration for the assignment.

—The promoters of the co. agreed to allot 127,500 out of its total capital of 250,000 \$10 shares, all marked fully-paid, to one of their number C., in consideration of his procuring A. to advance \$25,000 to the co., & of certain other services, & by the same instrument C. agreed to transfer 85,000 of such shares to A. in consideration of the \$25,000:—*Held*: A. was a purchaser of the 85,000 shares from C., who held them as fully paid up, & could not be treated as a purchaser from the co. of the shares at a discount, & could not be forced, at the instance of another shareholder, to contribute to its funds any part of the difference between the \$25,000 which he paid for them, & their face value.—*FRASER RIVER MINING & DREDGING CO., LTD. v. GALLAGHER* (1896), 5 B. C. R. 82.—CAN.

q. Allotment to man of straw—To knowledge of company.]—Deft. co. allotted 40,000 shares of \$10 each to a man of no means who did not pay for them & was not expected to do so:

—*Held*: the allotment was a "colourable transaction" to enable the co. to issue shares at a discount, & *ultra vires*.—*LINDSAY v. IMPERIAL STEEL & WIRE CO.* (1910), 18 O. W. R. 408; 21 O. L. R. 375; 1 O. W. N. 930.—CAN.

r. Issue of new one pound shares—In exchange for same number of less nominal value.]—In exchange for 20,000 shares of 5s. each a co. issued 20,000 new shares of £1 each:—*Held*: (1) persons who, with knowledge of the facts, took new for old shares, had taken them with only 5s. paid, & were therefore liable on a winding up to be put on the list of contributories for the unpaid balance; (2) the fact that the assets were sufficient to pay the debts made no difference, for if shares are issued at a discount, their holders are liable to pay for them in full to secure the adjustment of the rights of contributories *inter se* in the co.'s assets.—*SETA DIAMONDS, LTD. (LIQUIDATOR) v. KNOX*, [1915] W. L. D. 109.—S. AF.

PART III. SECT. 20, SUB-SECT. 1.—C.

s. Position of holder—On winding up—Effect of reincorporation of company subsequent to issue.]—A joint-stock limited liability co. being indebted in a small amount, which was afterwards paid off, & having at the time assets worth more than double the amount of its issued stock & all other liabilities, allotted a number of shares to its shareholders, at a discount. Subsequently the co. was freshly incorporated with the shares so issued treated as fully-paid, & afterwards falling into difficulties, was put into liquidation under R. S. C., c. 129:—*Held*: these shareholders were not liable as contributories.—*Re OWEN SOUND DRY DOCK SHIPBUILDING & NAVIGATION CO.* (1891), 21 O. R. 349.—CAN.

t. — — — Mistake of law not ground for relief.]—A co. incorporated under Ontario Companies Act, R. S. O. 1097, c. 191, issued 7 shares at a discount, as fully-paid, to resp., who had

Sect. 20.—Shares issued or credited as fully or partly paid: Sub-sect. 1, C.; sub-sect. 2, A. & B. (a).]

C. afterwards transferred a portion of these shares to L.:—*Held*: L. was not liable to be placed upon the list of contributories in the winding up of the co.—*Re BRITISH & FOREIGN CORK CO., LEIFCHILD'S CASE* (1865), L. R. 1 Eq. 231; 13 L. T. 267; 11 Jur. N. S. 941; 14 W. R. 22.

Annotations:—Reid. Re Baglan Hall Colliery Co. (1870), 5 Ch. App. 349, n.; Re Britannia Permanent Benefit Bldg. Soc. (1891), 65 L. T. 196; Re Wragg, [1897] 1 Ch. 796.

1836. ——— Distribution of assets.]—A. co. being in need of further capital issued shares at a discount. The original shares were fully paid. In the winding up there were surplus assets:—*Held*: the assets ought to be distributed upon the footing of returning to the holders of the original shares a sum sufficient to place the holders of both classes of shares upon an equality as to the amount actually paid upon the shares of each, & of dividing the balance in proportion to the shares.—*Re WEYMOUTH & CHANNEL ISLANDS STEAM PACKET CO.*, [1891] 1 Ch. 66; 60 L. J. Ch. 93; 63 L. T. 686; 39 W. R. 49; 7 T. L. R. 67; 2 Meg. 366, C. A.

Annotations:—Reid. Re Wakefield Rolling Stock Co., [1892] 3 Ch. 165; Welton v. Saffery, [1897] A. C. 299. Mentd. Hong Kong & China Gas Co. v. Glen, [1914] 1 Ch. 527.

1837. ———.]—By a preliminary agree-ment made before the incorporation of a co. it was agreed that 75 shares fully paid up should be allotted to the vendors as the purchase price of the property to be sold to the co., leaving 25 shares in the co. to be subscribed for in cash. This agreement was adopted by the co. after incorporation, with the modifications that £5,000 in cash, omitted by mistake from the preliminary agreement, should be paid to the vendors in addition to the 75 shares, & that the vendors should distribute 25 out of the 75 shares ratably among the cash subscribers of the first-mentioned 25 cash shares. The co. accordingly allotted 25 of the 75 vendors' shares to the cash subscribers, the certificates of title stating that the shares were fully paid up. There was no question of 1867 Act, s. 25, not being complied with. In the winding up of the co. the liquidator applied to have the allottees of the 25 distributed shares placed on the list of contributories. There was no question of any fraud or impropriety having been committed:—*Held*: the holders of the 25 distributed shares were liable to contribute the full nominal amount of such shares in cash.—*Re ALKALINE REDUCTION SYNDICATE, LTD.* (1896), 45 W. R. 10; 12 T. L. R. 534; 40 Sol. Jo. 668.

paid for 5 shares only, & who had acquiesced & acted as a holder of 7 shares:—*Held*: he was not entitled, on the ground of mistake, to be relieved from his position as a shareholder of the extra shares, & was liable upon the winding up, as a contributory in respect thereof.—*Re MCGILL CHAIR CO., MUNRO'S CASE* (1912), 26 O. L. R. 254; 21 O. W. R. 921; 3 O. W. N. 1074; 5 D. L. R. 75.—**CAN.**

a. ———.]—Unless the procedure required by Companies Act, R. S. M. 1913, s. 45 is complied with, a co. cannot issue shares at a discount, & if it does so, the holder is liable for the full amount unpaid, of the nominal value thereof. His misapprehension of the legal effect of the arrangement does not relieve him.—*BANK OF OTTAWA v. JONES* (1919), 1 W. W. R. 4.—**CAN.**

1836 i. ——— Distribution of assets.]—Re NEWTOWNARDS GAS CO., Ex p. STEPHENSON (1885), L. R. 15 Ir. 51.—**IR.**

1838. ——— Effect of special provision in articles.]—WELTON v. SAFFERY, No. 1817, ante.

1839. ——— Liability to pay in full—Though contract registered under 1867 Act, s. 25.]—A limited co. issued part of its capital in £10 preference shares at par, every present shareholder to be entitled to one preference share at 25 per cent. discount for each ordinary share held by him. Some of the shareholders took these preference shares, paid the £7 10s. per share, & had certificates given them stating them to be holders of shares fully paid up. No contract was registered under sect. 25 of the above Act. The co. having been ordered to be wound up, the preference shareholders who had taken their shares at a discount were placed on the list of contributories, & calls for the unpaid £2 10s. per share were made on them & paid. Some of them then applied for leave to prove in the winding up "in damages for breach of contract or otherwise in respect of the issue of the preference shares:—"*Held*: (KAY, J.) if there were any claim for damages the case fell within 1862 Act, s. 38 (7), but appcts. could not have maintained an action for damages against the co. if it had not been wound up, & could not prove for damages in the winding up, either against other creditors, or shareholders, or the co. On appeal:—*Held*: if the contract between the co. & the shareholders was to be treated as a contract to issue fully paid-up shares, the shareholders might on finding out that the shares were not in point of law fully paid up, have rescinded the contract to take them; but as after an order to wind up there could be no rescission, the shareholders had no remedy, it being settled by *Houldsworth v. City of Glasgow Bank*, No. 1553, *ante*, that a shareholder retaining his shares cannot bring an action against the co. for misrepresentations by which he was induced to take them, & the ct. being of opinion that no substantial distinction could be drawn for this purpose between misrepresentation & a breach of a contract that the shares should be fully paid-up shares.

Semble: if the contract was to issue shares at a discount, the allottees took the shares subject to a liability to pay their nominal amount in full, & could not be exonerated from this liability even by a registered contract.—*Re ADDLESTONE LINOLEUM CO.* (1887), 37 Ch. D. 191; 57 L. J. Ch. 249; *sub nom. Re ADDLESTONE LINOLEUM CO., LTD., Ex p. BENSON*, 58 L. T. 428; 36 W. R. 227; 4 T. L. R. 140, C. A.

Annotations:—Apld. Re New Chile Gold Mining Co. (1888), 38 Ch. D. 475. Reid. Re Almada & Tiritto Co. (1888), 38 Ch. D. 415; Re London Celluloid Co., Bayley & Han-

b. ——— On agreement to take discounted shares—When repudiation justified.]—If a man agrees to purchase from a co. paid-up shares at a price less than their nominal value, he may repudiate the agreement at any time before he actually becomes a shareholder on the ground that the co. cannot legally give him what he bargained for. The moment, however, he does any acts, such as accepting certificates, attending meetings, receiving dividends, etc., which show that the co. treated him as a shareholder, & that he acquiesced in being so treated, he is liable for the amount unpaid on his shares.—BANK OF OTTAWA v. JONES, [1919] 1 W. W. R. 4.—CAN.****

c. ——— Right to rectification of register—& extinguishment of liability on promissory note—Given in payment.]—Where the shares of a co. have been issued at a discount in face of statutory prohibition to do so, such issue is *ultra vires* of the co. & therefore illegal & void, & the person to whom they

are issued is not liable to the co. on a promissory note given for the shares. Such person may become liable on a new implied contract arising from his assent to his name being placed & continued on the register in respect of the shares, but this does not validate the original transaction & cannot be relied on to fix him with liability upon the note.—*PRINCESS COPPER MINES, LTD. v. TRELLE*, [1922] 3 W. W. R. 59; 65 D. L. R. 53.—**CAN.**

d. ——— & repayment of amount paid up.]—The memorandum & arts. of assocn. of a co. registered under the Cos. Acts contained provisions to the effect that the co. might issue its shares "at par, or at a discount, or at a premium." A person to whom new shares had been allotted at a discount presented a petition to the ct. for rectification of the register by the deletion of his name therefrom, & for an order on the co. for repayment of the amount paid by him on his shares. The ct. granted the prayer of the petition on the ground

bury's Cases (1888), 59 L. T. 109; *Re Railway Time Tables Publishing Co., Ex p. Sandys* (1889), 42 Ch. D. 98; *Re Eddystone Marine Inscoe.*, [1893] 3 Ch. 9; *Welton v. Saffery*, [1897] A. C. 299; *Re Wragg*, [1897] 1 Ch. 796. *Mentd. Re Railway Time Tables Publishing Co., Ex p. Welton*, [1899] 1 Ch. 108.

1840. — Application for fully-paid shares—*Repudiation.*—*Re ADDLESTONE LINOLEUM Co.*, No. 1839, *ante*.

1841. — Issue supposedly lawful—Mistake of law.]—In Jan. 1887, 673 £5 shares in the R. Co. were allotted to S. at a discount of £4 10s. per share. At this time, & until Dec. 1887, it was generally believed that the issue of shares at a discount was lawful. In Mar. 1887, she sold 150 of these shares to a purchaser for value, without notice that the shares were issued at a discount, & under the belief that they were fully paid up; but she subsequently took back the 150 shares from the purchaser, in exchange for 150 fully paid-up shares in the same co. In Apr. & Aug. 1887, she attempted to part with some of the remaining shares. In Jan. 1888, she handed in proxies to be used at a meeting. In Feb. 1888, she wrote to the secretary of the co. protesting against a proposed new issue of shares at a discount on the ground of its illegality. In June, 1888, she repudiated the shares, & in Nov. 1888, she applied to the ct. for removal of her name from the register in respect of the 673 shares, & for repayment of the amount paid thereon:—*Held*: (1) as regards the 150 shares, inasmuch as she had repurchased them from a purchaser for value without notice, she was entitled to treat them as fully paid up, & her application failed; (2) S. having by her conduct assented to keep the shares other than the 150 shares, although under a misapprehension as to the legal effect of the contract, was bound to pay the full amount thereon, & was not entitled to any relief.—*Re RAILWAY TIME TABLES PUBLISHING Co., Ex p. SANDYS* (1889), 42 Ch. D. 98; 58 L. J. Ch. 504; 61 L. T. 94; 37 W. R. 531; 5 T. L. R. 397; 1 Meg. 208, C. A.

Annotations:—As to (1) *Apld. Re Veuve Monnier, Ex p. Bloomenthal*, [1896] 2 Ch. 525. As to (2) *Apld. Re Briton Medical & General Life Assn.* (1889), 5 T. L. R. 502. *Distd. Re Macdonald*, [1894] 1 Ch. 89. *Consd. Re Pilkin* (1916), 85 L. J. Ch. 318. *Refd. Re Eddystone Marine Inscoe.*, [1893] 3 Ch. 9; *Mother Lode Consolidated Gold Mines v. Hill* (1903), 19 T. L. R. 341. *Generally, Refd. Re Johannesburg Hotel Co., Ex p. Zoutpansberg Prospecting Co.*, [1891] 1 Ch. 119.

Position of company—Company estopped from asserting liability.—*See Sub-sect. 3, C. (d), iv., post.*

— On petition for winding up—Company with surplus if discount paid up.]—*See No. 5398, post.*

1842. **Position of directors—Liable for amount of discount.**—Directors of a mining co. engaged an engineer to report upon a mineral property of the co. for which they agreed to give him the option for a fortnight of an allotment of shares in the co. at a discount. At the date of the agreement the shares were at a discount, but they rose to a premium before the option expired:—*Held*: it was not competent for the directors to issue the shares at a discount, & they were liable for the difference between the par value of the shares & the price at which they were allotted, but in the absence of fraud the measure of damages was the difference between the price of allotment & the value of the shares at the date of the agreement, & not at the expiration of the option.—*HIRSCHE v. SIMS*, [1894] A. C. 654; 64 L. J. P. C. 1; 71 L. T. 357; 10 T. L. R. 616; 11 R. 330, P. C.

Annotations:—*Refd. Welton v. Saffery*, [1897] A. C. 299; *Lagunas Nitrate Co. v. Lagunas Syndicate*, [1899] 2 Ch. 392. *Mentd. Stamp Duties Comr. v. Broken Hill South Extd.*, [1911] A. C. 439.

1843. **As unauthorised reduction of capital.**—*Re LONDON CELLULOID Co.*, No. 1848, *post*.

SUB-SECT. 2.—LIABILITY OF SHAREHOLDER.

A. In General.

As promoter.—*See Sect. 1, sub-sect. 5, A., ante.*

As subscriber to memorandum.—*See Sect. 7, sub-sect. 6, A., ante.*

Under 1867 Act, s. 25.—*See Sub-sect. 3, post.*

In respect of director's qualification shares.—*See Sect. 28, sub-sect. 2, C., post.*

B. Shareholder with Notice that Shares not Fully Paid.

(a) In General.

1844. **Issue of bonus shares ultra vires—Shares non-existent.**—*Re HOME & FOREIGN INVESTMENT & AGENCY Co., LTD.*, No. 1448, *ante*.

that the provision in the memorandum of association with regard to the issue of shares at a discount was illegal, & that such issue of shares was *ultra vires* of the co.—*KLEUCK v. EAST INDIA CO. FOR EXPLORATION & MINING, LTD.* (1888), 16 R. (Ct. of Sess.) 271.—SCOT.

e. **On transfer with notice—Liability of transferor—For amount of discount—Evidence.**—*Deft.* was a shareholder in a co., of which some of the capital stock subscribed for had not been taken up. These shares were offered to the stockbrokers at 60c. in the dollar, & *deft.* took some of them. *Pltf.* agreed to purchase *deft.*'s shares at 67½c. in the dollar, & the following transfer was executed: "For value received, S. transfers & assigns to C. 14 shares, on each of which has been paid \$500, amounting to the sum of \$7,000, in the capital stock of the N. Co." etc. *Pltf.* sued *deft.* to recover the difference:—*Held*: evidence was admissible to show that at the time of the sale *pltf.* was told that these shares had been issued at 60c., so that they were paid up in full only as between the directors & the shareholders; for this was evidence to show what was the subject matter of the contract, & that the transfer was not the concluded bargain between

the parties; & *pltf.* could not recover.—*CLARK v. SANFORD* (1875), 25 C. P. 256.—CAN.

f. **On transfer without notice—Liability of transferee—To execution creditor of company.**—Certain shares in a co. incorporated by letters patent were issued, & allotted by a resolution passed at a special general meeting of the shareholders to themselves in proportion to the number of shares held by them at that time at 40 per cent discount deducted from their nominal value & scrip was issued for them as fully-paid. G. was allotted 9 shares which were subsequently assigned to *applt.* for value as fully-paid:—*Held*: a person purchasing shares in good faith without notice from an original shareholder as shares fully-paid is not liable to an execution creditor of the co. whose execution has been returned *nulla bona* for the amount unpaid upon the shares.—*MCCRACKEN v. MCINTYRE* (1877), 1 S. C. R. 479.—CAN.

g. — — — **To company—Estoppel.**—A portion of the shares in a joint-stock co., purporting on the face of their certificates to be of a certain par value & paid up, were allotted to three promoters. One of them sold part of his allotment at a

discount & had them transferred by the co. direct to the purchasers, who were not aware that the shares were not fully-paid:—*Held*: in an action by the co., the purchasers were not liable for the discount on such shares, inasmuch as the co. were bound by their statement in the certificates that the shares were "fully-paid & non-assessable."—*KETTLE RIVER MINES, LTD. v. BLEASDEL* (1900), 7 B. C. R. 507.—CAN.

PART III. SECT. 20, SUB-SECT. 2.—B. (a).

h. **Position of holder—Where title derived from purchaser without notice—Not liable as contributory.**—Twenty shares in a limited co. were originally allotted to A. as fully-paid, partly for work done & partly for work to be done for the co. The agreement under which the shares were so allotted was not registered as required by Act VI of 1882, s. 28. A sold 3 of these shares to D., who had no notice that they were not fully-paid. D. sold the 3 shares to G. who was the managing director of the co. The co. was wound up by the ct. At the date of the winding up, G. was holder of the 3 shares. In settling the list of contributories, the ct. ordered G.'s name to be placed on the list in respect of the 3 shares:—

Sect. 20.—Shares issued or credited as fully or partly paid: Sub-sect. 2, B. (a), (b) & (c), & C. (a) & (b) i.]

Under 1867 Act, s. 25.]—See Sub-sect. 3, C. (d) iv., post.

(b) *What constitutes Notice.*

1845. Constructive notice—Statement in certificate not verified.]—TURPIN'S CASE, [1877] W. N. 70.

1846. ———.]—A co. issued shares at a discount. In respect thereof a contract, in which the numbers of the shares were specified, was registered with the Registrar of Joint Stock Cos. A shareholder subsequently purchased shares in the open market, & the co. issued to him certificates, in which it was stated that the shares were fully paid up. The shares so purchased were part of the shares issued by the co. at a discount. The shareholder was aware that the co. had issued shares at a discount. He did not, however, search the register of joint-stock cos., & in fact, had no notice that the shares purchased by him had been improperly issued. In the winding up of the co. it was sought to place him on the list of contributories in respect of the shares:—*Held*: the shareholder, in omitting to search the register, had not been guilty of gross or culpable negligence, & consequently he ought not to be settled on the list.—*Re NEW CHILE GOLD MINING CO., LTD.* (1892), 68 L. T. 15; 3 R. 219.

1847. ——— Original allottee—Nominee of vendor.]—In 1867 R. agreed to sell three shares in a ship to A. for £246 to be paid in cash. Afterwards, at the request of A., R. agreed to accept, in lieu of cash, 24 fully paid-up £10 shares in a co. to which A. represented he was entitled. A. had agreed with the co. to sell to them for cash some shares belonging to him in a vessel, & the co. owed him money on other transactions. Afterwards A. agreed to accept, instead of cash, an allotment of fully paid-up shares in the co. He requested the co. to allot 24 of these shares direct to R., & this the co. did, entering the shares in their register in the name of R. as fully paid up by A.'s order in the co. No payment in cash was made for the shares, & no contract for payment otherwise than in cash was registered under 1867 Act, s. 25. R. afterwards applied to the co. for a certificate of the shares, & a certificate was given to him, which stated that the shares had been paid up in full. R. did not inquire of the co. as to how the payment had been made. The co. being in liquidation, the liquidator claimed payment of the full amount of the shares from R.:—*Held*: (1) as there was no registered agreement, the shares had not been paid for in cash, for at no moment of time was there a debt on the one side which could be set-off against a debt on the other; (2) R. was not a transferee but the original allottee of the shares, & took them with constructive notice of the arrangement between A. & the co.—*Re NEWPORT & SOUTH WALES SHIPOWNERS' CO., LTD., ROWLAND'S CASE* (1880), 42 L. T. 785, C. A.

1848. Transferee officer of company.]—An agreement was entered into between an English manufacturing co. & a French co. that the French co. should render to the English co. certain services, that in consideration of those services the English co. should transfer to the French co. or their nominees 1,000 shares of £10 each in the English co. to be credited as fully paid up, with a

provision that before they were issued the English co. should procure the agreement to be registered. The services were rendered & the 1,000 shares were allotted, as to 800 to the French co. & as to 200 to S., a nominee & a director of the French co. S. transferred the 200 shares to H., one of the directors of the English co., who afterwards transferred 100 of them to B., another of the directors. The agreement between the two cos. was never registered; but B. & H. deposed that the directors had given their solr. directions to register it, & that, until after the co. had been ordered to be wound up, they believed that it had been registered. Certificates for the 1,000 shares had been issued stating them to be fully paid up:—*Held*: the liquidator was not estopped from requiring B. & H. to pay calls as holders of shares on which nothing had been paid in cash, for that S., B., & H., knew all along that the shares had not been paid up in cash.—*Re LONDON CELLULOID CO.* (1888), 39 Ch. D. 190; 4 T. L. R. 572; *sub nom. Re LONDON CELLULOID CO., LTD., Ex p. BAYLEY & HANBURY*, 57 L. J. Ch. 843; 59 L. T. 109; 36 W. R. 673; 1 Meg. 45, C. A.

Annotations:—Consd. Re National Pure Water Engineering Co., Follett's Case (1892), 8 T. L. R. 499. *Reid. Re Railway Time Tables Publishing Co., Ex p. Sandys* (1889), 42 Ch. D. 98; *Re Eddystone Marine Insce.*, [1893] 3 Ch. 9; *Re African Gold Concessions & Development Co., Markham & Dartor's Case* (1899), 68 L. J. Ch. 215. *Mentd. Re Macdonald*, [1894] 1 Ch. 89.

1849. ——— Transferor without notice.]—A co. agreed to buy a colliery for £5,115, which was to be paid or satisfied, as to £2,000 to R., & as to £3,115 to H., & of the £2,000 the co. were to pay to R., £500 cash, & to satisfy the residue of £1,500 by issuing or transferring to R. 300 shares of £5 each, issued & registered as fully paid up, & as to the £3,115, the co. was to pay the same in cash to H., or at the option of either the co. or of H., to issue or transfer to H. 623 shares of £5 each, issued & registered as fully paid up. This contract, through the neglect of an agent, was never registered, but 300 shares, purporting to be fully paid up were issued to R. & 623 to H. Of these 623 shares, 450 were ultimately transferred, some through the hands of other transferees without notice from H., to R., & 134 to B. R. was chairman, & B. was solr. of the co. from its formation:—*Held*: such of the 623 shares as came to the hands of R. through transferees without notice, must be treated as fully paid up, & the fact that R. & B. were officers of the co. made no difference as to their title.—*Re STAPLEFORD COLLIERY CO., BARROW'S CASE* (1880), 14 Ch. D. 432; 49 L. J. Ch. 498; 42 L. T. 891, C. A.

Annotations:—Consd. Re London Celluloid Co. (1888), 39 Ch. D. 190; *Re Railway Time Tables Publishing Co., Ex p. Sandys* (1889), 42 Ch. D. 98; *Wilkes v. Spooner*, [1911] 2 K. B. 473. *Reid. R. v. S. E. Ry.* (1910), 74 J. P. 137; *Weston v. Fairbridge*, [1923] 1 K. B. 667. *Mentd. Ledbrook v. Passman* (1888), 57 L. J. Ch. 855; *Wallis v. Hands* (1893), 68 L. T. 428; *Gordon v. Holland*, *Holland v. Gordon* (1913), 82 L. J. P. C. 81.

1850. Partner in transferee firm director of company—No actual notice.]—C. K. & Co., a partnership firm, agreed to sell a ship to a co. for £1,500 & to take £1,000 in fully-paid shares. The transaction was carried out by the firm mortgaging the ship for £1,000, paying the money to the co., & then transferring the ship to the co. subject to the mtge. at the price of £500. The £1,000 was paid before any shares had been allotted. E., who was a promoter of the co., applied the money, without the knowledge or authority of the firm,

Held: G. was not liable as a contributory, for though G. was a managing director of the co., & as such must have known that the shares had been

issued as fully-paid up shares without complying with the above sect., he was not on that account estopped from taking advantage of the equitable rule

which protects a purchaser with notice taking from a purchaser without notice.—*Re GULABDAS BHAIJIAS* (1892), 1 L. R. 17 Bom. 672.—IND.

in paying 5s. per share payable on application on 4,000 shares for which he had applied. These shares, numbered 791 to 4790, were allotted to him & entered in the register with only 5s. paid. Subsequently K., one of the partners, became a director of the co., & 1,000 of E.'s shares were transferred to the firm. A certificate was issued by the co. to the firm that these shares, numbered 891 to 1890, were fully paid. The certificate was signed by two directors, of whom K. was one. The co. was being wound up compulsorily, & the liquidator put the firm on the list of contributories for 15s. on each of 1,000 shares:—*Held*: K. had no actual knowledge of the transaction & had not acted in collusion with E., & in that state of his knowledge the fact that he was a director & signed the certificate did not affect either him or his firm with notice of the facts or prevent them from relying on the estoppel created against the co. by the certificate.

A director is not necessarily affected with constructive notice, in the absence of actual knowledge, of the facts which appear in the books of the co.—*Re COASTERS, LTD.*, [1911] 1 Ch. 86; 80 L. J. Ch. 89; 103 L. T. 632; 18 Mans. 133.

1851. Certificates inscribed "Bonus."—*Re EDDYSTONE MARINE INSURANCE CO.* (1894), 10 T. L. R. 274; *sub nom. Re EDDYSTONE MARINE INSURANCE CO., BROWNING'S CASE*, 38 Sol. Jo. 253.

(c) *Onus of Proof.*

1852. Party alleging notice.—*BURKINSHAW v. NICOLLS*, No. 1953, *post*.

1853. On liquidator.—*Re HALL (A. W.) & Co.*, No. 1954, *post*.

C. *Exemption from Liability.*

(a) *Where Company Estopped from Asserting Liability.*

1854. By representation in prospectus.—A Scottish co., whose nominal capital was £105,000, announced that £100,000 had been paid up, & that only £5,000 could be called for. Relying upon this representation a gentleman, resident in

London, purchased, as a transferee, 300 shares, & paid his proportion of the outstanding £5,000 to the co. The liquidator alleged that this gentleman "knew, or ought to have known," that the co. was a bubble; & proposed to make a call upon him of £30 for each of his shares:—*Held*: the liquidator was wrong, the shareholder having done all that could legitimately be demanded of him under his contract.—*WATERHOUSE v. JAMIESON* (1870), L. R. 2 Sc. & Div. 29, H. L.

Annotations:—*Reid. Re London Celluloid Co.* (1888), 39 Ch. D. 190; *Re Veuve Monnier, Ex p. Bloomenthal*, [1896] 2 Ch. 525. *Mentd. Re Appletreewick Lead Mining Co.* (1874), L. R. 18 Eq. 95; *Burkinshaw v. Nicholls* (1878), 48 L. J. Ch. 179; *Re National Funds Assoc.* (1878), 10 Ch. D. 118; *Re Florence Land & Public Works Co., Nicol's Case, Tufnell & Ponsonby's Case* (1885), 29 Ch. D. 421; *Re Almada & Tiritto Co.* (1888), 38 Ch. D. 415; *Ooregum Gold Mining Co. of India v. Roper, Wallroth v. Roper*, [1892] A. C. 125; *Re Hemp, Yarn & Cordage Co., Hindley's Case* (1896), 3 Mans. 187; *A.-G. for Dominion of Canada v. Standard Trust Co. of New York*, [1911] A. C. 498.

By certificate.—*See Sect. 18, sub-sect. 3, ante.*

By certification of transfer.—*See, generally, Sect. 23, sub-sect. 7, post.*

(b) *By Payment.*

i. *In General.*

1855. Amount credited under compromise of action with third party.—(1) F. was the holder of fifty shares in the co., which had been issued before the 1867 Act came into operation, & on each of which £14 was unpaid. In 1868, W. brought an action against the co., which was compromised upon the terms that the co. should pay to W. £3,200, & should credit F. with £700 in respect of his shares so as to make them fully paid-up shares. The arrangement was carried out & certificates for fully paid-up shares were issued to F. The co. was afterwards wound up:—*Held*: there had been payment in full of the amount due upon F.'s shares, & therefore he was not a contributory.

Semble: 1867 Act, s. 25, is not retrospective so as to apply to shares taken before the commencement of the Act.

(2) When an order is made against an official liquidator with costs, he must pay the costs

PART III. SECT. 20, SUB-SECT. 2.—
C. (a).

k. *By concurring in transfer—To purchaser without notice.*—A portion of the shares in a joint-stock co., purporting on the face of the certificates to be of a certain par value & paid up in full, were allotted to three promoters. One of them sold part of his allotment at a discount & had them transferred by the co. directly to the purchasers, who were not aware that the shares were not fully paid. In an action by the co.:—*Held*: the purchasers were not liable for the amount unpaid on the shares.—*KETTLE RIVER MINES, LTD. v. BLEASDEL* (1900), 7 B. C. R. 507.—CAN.

l. *By representation of directors—Acting within apparent authority.*—A co. will be estopped from claiming payment for shares from persons whom the directors, acting within the apparent scope of their authority, have led into honestly buying the shares by representing such shares to have been fully paid up; & upon the winding up of the co. the liquidators will similarly be estopped.

The owner of a manufactory sold his business to the promoters of a co., & one of the terms of the agreement was that he should receive a certain number of fully paid shares in the co. The co. was floated, but the agreement was not filed in terms of Act 25 of 1892, s. 97. Thereafter the co. was ordered to be wound up:—*Held* as the co.

had issued the scrip for such vendor's shares as having been fully paid-up, the liquidators were not entitled to place the names of *bona fide* purchasers of such shares, without notice of any illegality, upon the list of contributories in respect of such shares.—*Re REYNOLDS' VEHICLE & HARNESS FACTORY, LTD.* (1907), 3 Buch. A. C. 74.—S. AF.

m. *By certificate.*—*PENANG FOUNDRY CO., LTD. (IN LIQUIDATION) v. GARDINER*, [1913] S. C. 1203.—SCOT.

PART III. SECT. 20, SUB-SECT. 2.—
C. (b) i.

n. *What constitutes valid payment—Purchase for value without notice—Of amount discounted at issue.*—Certain shares in a co. incorporated by letters patent under 27 & 28 Vict. c. 23, were allotted, by resolution at a special general meeting of the shareholders, to themselves, in proportion to the number of shares held by them at that time, at 40 per cent below their nominal value, & scrip issued for them as fully paid-up. G., under this arrangement, was allotted 9 shares, which were subsequently assigned to applt. for value as fully paid-up. Applt. inquired of the secretary of the co., who also informed him that they were fully paid-up shares, & he accepted them in good faith as such, & about a year afterwards became a director in the co. The shares appeared as fully paid-up on the certificates of transfer,

whilst on each counterfoil in the share-book the amount mentioned was "shares, two, at \$300-\$600":—*Held*: a person purchasing shares in good faith, without notice, from an original shareholder under the above Act, as shares fully paid-up, is not liable to an execution creditor of the co. whose execution has been returned *nulla bona*, for the amount unpaid upon the shares.—*MCCRACKEN v. MCINTYRE* (1877), 1 S. C. R. 479.—CAN.

o. — *Not proceeds of dividend irregularly declared.*—The transferees of stock who take knowing that the stock purports to be paid out of dividends declared out of the capital of the co. are liable to be placed on the list of contributories.—*Re NORTHERN CONSTRUCTIONS, LTD.* (1910), 14 W. L. R. 308.—CAN.

p. — *Cheque—Returned to subscriber's firm—To meet company's engagements.*—S., who resided in G., Scotland, subscribed for shares in a co. formed under the Dominion Companies Act to carry on business in T., Ontario, & remitted his cheque for \$51,000, the par value of the shares. The cheque was acknowledged & entered in the co.'s books as payment, the shares were issued, & the said cheque was indorsed & sent to a firm in G. of which S. was a member so as to be applied, under an agreement between the T. co. & the G. firm, to meet the co.'s engagements in Great

Sect. 20.—Shares issued or credited as fully or partly paid: Sub-sect. 2, C. (b) i. & ii.; sub-sect. 3, A.]

personally, whether he gets them out of the estate or not.—*Re* PARAGUASSU STEAM TRAMROAD CO., FERRAO'S CASE (1874) 9 Ch. App. 355; 43 L. J. Ch. 482; 30 L. T. 211; 22 W. R. 386, L. JJ.

Annotations:—As to (1) *Apld.* *Re* Paraguassu Steam Tram. Co., Adamson's Case (1874), L. R. 18 Eq. 670; *Re* Regent United Service Stores, *Ex p.* Bentley (1879), 12 Ch. D. 850. *Distd.* *Re* Land Development Assocn., Kent's Case (1888), 39 Ch. D. 259. *Apld.* *Re* Jones, Lloyd (1889), 41 Ch. D. 159. *Reid.* *Re* Barrow-in-Furness & Northern Counties Land & Investment Co. (1880), 14 Ch. D. 400; *Re* Johannesburg Hotel Co., *Ex p.* Zoutpansberg Prospecting Co., [1891] 1 Ch. 119; North Sydney Investment & Tramroad Co. v. Higgins, [1899] A. C. 263. As to (2) *Folld.* *Re* Angerstein, *Exp.* Angerstein (1874), 30 L. T. 446. Compare No. 1847, ante.

ii. Where Valuable Consideration other than Cash passes.

1856. Issue to directors—For services rendered—On resolution of directors.]—The directors of a railway co. passed a resolution by which they appropriated 200 paid-up shares to one of the directors for his services in the formation of the co.:—*Held*: the directors had no power to allot shares among themselves as paid up, & the director to whom the shares were appropriated was liable to a call equally with the other shareholders.—*Re* UNIVERSAL PROVIDENT LIFE ASSOCN., *Ex p.* DANIELL (1857), 1 De G. & J. 372; 26 L. J. Ch. 563; 29 L. T. O. S. 254; 3 Jur. N. S. 803; 5 W. R. 677; 44 E. R. 767, L. JJ.

Annotations:—*Distd.* *Re* Anglesea Colliery Co. (1866), L. R. 2 Eq. 379; *Re* Western of Canada Oil, Lands, & Works Co., Carling, Hespeler, & Walsh's Cases (1875), 1 Ch. D. 115.

1857. Issue to creditor—As security for debt.]—By a written agreement the directors of a co. agreed to transfer to pltf. 675 fully paid-up shares in the co. as security for moneys advanced by him on their promissory notes. They subsequently

registered pltf. as the holder of 675 partly unpaid shares. Pltf. being threatened with an action by judgment creditors of the co. applied to the ct. to rectify the register, & restrain the judgment creditors from proceeding against him at law:—*Held*: the co. had no authority to place him on the register in any other capacity than as the holder of fully paid-up shares.—*ASHWORTH v. BRISTOL & NORTH SOMERSET RY. CO.* (1867), 15 L. T. 561.

Annotations:—*Reid.* *Power v. O'Connor* (1871), 19 W. R. 923. *Mentd.* *Power v. Hoey* (1871), 19 W. R. 916.

1858. — Satisfaction of debt.]—Shares in a co. were allotted to a creditor in satisfaction of a debt due by the co. Subsequently the co. gave the creditor a debenture for the amount of the debt, which was treated as subsisting, but the creditor retained the shares which had been allotted to him, & agreed to surrender them on payment of the debenture:—*Held*: by the allotment of the shares in satisfaction of the debt, the debt ceased to exist, & the creditor having taken the shares in satisfaction of his debt, could not be placed on the list of contributories in respect of the shares.—*Re* MATLOCK OLD BATH HYDRO-PATHIC CO. (MANCHESTER FINANCE CORPN. CASE) (1873), 29 L. T. 441; 22 W. R. 41, L. JJ.

1859. — —.]—*Semle*: there is no objection to an agreement by a limited co. that a debt which it presently owes shall be satisfied by the allotment of fully-paid shares of the same nominal amount.—*GARDNER v. IREDALE*, [1912] 1 Ch. 700; 81 L. J. Ch. 531; 106 L. T. 860; 19 Mans. 245.

1860. — — Charged on income.]—A limited co. being in want of money borrowed it by the issue of £10 bonds on the terms that the co. would, when & so far as there were net profits available for the purpose pay to the bondholder the principal money of £10 together with a bonus of £25, the principal money & bonus to be paid exclusively out of profits. Years later, the co.

Britain & elsewhere abroad in order to facilitate the purchases & dealings of the co.:—*Held*: the sending to the co. & putting through of the cheque in manner aforesaid effected payment for the shares: the transaction was not a loan to S. or in any way *ultra vires* of the co.; & pltf. who as a shareholder attacked the transaction years afterwards had by acquiescence precluded herself from complaining.—*HENDERSON v. STRANG*, [1920] 1 W. W. R. 982; 54 D. L. R. 674; 60 S. C. R. 201.—CAN.

q. — Cash paid prior to registration—If company receives the benefit.]—A subscriber for shares in a co. who pays for his shares prior to registration, & after incorporation is allotted fully-paid shares, is entitled to be regarded as having fully paid for such shares, provided that the co. has received the benefit of his said payments, & the circumstances disclose a *bond fide* implied contract between himself & the co. to the effect that the shares were to be allotted as fully-paid.—*NELSON, LTD. (IN LIQUIDATION) v. WIENAND* (1907), T. S. 348.—S. AF.

PART III. SECT. 20, SUB-SECT. 2.—C. (b) ii.

r. General rule.]—The consideration, other than cash, for which the shares are issued must be a valuable consideration, & must be something existing at the time & not something subsequently accruing.—*Re* RED DEER MILL & ELEVATOR CO., *MACDONALD'S CASE* (1908), 1 Alta. L. R. 538.—CAN.

s. Work done as payment—Pursuant to agreement.]—Pltf. performed certain work, amounting to \$465, for debts, a joint stock co., incorporated under R. S. O. 1877, c. 150, under an

agreement for payment in shares of the capital stock of the co.:—*Held*: the agreement was not *ultra vires* of the co., & pltf.'s acceptance of the shares under such agreement would not render him liable to pay the amount thereof to creditors of the co.—*INGLIS v. WELLINGTON HOTEL CO.* (1878), 29 C. P. 387.—CAN.

t. Assignment of interest in land—Price not material—In absence of fraud.]—Where debts, agreed to take stock in a co. about to be incorporated, & arranged that their interest in certain land acquired from them by the co. should be applied in payment of their stock, & although it appeared that the co. took the land over at a price considerably beyond that at which it was acquired by debts, yet no fraud being shown:—*Held*: the shares of stock issued to debts, pursuant to the arrangement, upon the incorporation of the co., as fully paid-up shares, must be treated as such in an action by an execution creditor of the co. seeking to make debts, liable upon their shares for the amount unpaid thereon.—*JONES v. MILLER* (1893), 24 O. R. 268.—CAN.

u. Agreement to render future services—Necessity for contract in writing.]—M. & C. each agreed to take shares in a joint-stock co., paying a portion of the price in cash & receiving receipts for the full amount, the balance to be paid for in future services. The co. afterwards failed:—*Held*: as there was no agreement in writing for the payment of the difference by money's worth instead of cash under Companies Act, 1867, s. 27, M. & C. were liable to pay the balance of the price of the shares to the liquidator of the co.—*MORRIS v. UNION BANK* (1890), 31

S. C. R. 594.—CAN.

b. Issue to corporation—Debentures given in satisfaction.]—To a declaration under 14 & 15 Vict. c. 51, s. 19, by judgment creditors of a co. against a municipality as shareholders, debts, pleaded, in substance, that they subscribed for the stock under a bye-law which provided that their debentures, payable in 1877, should be issued for the sum subscribed as the same should become payable, & that the co. should take such debentures at par; & that pltf. knew this before he became a creditor:—*Held*: a good defence.—*HIGGINS v. WHITBY CORPN.* (1860), 20 U. C. R. 296.—CAN.

c. Issue to creditor of firm—Subsequently converted into company—In satisfaction of interest in firm assets.]—H. & others, interested as creditors & otherwise in a struggling firm, agreed to purchase the latter's assets & form a co. to carry on its business, & they severally subscribed for stock in the proposed co. to an amount representing the value of the business. A power of attorney was given to one of the parties to purchase the assets, which was done, payment being made by the discount of a note for \$2,000 made by H. & indorsed by another of the parties. The co. having been formed, the assets were transferred & the note was retired by a note of the co. for \$4,000 indorsed by H., which he afterwards had to pay. H. also, or a co. of which he was manager, advanced money to a considerable amount for the co., which eventually went into liquidation. After the co. was formed, in pursuance of the original agreement between the parties, stock was issued to each of them as fully-paid according to the amounts for which they respectively subscribed,

having made no profits whatever & being still in want of money, it was arranged with the consent of all parties interested that new £1 shares should be issued & the bonus of £25 satisfied or extinguished by the allotment of twenty of the new £1 shares considered as fully paid:—*Held*: it was *ultra vires* for the co. to make the charge on future net profits a charge on capital & a present debt & to issue shares fully paid up in satisfaction of the debt so created, the charge being exclusively on income.

Qu.: whether it is possible for directors to create a debt against their co. & to saddle their co. with it for the purpose of enabling them to issue shares without payment in cash, however advantageous they may consider the transaction to be.—**FAMATINA DEVELOPMENT CORPN., LTD. v. BURY**, [1910] A. C. 439; 79 L. J. Ch. 597; 102 L. T. 866; 26 T. L. R. 540; 54 Sol. Jo. 610, H. L.; *affg.* S. C. *sub nom.* **BURY v. FAMATINA DEVELOPMENT CORPN., LTD.**, [1909] 1 Ch. 754, C. A.

1861. — Purchase price of concession—Future issues of capital.—**HONG KONG & CHINA GAS CO., LTD. v. GLEN**, No. 1468, *ante*.

Compare No. 1928, *post*.

1862. Issue to subscribers to memorandum.—Nine persons bought a moiety of a colliery from P. for £10,000 & the ten, after working it for some time, agreed to form a co. for carrying it on, & a co. was accordingly registered, the memorandum of assocn. of which was subscribed by the owners of the colliery for numbers of shares proportioned to their respective interests; the nominal amount of shares subscribed for being £20,000. The memorandum stated nothing as to the shares being treated as paid-up shares, but

the arts. provided that all the shares subscribed for in the memorandum should be treated as fully paid up. The colliery was made over to the co., but no other payment was made by any of the subscribers of the memorandum. No other shares than those subscribed for by the memorandum were ever allotted:—*Held*: the subscribers of the memorandum of assocn. were not liable as contributories, for that the shares must be taken as having been fully paid up by the handing over the colliery.—**Re BAGLAN HALL COLLIERY CO.** (1870), 5 Ch. App. 346; 39 L. J. Ch. 591; 23 L. T. 60; 18 W. R. 499, L. J.

Annotations:—**Expld.** *Re Pen' Allt Silver Lead Mining Co.*, *Fothergills' Case* (1873), 8 Ch. App. 270. **Consd.** *Re Anglo-Moravian Hungarian Junction Rty.*, *Dent's Case*, *Forbes' Case* (1873), 8 Ch. App. 768; *Re Appletreewick Lead Mining Co.* (1874), L. R. 18 Eq. 95; *Re Wedgwood Coal & Iron Co.*, *Anderson's Case* (1877), 7 Ch. D. 75; *Re Wragg*, [1897] 1 Ch. 796. **Refd.** *Re Limehouse Works Co.*, *Coates' Case* (1873), L. R. 17 Eq. 169; *Re Tavarone Mining Co.*, *Pritchard's Case* (1873), 28 L. T. 625; *Re Carribean Co.*, *Crickmer's Case* (1875), 44 L. J. Ch. 595. **Mentd.** *Riche v. Ashbury Ry. Carriage & Iron Co.* (1874), L. R. 9 Exch. 224; *Re Faure Electric Accumulator Co.* (1888), 37 W. R. 116; *Salomon v. Salomon*, *Salomon v. Salomon*, [1897] A. C. 22.

See, also, Sub-sect. 3, D. (b) i. & iv., *post*, & generally, Sect. 7, sub-sect. 6, A. (b) ii., *ante*.

Under 1867 Act, s. 25.—*See* Sub-sect. 3, B. (a), *post*.

SUB-SECT. 3.—UNDER COMPANIES ACT, 1867 (c. 131), s. 25.

A. In General.

1863. Application of section—Shares issued before commencement of Act.—**Re PARAGUASSU STEAM TRAMROAD CO.**, **FERRAO'S CASE**, No. 1855, *ante*.

1864. — Shares not allotted before winding

& in the winding-up proceedings they were respectively placed on the list of contributories for the total amount of said stock:—*Held*: reversing the judgment of the Ct. of Appeal, as all the proceedings were in good faith & there was no misrepresentation of material facts, & as H. & S. had paid full value for their shares, the agreement by which they received them as fully paid up was valid & the order making them contributories should be rescinded.—**HOOD v. EDEN** (1905), 36 S. C. R. 476.—**CAN.**

d. Issue to partners — In satisfaction of interest in partnership.—*On formation of company.*—On the formation of a joint-stock co. to take over a partnership business each partner received a proportionate number of fully paid-up shares, at their par value, in satisfaction of his interest in the partnership assets:—*Held*: the transaction did not amount to payment in cash for shares subscribed by the partners within Companies Act, R. S. B. C., c. 44, ss. 50, 51.—**TURNER v. COWAN** (1903), 34 S. C. R. 160.—**CAN.**

e. Issue to ordinary subscriber — In satisfaction of novated contract.—*To render future services & assign doubtful assets—Resulting in fraud on company.*—After a person has subscribed in the ordinary manner for shares in a co. incorporated by letters patent under Manitoba Joint Stock Companies Act, R. S. M. 1902, c. 30, & they had been allotted to him, it is not competent for the co. to release him from his liability to pay for the shares in cash, by entering into an agreement, even under seal, to issue to him fully-paid & non-assessable shares in consideration of his covenants to do something in the future. When such an agreement included, with such covenants, a transfer of assets of doubtful value, but the circumstances surrounding the agreement were such as to make it a fraud upon the co., it was held void, & it was ordered that the subscribers for

the shares should be settled upon the list of contributories in the winding up of the co. for the full amount of their shares.—**Re JONES & MOORE ELECTRIC CO.**, **JONES & MOORE'S CASE** (1909), 18 Man. L. R. 549; 10 W. L. R. 210.—**CAN.**

f. Issue to promoter — In satisfaction of interest in business & patent rights—Sufficiency of value.—One of the objects for which a co. was established was to adopt a contract made between a promoter & the co., whereby the co. agreed to allot to the promoter 3,500 fully-paid shares in consideration of an assignment of the benefit of certain options, businesses, & patent rights, & an undertaking to discharge the preliminary expenses of the co. The agreement was adopted & registered pursuant to Companies Act, 1867, s. 25, & the shares allotted to the promoter & his nominees. The options, businesses, & patent rights were of no value. On the winding up of the co. the liquidator contended that there was no real consideration for the agreement, & that the allottees were liable to pay the full amount of the shares:—*Held*: the promoter & his nominees were entitled to hold the shares as fully-paid.—**Re LEINSTER CONTRACT CORPN., LTD.**, [1902] 1 I. R. 349.—**IR.**

g. Issue to vendor — In satisfaction of interest in business—Necessity for registration of contract.—A person who had sold a paper mill to a limited co. formed for the purpose of acquiring it & carrying on the business for the sum of £12,000 agreed to take £8,500 of the price in fully-paid shares of the co. This agreement appeared in the minutes of the directors of the co. & was carried out by the issue of shares to the vendor but was never filed with the Registrar of Joint Stock Companies. The co. having become insolvent & gone into liquidation, the liquidators proposed to place the vendor in the

list of contributories in respect of the shares so issued & still held by him with liability to the amount of the uncalled capital effecting to them. The vendor maintained that the shares must be treated as fully-paid, & that no liability attached to him in respect of them:—*Held*: he must be placed on the list of contributories with liability as contended for by the liquidators.—**COUSTONHOLM PAPER MILLS CO., LTD. (LIQUIDATORS) v. LAW** (1891), 18 R. (Ct. of Sess.) 1076; 28 Sc. L. R. 836.—**SCOT.**

h. — — — Defective adoption of contract by company—Cured by benefit accruing therefrom over long period.—On Aug. 5, 1904, the promoters of a co. entered into an agreement with a trustee for the proposed co., whereby it was agreed that 105 fully-paid vendors' shares should be issued to the promoters. On Nov. 15, 1904, the co. was registered. On Nov. 22, 1904, at the first meeting, certain persons as directors purported to adopt the promoters' agreement. On Nov. 1, 1906, a general meeting adopted the promoters' agreement & authorised the issue of the vendors' shares which were accordingly issued in Dec. In terms of the arts. of assocn. no one at this meeting was qualified to vote as a shareholder:—*Held*: although the meeting of Nov. 1 was not a properly constituted shareholders' meeting, yet as the shares were issued for valuable consideration, & as for six years the co. had availed itself of the benefits accruing under the contract & the vendors carried out their part of the agreement, the shares must be taken to be fully-paid shares under Act 25 of 1892, s. 95.—*Ex p.* **MUTUAL HOUSE & LAND ASSOCN., LTD. (LIQUIDATORS)** (1912), 3 C. P. D. 904.—**S. AF.**

PART III. SECT. 20, SUB-SECT. 3.—A.

k. Application of section — Scope of application.—**Re GIBSON, LITTLE &**

Sect. 20.—Shares issued or credited as fully or partly paid: Sub-sect. 3, A. & B. (a) & (b).]

up.]—1867 Act, s. 25, has no application in a question in a winding up of liability to take shares which were never allotted by the co. Therefore in a winding up effect was given to an unregistered contract which was interpreted as entitling a person to set off against calls on shares to be allotted to him money to become due to him for work done for the co., no shares having been allotted to him before the winding up.—*Re VICTORIA MANSIONS, LTD., NORTON'S CASE* (1881), 50 L. J. Ch. 454.

1865. — Shares allotted under contract—Subsequent cancellation of allotment & issue of fresh shares.]—By the arts. of assocn. of a co. it was provided that the qualification of every director should be the holding, in his own right of shares of the co. of the nominal value of £100, & that the office of director should be vacated if he ceased to hold the requisite amount of shares, or did not acquire the same within two months after election or appointment. The first directors of the co. were appointed in June, 1889, but none of them acquired any shares in the co. until Oct. 1889, when shares were allotted to some of the directors, & to the vendor to the co., who was also managing director. On Oct. 28 a contract was entered into by the co. for the issue of fully paid-up shares to the vendor in satisfaction of his purchase-money, which was duly registered, & on Nov. 20, a previous allotment of shares to the vendor was cancelled, & a new allotment of fully paid-up shares was made to him. The co. was ordered to be wound up, & the vendor to the co. was settled by the chief clerk on the list of contributories as a holder of the shares on which nothing had been paid up:—**Held:** the allotment to the vendor was intended to be an allotment of fully paid-up shares, & the co. could not sever the transaction by ratifying the allotment of shares, & refusing to ratify the contract & the registration thereof by which the shares would be rendered fully paid-up.—*Re STAFFORDSHIRE GAS & COKE CO., LTD., Ex p. NICHOLSON* (1892), 66 L. T. 413.

Annotation:—*Overd. Channel Collieries Trust v. Dover, St. Margaret's & Martin Mill Light Ry., [1914] 2 Ch. 506.*

1866. — Whether between company & shareholders.]—*Re HEATON'S STEEL & IRON CO., BLYTH'S CASE*, No. 1929, *post*.

1867. — Whether confined to liquidation.]—*BURKINSHAW v. NICOLLS*, No. 1953, *post*.

B. "Payment in Cash."

(a) In General.

1868. Construction of words.]—The words "payment in cash" in 1867 Act, s. 25, are not to be construed narrowly or technically, but will include anything which could in an action at law for the calls due upon shares be pleaded as pay-

Co., LTD., *Ex p. JAMES* (1880), 5 L. R. Ir. 139.—**IR.**

1. — Shares issued before repeal of Act.]—In 1902 a co., in respect of doubts as to whether the repeal of sect. 25 of Companies Act, 1867, by Companies Act, 1900, applied to the case of shares issued prior to the passing of the Act of 1900 presented a petition for an order on the Registrar for filing a memorandum setting forth the contract. The ct. granted the order.—*BRAID HILLS HOTEL CO., LTD., PETITIONERS* (1902), 4 F. (Ct. of Sess.) 838; 39 Sc. L. R. 607; 10 S. L. T. 81.—**SCOT.**

PART III. SECT. 20, SUB-SECT. 3.—
B. (a).

m. General rule — Genuine trans-

action amounting in fact to payment.]—Any bona fide transaction between a co. & a shareholder, which amounts in fact to a payment, is a "payment in cash" within art. 4722, s. 1, of Revised Statutes of Quebec, which is equivalent to the English Companies Act, 1867, s. 25.—*LAROCQUE v. BEAUCHEMIN* (1897), 76 L. T. 473.—**CAN.**

n. — —.]—A resolution by certain persons interested in a property setting forth the manner in which they propose to put it before the public is not a contract within New South Wales Companies Act, 1874, s. 57 (which is to the same purport as the English Act of 1867, s. 25); & therefore a registered shareholder to whom partially paid-up shares have been issued in accordance with such resolu-

ment.—*Re PEN 'ALLT SILVER LEAD MINING CO., FOTHERGILL'S CASE* (1873), 8 Ch. App. 270; 42 L. J. Ch. 481; 28 L. T. 124; 21 W. R. 301, L. C. & L. JJ.

Annotations:—*Consd. Re Pen' Allt Silver Lead Mining Co., Fraser's Case* (1873), 42 L. J. Ch. 358. **Apld. Re Harmony & Montague Tin & Copper Mining Co., Spargo's Case** (1873), 8 Ch. App. 407; *Re Matlock Old Bath Hydro-pathic Co., Maynard's Case* (1873), 9 Ch. App. 60; *Re Jarvis, [1899] 1 Ch. 193. Rejd. Anglo-Moravian Hungarian Junction Ry., Dent's Case, Forbes' Case* (1873), 8 Ch. App. 768; *Re Limehouse Works Co., Coates' Case* (1873), L. R. 17 Eq. 169; *Re Appletreewick Lead Mining Co. (1874), L. R. 18 Eq. 95; Re Paraguassa Steam Tramroad Co., Ferrao's Case* (1874), 43 L. J. Ch. 264; *Re Caribbean Co., Crickmer's Case* (1875), 44 L. J. Ch. 595; *Re Wedgwood Coal & Iron Co., Anderson's Case* (1877), 7 Ch. D. 75; *Re British Farmers' Pure Linseed Cake Co., Potter & Brown's Cases* (1878), 38 L. T. 757; *Re Government Security Fire Inco., White's Case* (1879), 12 Ch. D. 511; *Re Delta Syndicate, Ex p. Forde* (1885), 30 Ch. D. 153; *Re Land Development Assocn., Kent's Case* (1888), 39 Ch. D. 259; *Re Jones, Lloyd* (1889), 41 Ch. D. 159; *Dalton Time Lock Co. v. Dalton* (1892), 66 L. T. 704; *Ooregum Gold Mining Co. of India v. Roper, Wallroth v. Roper, [1892] A. C. 125; Re Kharaskhoma Exploring & Prospecting Syndicate, Pyke & Gibson's Case* (1897), 77 L. T. 82; *Larocque v. Beauchemin, [1897] A. C. 358; Re Wragg, [1897] 1 Ch. 796.*

1869. Law not changed.]—1867 Act, s. 25, has not altered the law with regard to the question of what is a good payment for shares. The memorandum of assocn. of a co. formed for the purpose of purchasing & carrying on the business of C. was subscribed by him for 2,500 shares, which were of £1 each. It was also subscribed by other persons, by which the number taken amounted to 6,265 out of a total capital of 7,500 shares; & the co. could only issue fresh shares by special resolution. The arts. of assocn. stated that an agreement had been prepared between C. & the co. for the sale of the business to the latter for £5,000, of which one-half was to be in fully paid-up shares of the co. This agreement was executed shortly after the registration of the memorandum & arts. of assocn. & was filed with the Registrar of Joint-Stock Cos. As between C. & the co. the shares for which he signed the memorandum were treated as being the fully paid-up shares which he took as part of the purchase-money, & he was debited in the books with £2,500 due on the shares, & credited with £5,000 as the price of the business:—**Held:** C. was entitled to treat the shares for which he subscribed the memorandum as the same shares as those for which he sold his business, & the shares were paid for in cash within the meaning of 1867 Act, s. 25.—*Re LIMEHOUSE WORKS CO., COATES' CASE* (1873), L. R. 17 Eq. 169; 43 L. J. Ch. 538; 29 L. T. 636; 22 W. R. 228.

Annotations:—*Rejd. Re Appletreewick Lead Mining Co. (1874), L. R. 18 Eq. 95; Re Caribbean Co., Crickmer's Case* (1875), 24 W. R. 219.

(b) What constitutes.

1870. General rule—Payment available as defence to action for calls.]—*Re PEN 'ALLT SILVER*

tion is liable to contribute in the winding up of the co. In order to satisfy the sect., there must be a genuine sale, & a genuine bargain to pay the price in paid-up shares, capable of being enforced by the vendor.—*SMITH v. BROWN* (1896), 75 L. T. 213.—**AUS.**

PART III. SECT. 20, SUB-SECT. 3.—
B. (b).

1870 i. General rule—Payment available as defence to action for calls.]—Where the circumstances relied on would, in an action for money due on shares, be evidence only in support of a plea of accord & satisfaction, it would not be a good defence of a "payment in cash" within Indian Companies Act VI. of 1882, s. 28, but

LEAD MINING CO., FOTHERGILL'S CASE, No. 1868, *ante*.

1871. ———.]—Any *bond fide* transaction between a co. & a shareholder which, if the co. brought an action against him for calls, would support a plea of payment, is "payment in cash" within 1867 Act, s. 25. S. took shares in a co. formed for working a mine which he sold to them. The whole nominal amount of the shares was immediately payable, as was also the purchase-money of the property. It was agreed between S. & the co. that he should be credited in account with the price of the property, & debited with the amount payable on his shares; & the balance of the account thus made out was shortly afterwards exactly balanced by cash payments by S.:—*Held*: S. must be considered as having paid up his calls in cash.—*Re* HARMONY & MONTAGUE TIN & COPPER MINING CO., SPARGO'S CASE (1873), 8 Ch. App. 407; 42 L. J. Ch. 488; 28 L. T. 153; 21 W. R. 306, L. JJ.

Annotations:—*Consd.* *Re* Limehouse Works Co., Coates' Case (1873), L. R. 17 Eq. 169. *Distd.* *Re* Church & Empire Fire Insce., Pagin & Gill's Case (1877), 6 Ch. D. 681; *Re* Church & Empire Fire Insce. Fund, Andross' Case (1878), 8 Ch. D. 126; *Re* Government Security Fire Insce., White's Case (1879), 12 Ch. D. 511. *Appld.* *Re* Barrow-in-Furness & Northern Counties Land & Investment Co. (1880), 14 Ch. D. 400; *Re* Newport & South Wales Shipowners' Co., Rowland's Case (1880), 42 L. T. 785; *Re* Land Development Assocn., Kent's Case (1888), 39 Ch. D. 259; *Re* Jones, Lloyd (1889), 41 Ch. D. 159. *Consd.* *Re* Johannesburg Hotel Co., *Ex p.* Zoutpansberg Prospecting Co., [1891] 1 Ch. 119. *Appld.* *Larocque v. Beauchemin*, [1897] A. C. 358. *Refd.* *Re* Pen' Allt Silver Lead Mining Co., Fraser's Case (1873), 42 L. J. Ch. 358; *Re* Tavarone Mining Co., Pritchard's Case (1873), 28 L. T. 625; *Re* Paraguassu Steam Tramroad Co., Ferrao's Case (1874), 43 L. J. Ch. 264; *Re* British Farmers' Pure Linseed Cake Co., Potter & Brown's Cases (1878), 38 L. T. 757; *Credit Co. v. Potts* (1880), 6 Q. B. D. 295; *Re* Government Security Fire Insce., Mudford's Claim (1880), 14 Ch. D. 634; *Re* London Celluloid Co., *Ex p.* Bayley & Hanbury (1888), 57 L. J. Ch. 843; *Re* Rosherville Hotel Co., Roberts' Case (1890), 2 Meg. 60; *Re* Washington Diamond Mining Co., [1893] 3 Ch. 95; *North Sydney Investment & Tram. Co. v. Higgins*, [1899] A. C. 263; *Moseley v. Koffyfontein Mines* (1904), 73 L. J. Ch. 569; *Parsons v. Equitable Investment Co.*, [1916] 2 Ch. 527.

1872. Cancellation of debt—Due from company for services.]—A holder of shares allotted to him as "fully paid up," will, on the winding up of the co., now be placed on the list of contributories to it, unless he can show that the shares were paid for "in cash," or that 1867 Act, s. 25, was otherwise complied with. The cancellation of a debt due from the co. for service is not payment in cash within the meaning of the sect.

Qu.: whether payment in cash by A. for the allotment of fully paid-up shares to B., or whether the cancellation of a debt due to the allottee for money lent would be payment in cash within the

sect.—*Re* METROPOLITAN PUBLIC CARRIAGE & REPOSITORY CO., CLELAND'S CASE (1872), L. R. 14 Eq. 387; 41 L. J. Ch. 652; 27 L. T. 307; 20 W. R. 924.

Annotations:—*Refd.* *Re* Paraguassu Steam Tramroad Co., Black's Case (1872), 8 Ch. App. 255, n.; *Re* Tavarone Mining Co., Pritchard's Case (1873), 28 L. T. 625; *Re* Appletreewick Lead Mining Co. (1874), L. R. 18 Eq. 95; *Re* British Farmers' Pure Linseed Cake Co., Potter & Brown's Cases (1878), 38 L. T. 757.

1878. ——— Money lent by allottee.]—*Re* METROPOLITAN PUBLIC CARRIAGE & REPOSITORY CO., CLELAND'S CASE, No. 1872, *ante*.

1874. Set-off—In settlement of account.]—*Re* HARMONY & MONTAGUE TIN & COPPER MINING CO., SPARGO'S CASE, No. 1871, *ante*.

1875. ——— Compensation due to director.]—A. a director of the co. had taken shares in the co. in order to obtain a certain agreement as to freight. The agreement was beneficial to A. but at the end of two years the co., which was then in difficulty, found the agreement onerous & entered into another agreement with A. that the first agreement should be annulled in consideration of a payment to A. of £1,800 in cash, £200 by a bill & £10,000 in shares, the shares being subject to a condition under which, in the events which happened, they were never issued. The £1,800 was paid by crediting that sum to the shares held by A. & his friends in the books of the co., thereby making all their shares in the co. fully paid up. Two months after the second agreement a petition was presented for winding up the co. & subsequently an order for winding up was made on this petition:—*Held*: the second agreement amounted to a payment in cash within the meaning of 1867 Act, s. 25, & there was no further liability upon the shares.—*Re* PARAGUASSU STEAM TRAMWAY CO., ADAMSON'S CASE (1874), L. R. 18 Eq. 670; 44 L. J. Ch. 125; *sub nom* *Re* PARAGUASSU STEAM TRAMROAD CO., LTD., ADAMSON'S, RONALDSON'S & WESCOTT'S CASES, 22 W. R. 820.

Annotations:—*Refd.* *Re* Great Australian Gold Mining Co., Appleyard's Case (1880), 42 L. T. 814; *Re* Jones, Lloyd (1889), 41 Ch. D. 159.

1876. ———.]—Where an agreement was entered into between a co. & one of its directors that, in consideration of his giving up certain benefits, the director should receive a sum of money equal to three-fourths of the amount paid up by him upon his shares, & that sum was credited to him in the books of the co. in pursuance of the agreement:—*Held*: the amount so credited to the director was equal to a cash payment by him within the meaning of 1867 Act, s. 25; & there was nothing fraudulent or improper in such an agreement being entered into.—*Re* REGENT UNITED

otherwise, if the circumstances would support a plea of payment.—*PARSHOTUMDÁS v. ISHVARDÁS* (1891), L. L. R. 16 Bom. 161.—IND.

1870 ii. ———.]—The principle that a transaction which would support a plea of payment is a payment in cash within Companies Act, 1882, s. 34, which provides that every share shall be held subject to the payment of the whole amount thereof in cash, was followed, & applied to a case of an agreement, under Regulation 7 of Table A. in the First Sched. to that Act to receive & pay moneys due upon shares in advance, & a subsequent set off of such moneys due to the shareholder.—*Re* NEW ZEALAND PINE CO., LTD., *Ex p.* OFFICIAL LIQUIDATOR, GUTHRIE'S CASE (1898), 17 N. Z. L. R. 257.—N.Z.

1874 i. Set off—In settlement of account.]—Appl. was a director of a co. at the time when the co. was desirous of erecting some machinery on the

mine. With that object in view the directors, at an informal meeting, arranged that the co.'s capital should be increased by the issue of new shares, part of which were to be fully-paid & part contributing. It was also arranged between applt. & his co-directors that applt. should purchase the machinery, paying for it partly in cash & the balance by promissory notes, & that on the issue of the fresh capital he might apply for certain contributing shares, the money he advanced in payment of the machinery to be applied in payment of the shares & calls as they became due. This arrangement, both as to the issue of fresh capital & the purchase of machinery, was carried out, & on the new capital being issued, applt. applied for 200 contributing shares. In making such application he authorised the directors to debit against his credit with the co. the sum required on application, & any sums which should become due for calls. Under these circumstances applt.

contended that he had paid up the whole amount due upon the shares he held. It was contended on the part of the liquidator that the transaction was not a "payment in cash" for the shares as required by Companies Act, 1893, s. 26:—*Held*: the advances were capable of being supported as "payment in cash," & applt. was entitled to set off the amounts against the sum claimed by the liquidator in respect of the shares.—*RANDALE v. SANTA CLAUS GOLD MINING CO. (LIQUIDATOR)* (1906), 8 W. A. L. R. 36.—AUS.

o. ——— Debt due at date of allotment—Payable by company in cash.]—P. served a co. as a broker by getting shares subscribed for, collecting money from subscribers, & inducing people to take shares. There was no express agreement to pay him in cash, but there was a tacit understanding that he should get the usual broker's commission. He was given two shares as remuneration for his services. At

Sect. 20.—Shares issued or credited as fully or partly paid: Sub-sect. 3, B. (b) & C. (a).]

SERVICE STORES, Ex p. BENTLEY (1879), 12 Ch. D. 850; 49 L. J. Ch. 240; 41 L. T. 500; 28 W. R. 165.

Annotation:—Refd. Re Jones, Lloyd (1889), 41 Ch. D. 159.

1877. — Debt not due at date of allotment—Agreement for future services.]—The proprietors of a newspaper agreed with an insurance co. to insert a series of advertisements for the co. in consideration of 100 fully paid-up shares in the co. Fully paid-up shares were accordingly allotted to them, but no contract in writing within 1867 Act, s. 25, was filed at or before the issue of the shares. The newspaper proprietors sent the co. a receipted bill, & subsequently duly inserted the advertisements. The co. was afterwards wound up:—*Held:* there having been, at the time of the allotment, no *bona fide* debt due from the co. to the newspaper proprietors amounting to payment in cash within 1867 Act, s. 25, the newspaper proprietors must be placed upon the list of contributories.—*Re CHURCH & EMPIRE FIRE INSURANCE CO., PAGIN & GILL'S CASE (1877),* 6 Ch. D. 681; 46 L. J. Ch. 779; 37 L. T. 89; 25 W. R. 905.

Annotations:—Distd. Re Government Security Fire Insce., White's Case (1878), 10 Ch. D. 720. *Refd. Re Macdonald, [1894]* 1 Ch. 89.

1878. — — — — —.]—The proprietor of a newspaper agreed with a co. to insert a series of advertisements in consideration of 75 fully paid-up shares in the co. Fully paid-up shares were accordingly allotted to him, but no contract was registered, as required by 1867 Act, s. 25. He sent the co. a receipted bill & inserted the advertisements. The co. was afterwards ordered to be wound up:—*Held:* as at the time of the allotment there was no debt payable to the allottee in cash by the co., the case was not within *Re Harmony & Montague Tin & Copper Mining Co., Spargo's Case, No. 1871, ante*, for that the allottee could not have sustained a plea of payment in an action by the co. for calls, & he must therefore be placed on the list of contributories as a holder of shares on which nothing had been paid.—*Re CHURCH & EMPIRE FIRE INSURANCE FUND, ANDRESS' CASE (1878),* 8 Ch. D. 126; 47 L. J. Ch. 679; 38 L. T. 266; 26 W. R. 567, C. A.

Annotation:—Refd. Re Railway Time Tables Publishing Co., Ex p. Sandys (1889), 42 Ch. D. 98.

1879. — — — — —.]—The proprietor of a newspaper agreed with a co. to insert for them a series of advertisements in his newspaper, & to accept payment of his account in fully paid-up shares. He inserted the advertisements & sent in his account to the co. The co. accepted the account & allotted him fully paid-up shares to the amount thereof. The contract was not registered in pursuance of 1867 Act, s. 25, & the co. was afterwards wound up:—*Held:* the allottee having

originally agreed to accept shares in payment of his account, the co. never came under any liability to pay for the advertisements in cash; & therefore the allottee must be placed on the list of contributories for unpaid shares.—*Re GOVERNMENT SECURITY FIRE INSURANCE CO., WHITE'S CASE (1879),* 12 Ch. D. 511; 48 L. J. Ch. 820; 27 W. R. 895; *sub nom. Re GOVERNMENT INVESTMENT FIRE INSURANCE CO., WHITE'S CASE, 41 L. T. 333, C. A.*
Annotations:—Appld. Re Land Development Assocn., Kent's Case (1888), 39 Ch. D. 259. *Consd. Re Jones, Lloyd (1889),* 41 Ch. D. 159. *Foll'd. Re Rosherville Hotel Co., Roberts' Case (1890),* 2 Meg. 60. *Refd. Re Barrow-in-Furness & Northern Counties Land & Investment Co. (1880),* 14 Ch. D. 402, n; *Re Stapleford Colliery Co., Barrow's Case (1880),* 14 Ch. D. 432. *Ment'd. Re Government Security Fire Insce., Mudford's Claim (1880),* 14 Ch. D. 634; *Re Great Australian Gold Mining Co., Ex p. Appleyard (1881),* 18 Ch. D. 587; *Re Addlestone Linoleum Co. (1887),* 37 Ch. D. 191.

1880. — — — — —.]—*Re JOHANNESBURG HOTEL Co., Ex p. ZOUTPANSBERG PROSPECTING CO., No. 1883, post.*

1881. — — — — — Calls not yet due—Company authorised to receive payment in advance.]—*Re LAND DEVELOPMENT ASSOCN., KENT'S CASE, No. 2133, post.*

See, also, No. 2134, post.

1882. — — — — — Whether between company & nominee of allottee.]—*Re NEWPORT & SOUTH WALES SHIP-OWNERS' CO., LTD., ROWLAND'S CASE, No. 1847, ante.*

Compare No. 1855, ante.

1883. — — — — — Cross debts extinguishable by cross payments.]—(1) In order that a transaction between a co. & an allottee of shares may amount to a "payment in cash" of the amount payable on the shares within 1867 Act, s. 25, each party must have an actual demand on the other for present payment.

(2) If a creditor of the co. agrees to accept payment of his debt in fully paid-up shares, & shares purporting to be fully paid up are allotted to him, which he accepts, & after an order for winding up the co. it is discovered that the shares are not fully paid up, the shares cannot be treated as having been fully paid up, since a contract to take fully paid-up shares does not create a liability to pay money, & there are, therefore, no cross debts between the co. & the allottee.—*Re JOHANNESBURG HOTEL Co., Ex p. ZOUTPANSBERG PROSPECTING CO., [1891]* 1 Ch. 119; 60 L. J. Ch. 391; 64 L. T. 61; 39 W. R. 260; 7 T. L. R. 166; 2 Meg. 409, C. A.

Annotations:—Appld. North Sydney Investment & Tram. Co. v. Higgins, [1899] A. C. 263. *Refd. Larocque v. Beauchemin, [1897]* A. C. 358.

1884. Consideration for property purchased—Agreement to allot fully-paid shares—Sale by owner to third party & resale to company.]—Y. agreed to sell land to H. & W. for £7,713. H. & W. agreed to sell to the co. for money payable by instalments. The co. being short of money, it was

the time he accepted the shares, the account of his commission as broker had not been settled, & no demand had been made by him for payment of any specified sum. When the co. was wound up, the liquidators placed his name on list A. of the contributories for the value of the two shares. He applied to have his name removed from the list:—*Held:* his name was rightly put on the list of contributories: the fact that the shares were given him as remuneration for his services could not be pleaded as a payment of the calls, on shares, as no definite sum had been found due when the shares were accepted by him.—*PARSHOTUMDAS v. ISHVARDAS (1891),* 1 L. R. 16 Bom.

p. — — — — —.] — To constitute a payment in cash, within Companies Act, 1867, s. 25, the amount of the shares must either pass in actual cash, or be paid by setting against it an equal sum due & presently payable in cash by the co. to the allottee, & which is by agreement between them to be given by the allottee & accepted by the co. in discharge of the amount due in respect of the shares.—*Re GIBSON & Co. (1880),* 5 L. R. Ir. 139.—*IR.*

1884 i. Consideration for property purchased—Agreement to allot fully-paid shares—Sale by owner to third party & resale to company.]—H. & others, interested as creditors & otherwise

in a struggling firm, agreed to purchase the latter's assets & form a co. to carry on its business, & they severally subscribed for stock in the proposed co. to an amount representing the value of the business after receiving financial aid which they undertook to furnish. A power of attorney was given to one of the parties to purchase the assets, which was done, payment being made by the discount of a note for \$2,000 made by H., & indorsed by another of the parties. The co. having been formed, the assets were transferred, & the note was retired by a note of the co. for \$4,000, indorsed by H., which he afterwards had to pay. H. also advanced money to a considerable amount for the co., which eventually

arranged that Y. should accept £2,000, part of the money, in fully paid-up shares. The land was accordingly conveyed by Y. to the co. in consideration of £5,713 in cash & £2,000 in fully paid-up shares:—*Held*: an arrangement between the co., H. & W., & Y., for paying £2,000, part of the sum due from the co. to H. & W., by writing off a like amount of the sum due from H. & W. to Y., was equivalent to a cash payment of £2,000 by Y. to the co., & the shares thus taken by Y. were to be treated as fully paid up.—*Re BARROW-IN-FURNESS & NORTHERN COUNTIES' LAND & INVESTMENT CO.* (1880), 14 Ch. D. 400; 42 L. T. 888, C. A.

Annotations:—*Distd.* *Re Rosherville Hotel Co., Roberts' Case* (1890), 2 Meg. 60. *Refd.* *Re Jones, Lloyd* (1889), 41 Ch. D. 159.

1885. ————.]—*Re PEN 'ALLT SILVER LEAD MINING CO., FRASER'S CASE*, No. 387, *ante*.

1886. ————.]—*Re LIMEHOUSE WORKS CO., COATES' CASE*, No. 1869, *ante*.

1887. ————.]—An agreement between the vendors to a co. & the co. contained the following: Clause 2, By way of premium & consideration the co. shall pay the vendors the moneys following, £3,000. Clause 4, "The said sum of £3,000 shall be paid & satisfied as follows, £1,000 cash & £2,000 by the allotment to the vendors of fully-paid shares." Shares were allotted to the vendors in pursuance of the agreement. No contract was registered at or before the issue. The shares were not entered as fully paid in the share register, but in the co.'s stock & bought account books, the co. purported to have written off its liability of £3,000 by the payment of £1,000 in cash & the allotment of the shares:—*Held*: the agreement must be looked at as a whole, & although clause 2 provided for the payment of the following moneys £3,000, still clause 4 showed no money beyond

the £1,000 cash was ever due from the co. to the vendors, & therefore their shares had not been paid for in cash.—*Re ROSHERVILLE HOTEL CO., ROBERTS' CASE* (1890), 2 Meg. 60.

1888. Remuneration for services voted at general meeting—Agreement to accept shares in lieu of cash.]—*Re BARANGAH OIL REFINING CO., ARNOT'S CASE*, No. 1675, *ante*.

1889. Allotment in respect of past services.]—*Re EDDYSTONE MARINE INSURANCE CO.*, No. 1923, *post*.

Compare Sect. 7, sub-sect. 6, *ante*.

C. The Statutory Contract.

(a) What is a "Contract."

1890. Articles of association—Provision for further agreement—Vendor to receive fully-paid shares.]—By the arts. of assocn. of a mining co. it was provided that the co. should, immediately after incorporation, enter into an agreement with the vendor of the mine for the purchase of the mine; the price to be £2,000 in cash, & 3,200 fully paid-up shares to be allotted to the vendor or his nominees. The arts. were signed by the vendor & six other persons, & were duly registered. The directors allotted the 3,200 shares to the vendor or his nominees, & for a short time worked the mine, but no further agreement was made with the vendor. The co. was then ordered to be wound up. A firm to whom ten of the vendor's shares were allotted had requested that they might be registered in the name of one of the members of the firm, which was done; & he was afterwards placed on the list as a contributory in respect of ten shares not fully paid up:—*Held*: the arts. of assocn. did not constitute a contract in writing between the vendor & the co. within

went into liquidation. After the co. was formed in pursuance of the original agreement between the parties, stock was issued to each of them as fully-paid according to the amounts for which they respectively subscribed, & in the winding-up proceedings they were respectively placed on the list of contributories for the total amount of said stock:—*Held*: as all the proceedings were in good faith, & there was no misrepresentation of material facts, & as H. & S. had paid full value for their shares, the agreement by which they received them as fully-paid was valid, & the order making them contributories should be rescinded.—*HOOD v. EDEN* (1905), 36 S. C. R. 476; 25 C. L. T. 115.—CAN.

1886 i. ————.]—Where, on the formation of a joint-stock co. to take over a partnership business, each partner receives a proportionate number of fully-paid shares, at their par value, in satisfaction of his interest in the partnership assets, this does not constitute a payment in cash within Companies Act, s. 50, for shares subscribed for by the partner, & the debt owing to the shareholders as the price of the partnership assets cannot be set off against their liability on the shares.—*TURNER v. COWAN* (1903), 34 S. C. R. 160.—CAN.

q. Credit given by vendor — In respect of purchase price.]—Where there is a sum of money in the hands of the vendor to a co. specifically appropriated to the payment of the subscribers' shares in the co., & the co. gives credit for that amount to the vendor, & gets credit for that amount of the purchase-money, the shares are paid for "in cash" within New South Wales Companies Act, s. 57, which is identical with the English Companies Act, 1867, s. 25. It is sufficient if the shareholders can show that their shares were in fact paid up to the

extent of the money in the vendor's hands.—*NORTH SYDNEY INVESTMENT & TRAMWAY CO. v. HIGGINS* (1899), 80 L. T. 303.—AUS.

r. Balance of price — To be satisfied by future services—No contract in writing.]—M. & C. each agreed to take shares in a joint stock co., paying a portion of the price in cash & receiving receipts for the full amount, the balance to be paid for in future services. The co. afterwards failed:—*Held*: * as there was no agreement in writing for the payment of the difference by money's worth instead of cash, under Companies Act, s. 27, M. & C. were liable to pay the balance of the price of the shares to the liquidator of the co.—*MORRIS v. UNION BANK* (1901), 31 S. C. R. 594; 22 C. L. T. 45.—CAN.

s. Substantial services rendered to company—Under express or implied contract with company.]—The holding of shares in a co., registered under Law 5 of 1874, involves an obligation to pay to the co. the full amount of the nominal value of those shares. Such obligation to pay may, under Volksraad Resolution, Art. 856 of Aug. 16, 1893, be satisfied by services rendered to the co.; but such services must be real & not illusory, & the award for them must represent an honest & not a collusive decision on the part of the co. Services performed in connection with the formation or promotion of a co. on instructions received from the promoters & rendered for remuneration, the persons performing them looking for payment, not to the persons instructing them, but to the co. when formed, are, if the co. takes the benefit of them, services rendered "for the benefit of the co.," which can be paid for by the issue of shares as fully paid up. But services not rendered under any express or implied contract for remuneration or rendered by a person who did not primarily look to the co.

for payment, even though the co. may indirectly benefit thereby, are not such services & cannot be paid for by the issue of shares as fully-paid.—*Re ROSEMOUNT GOLD MINING SYNDICATE, LTD. (IN LIQUIDATION)*, [1905] T. H. 169.—S. AF.

t. Discharge by shareholder of debt — Due from company to third party — Necessity for release of company by third party.]—A promise by a shareholder to discharge at some future date a debt due by a co. without any release of the co. by its creditor, is not equivalent to the payment of cash so as to discharge the shareholder from liability to pay for shares held by him, even though the co. may have agreed to credit him in its books with the amount of such debt.—*SIMON v. MASTER OF THE SUPREME COURT*, [1912] T. P. D. 459.—S. AF.

a. Fund distributable as dividend — Applied in issue of partly-paid bonus shares.] — *BROWNIE PETITIONERS* (1898), 6 S. L. T. 249.—SCOT.

b. Surrender of share — New partly-paid shares issued instead.] — The surrender of a share for which £100 was paid some time before, & an acceptance in lieu thereof of two new £100 shares, credited each with £50 paid up, is not a payment in cash.—*DRYSDALE v. BRUCE PATENT OATMEAL & MILLING CO., LTD. (LIQUIDATORS)* (1892), 10 N. Z. L. R. 116.—N.Z.

PART III. SECT. 20, SUB-SECT. 3.—C. (a).

c. General rule — Requisites of.] — The contract in writing to be filed with the Registrar of Joint-Stock Companies at or before the issue of shares under New South Wales Companies Act, 1874, s. 57, & Companies Act, 1867, s. 25, so as to avoid the liability of payment in full on such shares, must be a document creating legal rights,

Sect. 20.—Shares issued or credited as fully or partly paid: Sub-sect. 3, C. (a).]

1867 Act, s. 25, & the ten shares could not be considered as fully paid up.—*Re TAVARONE MINING CO., PRITCHARD'S CASE* (1873), 8 Ch. App. 956; 42 L. J. Ch. 768; 29 L. T. 363; 21 W. R. 829, L. J.

Annotations:—Distd. Re Appletreewick Lead Mining Co. (1874), L. R. 18 Eq. 95. *Apld. Re Malaga Lead Co., Firmstone's Case* (1875), L. R. 20 Eq. 524. *Reid. Eley v. Positive Government Security Life Assce.* (1875), 1 Ex. D. 20; *Hickman v. Kent or Romney Marsh Sheep-Breeders' Asscn.*, [1915] 1 Ch. 881. *Mentd. Re Imperial Rubber Co., Bush's Case* (1874), 22 W. R. 685.

1891. — Memorandum signed by all vendors—Partly-paid shares allotted in proportion to interest in business.]—There may be a sufficient "contract in writing" for the issue of shares, as partially or fully paid up, within 1867 Act, s. 25, contained in the arts. of assocn. themselves.

In 1870, a co. was formed for the purpose, as stated in the memorandum of assocn. of purchasing the interests of the persons then engaged in working a certain mine. These persons, one of whom was R., subscribed the memorandum for the whole number of shares, of £10 each, into which the capital of the co. was divided. By one of the arts. of assocn. it was agreed that each share should be credited with £7 per share as paid up thereon, & that in consideration thereof the interest of the persons respectively, who were interested in the mine in proportion to the number of shares for which they had respectively signed the memorandum, should be transferred to the co. The mine was handed over to the co. & the memorandum & arts. were duly registered. R. subscribed the memorandum for ninety shares, which were duly allotted to him. Each of these shares was credited in the share register of the co. with £7 per share as paid up thereon. No cash payment had been made in respect of the £7 per share, the remaining £3 per share had been called up, & paid. The co. was subsequently ordered to be wound up, at which time R. remained on the register for 75 of these shares, having sold the rest:—*Held*: he was not liable as a contributory to the extent of £7 per share on these 75 shares, as the arts. of assocn. constituted a sufficient contract in writing between the vendors of the mine & the co. within 1867 Act, s. 25.—*Re APPLE-TREEWICK LEAD MINING CO.* (1874), L. R. 18 Eq. 95; 43 L. J. Ch. 793; 30 L. T. 287; 22 W. R. 678.

Annotation:—Consd. Re Carribean Co., Crickmer's Case (1875), 44 L. J. Ch. 595.

1892. — Bonus shares allotted to subscribers to debentures.]—The arts. of assocn. of a limited co. provided that the directors should offer for subscription certain debenture bonds & that with each bond they should allot, by way of bonus to the lenders, fully paid-up shares of equal value to the amount of such bond. F., who was already a member of the co., subscribed for some of the bonds, & bonus shares of equal nominal value were allotted to him & registered in his name as paid-up shares. The co. was afterwards ordered to be wound up:—*Held*: the arts. of assocn. did not constitute a contract in writing within 1867 Act, s. 25, & the requirements of that sect. had not been complied with, & F. was liable as a contributory in respect of his bonus shares.—*Re MALAGA LEAD*

CO., FIRMSTONE'S CASE (1875), L. R. 20 Eq. 524; 44 L. J. Ch. 617; 23 W. R. 867.

Annotations:—Consd. Re Carribean Co., Crickmer's Case (1875), 44 L. J. Ch. 595. *Reid. Re New Eberhardt Co., Ex p. Menzies* (1889), 43 Ch. D. 118.

1893. — All shares allotted as fully-paid to vendor—Except one share allotted to each subscriber of memorandum.]—The memorandum of assocn. of a limited joint-stock co. established for working guano stated that the capital of the co. should consist of 2,500 shares of £10 each. The arts. contained a clause providing that all the original shares should be considered fully paid-up shares; & a clause empowering the directors to purchase property for the co. with paid-up shares. All the original shares, except one share retained by each of the subscribers of the memorandum, were allotted, as fully paid-up shares, to the vendor of a concession for working guano, in pursuance of a contract made by him with one of the promoters of the co.; but this contract was not registered. The co. was afterwards ordered to be wound up:—*Held*: the arts. of assocn. did not constitute a contract within 1867 Act, s. 25, & the holder of vendor's shares, who took them with notice of the circumstances under which they were allotted, was liable to calls to the full nominal amount of the shares.—*Re CARIBBEAN CO., CRICKMER'S CASE* (1875), 10 Ch. App. 614; 24 W. R. 219; *sub nom. Re CARRIBEAN CO., LTD., CRICKMER'S CASE*, 46 L. J. Ch. 870, L. JJ.

Annotations:—Distd. Re Wedgwood Coal & Iron Co., Anderson's Case (1877), 7 Ch. D. 75. *Reid. Re Kharaskhoma Exploring & Prospecting Syndicate, Pyke & Gibson's Case* (1897), 77 L. T. 82.

1894. Contract on behalf of company—Adopted by company.]—Certain shares were allotted & accepted as fully paid up in pursuance of a contract with a trustee for the co., which, through inadvertence, had not been registered in accordance with 1867 Act, s. 25. Upon discovery of the omission the directors cancelled the shares & removed the name of the allottee from the register, then registered the contract, & subsequently issued fresh shares to the allottee. The co. was afterwards wound up:—*Held*: the directors had power to rectify a mistake which was common to them & the allottee, & the transaction could not be disturbed, & a contract with a trustee for a co. adopted by the co. is within the sect.—*Re POOLE FIREBRICK & BLUE CLAY CO., HARTLEY'S CASE* (1875), 10 Ch. App. 157; 44 L. J. Ch. 240; 32 L. T. 106; 23 W. R. 203, L. C. & L. J.

Annotations:—Distd. Re Malaga Lead Co., Firmstone's Case (1875), L. R. 20 Eq. 524. *Consd. Re Anglo-Colonial Syndicate* (1891), 65 L. T. 847; *Re Staffordshire Gas & Coke Co., Rushworth's Case* (1891), 66 L. T. 48. *Distd. Smith v. Brown*, [1896] A. C. 614. *Consd. Re Wragg*, [1897] 1 Ch. 796. *Reid. Re Macdonald*, [1894] 1 Ch. 89; *Re Common Petroleum Engine Co., Elsner & McArthur's Case*, [1895] 2 Ch. 759; *Re London Health Electrical Institute* (1896), 75 L. T. 658. *Mentd. Re Tal-y-Drws Slate Co., Mackloy's Case* (1875), 33 L. T. 460; *Stone v. City & County Bank, Collins v. City & County Bank* (1877), 3 C. P. D. 282; *Re Ambrose Lake Tin & Copper Co., Clarke's Case* (1878), 8 Ch. D. 635; *Re Preservation Syndicate* (1895), 64 L. J. Ch. 723.

1895. — —.]—*DALTON TIME LOCK CO. v. DALTON*, No. 1936, *post*.

See, also, No. 1900, *post*.

1896. Contract executed by company only.]—The filing with the Registrar of Joint-Stock Co. of an agreement purporting to be between a co. & the persons mentioned in the schedule thereto, for the issue to such persons of shares as fully

duties, or obligations as between the parties to it. A mere resolution between certain persons interested in a property, setting forth the manner in which they propose to put the pro-

though registered under the statute.—*SMITH v. BROWN* (1896), 45 W. R. 132. —*AUS.*

d. Statements in memorandum — Referring to contract never registered.]

The memorandum of assocn. of a co. registered under Companies Acts, 1874, stated that the object of the co. was to purchase a certain invention & to adopt & carry into effect a certain agreement entered into between the

paid up, but executed by the co. only, & not by the persons named in the schedule, is not the filing of "a contract duly made in writing" in compliance with the provision of 1867 Act, s. 25.—*Re* NEW EBERHARDT Co., *Ex p.* MENZIES (1889), 43 Ch. D. 118; 59 L. J. Ch. 73; 62 L. T. 301; 38 W. R. 97; 6 T. L. R. 56; 1 Meg. 441, C. A.

Annotations :—*Consd.* *Re* Staffordshire Gas & Coke Co., Rushworth's Case (1891), 66 L. T. 48. *Distd.* *Re* Common Petroleum Engine Co., Elsner & McArthur's Case, [1895] 2 Ch. 759. *Consd.* *Ruf v. Pauwels*, [1919] 1 K. B. 660. *Refd.* *Re* Anglo Colonial Syndicate (1891), 65 L. T. 847; *Re* Kharaskhoma Exploring & Prospecting Syndicate, Pyke & Gibson's Case (1897), 77 L. T. 82. *Mentd.* *Re* Maynard's, [1898] 1 Ch. 515; *Re* Metropolitan Fire Insee., Wallace's Case, [1900] 2 Ch. 671.

1897. Contract not between company & allottee
—**Contract between company & vendor—Allotment to vendor's nominee.**—W. entered into an agreement with a person as trustee of an intended co. for the sale to the co. of a property for a certain sum in cash & a certain number of fully paid-up shares. The agreement was not to be binding unless adopted by the co. when formed. The co. was formed, & the agreement was set out in the articles. W. applied to applts. to become directors, which they agreed to do upon his promising to transfer to them fully paid-up shares to qualify them. They acted as directors, & adopted the agreement for sale. The number of shares requisite for the qualification of a director was five, but after the completion of the purchase thirty paid-up shares were, by the direction of W., allotted to each of applts. & they were entered on the register as holders each of thirty paid-up shares, & received certificates to that effect. An order was afterwards made for winding up the co. :—*Held* : applts., as to the shares allotted to them, stood in the same position as if those shares had been allotted to W. & transferred to them by him; & as there was no contract between them & the co. that they would take shares independently of their accepting certificates stating them to be the holders of these fully paid-up shares, they could not be placed on the list of contributories as holders of unpaid shares, & the order of the Master of the Rolls was discharged without prejudice to any application that might be made against them under 1862 Act, s. 165, or otherwise, on the ground that they had entered into a corrupt bargain with W.—*Re* WESTERN OF CANADA OIL, LANDS & WORKS Co., CARLING, HESPELER & WALSH'S CASES (1875), 1 Ch. D. 115; 45 L. J. Ch. 5; 33 L. T. 645; 24 W. R. 165, C. A.

Annotations :—*Distd.* *Re* Eupion Fuel & Gas Co., Aspinall's Case (1877), 36 L. T. 362. *Consd.* *Re* British Farmers Pure Linseed Cake Co., Potter & Brown's Cases (1878), 38 L. T. 757. *Distd.* *Re* Newport & South Wales Ship-owners' Co., Rowland's Case (1880), 42 L. T. 785. *Appld.* *Re* Dominion of Canada Plumbago Co., Kirby's Case (1882), 46 L. T. 682. *Folld.* *Re* Innes, [1903] 2 Ch. 254. *Refd.* *Re* Church & Empire Fire Insee., Pagin & Gill's Case (1877), 6 Ch. D. 681; *Re* Wedgwood Coal & Iron Co., Anderson's Case (1877), 26 W. R. 442; *Re* Railway Time Tables Publishing Co., *Ex p.* Sandys (1889), 42 Ch. D. 98; *Re* Macdonald, [1894] 1 Ch. 89; *Re* Common Petroleum Engine Co., Elsner & McArthur's Case, [1895] 2 Ch. 759; *Re* Alkaline Reduction Syndicate (1896), 45 W. R. 10; *Re* Building Estates Brickfields Co., Parbury's Case, [1896] 1 Ch. 100; *Re* African Gold Concessions & Development Co., Markham & Darter's Case, [1899] 1 Ch. 414. *Mentd.* *Christchurch Gas Co. v. Kelly* (1887), 3 T. L. R. 634; *Re* Howatson Patent Furnace Co. (1887), 4 T. L. R. 152; *Re* Jubilee Cotton Mills, [1923] 1 Ch. 1.

1898. ————.]—Where a vendor to a co. has contracted to accept part of his purchase-money in shares to be issued as partly paid up,

inventors of the one part & B. on behalf of the co. of the other part. The memorandum also stated that the capital of the co. was £100,000 divided into 100,000 shares of £1 each, of which 90,000 should be deemed for

all purposes fully-paid. It was provided in the agreement referred to in the memorandum that these 90,000 paid-up shares should be issued to the inventors as consideration for their sale to the co. of the invention. F.,

& the contract has been duly filed in accordance with 1867 Act, s. 25, the vendor's nominee is entitled to the benefit of the contract, to protect him from liability on the shares to the extent to which the shares were agreed to be issued as paid up, although the contract did not provide for allotment to a nominee of the vendor, nor did it purport to identify the shares to be allotted.—*Re* DOMINION OF CANADA PLUMBAGO Co., LTD., KIRBY'S CASE (1882), 46 L. T. 682.

Annotation :—*Refd.* *Re* Common Petroleum Engine Co., Elsner & McArthur's Case, [1895] 2 Ch. 759.

1899. ————.]—*Re* STAFFORDSHIRE GAS & COKE Co., LTD., RUSHWORTH'S CASE, No. 1761, *ante*.

1900. ————.]—A contract need not, in order to comply with 1867 Act, s. 25, be made directly between the allottee of the shares & the co. the shares of which are to be issued; & it need not show on the face of it which particular shares are to be allotted, although the *onus* lies on the allottee to show that his shares are within the registered contract.

By a written agreement between the S. Co. & the trustee for the C. Co., the C. Co. agreed to purchase certain patent rights from the S. Co., & to allot to each shareholder in the S. Co. certain £1 shares in the C. Co., to be credited with 19s. paid up. The C. Co. when registered adopted this agreement by a deed indorsed thereon, & the agreement so indorsed was duly filed. E. & M., who were not shareholders in the S. Co., were allotted shares as nominees of the shareholders, & on paying 1s. per share were registered as holders of fully paid-up shares :—*Held* : the agreement & the indorsed deed were sufficient within 1867 Act, s. 25, although not executed by E. or M.—*Re* COMMON PETROLEUM ENGINE Co., ELSNER & MCARTHUR'S CASE, [1895] 2 Ch. 759; 65 L. J. Ch. 76; 73 L. T. 338; 44 W. R. 361; 2 Mans. 598; 13 R. 840.

Annotation :—*Folld.* *Transvaal Exploring Co. v. Albion (Transvaal) Gold Mines*, [1899] 2 Ch. 370.

1901. ————.]—*Re* INNES & Co., LTD., No. 1926, *post*.

1902. ———— **Allottee original owner of property.**—*Re* WEDGWOOD COAL & IRON Co., ANDLRSON'S CASE, No. 1940, *post*.

See, also, No. 1907, *post*.

1903. Contract giving company option to issue fully-paid shares—No contract in exercise of option filed.—Property was sold to a co. with an option to the co. to pay part of the purchase price in cash or fully-paid shares. The co. decided to pay it in fully-paid shares, & before the shares were issued the contract giving them the option was filed with the Registrar of Joint-Stock Co., but no document showing that the option to pay in fully-paid shares had been exercised was filed "at or before" the issue of the shares :—*Held* : 1867 Act, s. 25, had not been complied with, inasmuch as the contract which was filed before the shares were issued was not a contract to issue fully-paid shares, but only gave an option to do so.—*Re* COOLGARDIE CONSOLIDATED GOLD MINES, LTD. (1898), 14 T. L. R. 277.

Annotation :—*Refd.* *Transvaal Exploring Co. v. Albion (Transvaal) Gold Mines*, [1899] 2 Ch. 370.

1904. ————.]—By a contract in writing dated Oct. 18, 1897, the owner of a business agreed

who was solr. to the co., & had full notice of the circumstances under which the co. was formed, warned B. the managing director that the shares should not be allotted till the agreement had been registered. The agree-

Sect. 20.—Shares issued or credited as fully or partly paid: Sub-sect. 3, C. (a), (b) & (c).]

to sell it to a co. for a specified sum of money to be paid wholly or partly in cash, shares, or debentures as the directors should determine. Subsequently the directors allotted specified shares to the vendor as fully paid up in respect of a part of the purchase-money, but no written contract to that effect was entered into. The original contract was not filed as required by 1867 Act, s. 25, the omission to file it being due to the fact that the parties were ignorant of the provisions of the Act. Upon an application by the vendor for an order for the filing of the original contract with the Registrar of Joint-Stock Cos. under Companies Act, 1898 (c. 26), s. 1:—*Held*: (1) the omission to file the contract was due to "inadvertence" within the Act; (2) the contract was not sufficient within the Act, inasmuch as the determination by the directors as to the mode in which payment was to be made was supplemental to the original contract, & without this determination there was no complete contract; there must be an order that a supplemental contract be entered into, that the supplemental contract be filed with the original contract, & that the entire contract when so filed should operate as if it had been filed at the time of the issuing of the shares.—*Re JACKSON & Co., LTD.*, [1899] 1 Ch. 348; 68 L. J. Ch. 190; 79 L. T. 662; 6 Mans. 125.

Annotations:—As to (1) *Reid. Nichol v. Fearby, Nichol v. Robinson*, [1923] 1 K. B. 480. As to (2) *Reid. Transvaal Exploring Co. v. Albion (Transvaal) Gold Mines*, [1899] 2 Ch. 370.

See, also, No. 1969, *post*.

1905. Contract confirming prior binding agreement.]—*Re MAYNARDS, LTD.*, No. 1915, *post*.

1906. —.—A contract, registered under 1867 Act, s. 25, & made between the co. & the vendors, recited a previous agreement between the vendors & a trustee for the then intended co. so that the material terms appeared, & adopted it. The previous contract was for the sale to the co. of a mining lease of certain property in consideration of the issue of certain fully-paid shares in the co.:—*Held*: the registered contract was sufficient within the Act.—*Re FRASER SOUTH EXTENDED GOLD MINING Co., LTD.* (1899), 15 T. L. R. 452.

1907. Reconstruction agreement.]—By an agreement of Mar. 1897, under which deft. co. had been reconstructed, it was provided that, as part of the consideration for the transfer of the assets of the old co. to deft. co., the liquidator of the old co. should be entitled to have allotted to him or his nominees 200,000 shares of 10s. each in deft. co. with 7s. 6d. per share credited thereon as paid up, upon applying for the same within two months from the date of this agreement, & making a small further payment with such application. This agreement was filed with the Registrar of Joint-Stock Cos. Pltf. co. having applied for 6,500 of these 200,000 shares under the option so conferred upon them, the question was raised whether the filing of the above agreement was a sufficient compliance with 1867 Act, s. 25:—*Held*: the filing of the reconstruction agreement of Mar. 1897, was a sufficient compliance with the sect.—*TRANSVAAL EXPLORING Co., LTD. v. ALBION (TRANSVAAL) GOLD MINES, LTD.*, [1899] 2 Ch. 370; 68 L. J. Ch. 670; 48 W. R. 108; 7 Mans. 51.

See, also, No. 1991, *post*.

(b) What Contract must Contain.

1908. Identity of shares allotted.]—*Re BUENOS AYRES & CAMPANA RY. Co.*, [1875] W. N. 59.

1909. —.—*Re DOMINION OF CANADA PLUMBAGO Co., LTD.*, *KIRBY'S CASE*, No. 1898, *ante*.

1910. —.—A contract to issue fully paid-up shares for a consideration other than money, registered under 1867 Act, s. 25, need not specify the numbers of the shares.—*Re DELTA SYNDICATE LTD.*, *Ex p. FORDE* (1885), 30 Ch. D. 153; 54 L. J. Ch. 724; 53 L. T. 559; 33 W. R. 839.

Annotations:—*Reid. Re Common Petroleum Engine Co., Elsner & McArthur's Case*, [1895] 2 Ch. 759; *Re Jackson*, [1899] 1 Ch. 348.

1911. —.—*Re COMMON PETROLEUM ENGINE Co., ELSNER & MCARTHUR'S CASE*, No. 1900, *ante*.

1912. Names of allottees.]—*Re BUENOS AYRES & CAMPANA RY. Co.*, No. 1908, *ante*.

1913. —.—*Re COMMON PETROLEUM ENGINE Co., ELSNER & MCARTHUR'S CASE*, No. 1900, *ante*.

1914. Consideration—Reference to unfilled agreement insufficient.]—In order to comply with 1867 Act, s. 25, the filed contract with reference to the issue of fully-paid shares for a consideration other than cash must state the actual consideration given for the shares, & it is not sufficient for the filed contract to recite that by a previous unfilled agreement it was agreed to allot the shares "for the considerations therein mentioned."

Observations as to the particularity with which the consideration for the issue of paid-up shares must be described in the filed contract.—*Re KHARASHOMA EXPLORING & PROSPECTING SYNDICATE*, [1897] 2 Ch. 451; *sub nom. Re KARASHOMA EXPLORING & PROSPECTING SYNDICATE, PYKE & GIBSON'S CASE*, 66 L. J. Ch. 675; 46 W. R. 37; 4 Mans. 249; *sub nom. Re KHARASHOMA EXPLORING & PROSPECTING SYNDICATE, LTD., PYKE & GIBSON'S CASE*, 77 L. T. 82; 13 T. L. R. 530; 41 Sol. Jo. 661, C. A.

Annotations:—*Apld. Re Maynards*, [1898] 1 Ch. 515; *Re West Randt Proprietary* (1898), 42 Sol. Jo. 395. *Consd. Re African Gold Concessions & Development Co., Markham & Darter's Case*, [1899] 2 Ch. 480; *Re Frost*, [1899] 2 Ch. 207. *Reid. Re Watson*, [1899] 2 Ch. 509.

1915. —.—(1) A contract registered under 1867 Act, s. 25, must indicate the vendor, the purchaser, the price to be given, & the thing to be purchased.

(2) A contract registered under 1867 Act, s. 25, for the sale of a business to a co. for a sum payable partly in cash & partly in shares to be credited as fully paid up, which describes the subject-matter of the contract merely by reference to a sched. in a prior unregistered agreement, does not sufficiently comply with that sect. to enable the vendor to hold shares issued in pursuance of such contract as fully paid up. The vendor will therefore be entitled to have the register of shareholders of the co. rectified by striking off his name. The proper form of order is to strike out the name without giving further directions.

(3) A confirmatory contract which merely embodies a prior binding contract, if it is registered under sect. 25 & in other respects complies with the requirements of that sect., is sufficient to protect the holder of shares issued as fully paid up.—*Re MAYNARDS, LTD.*, [1898] 1 Ch. 515; 67 L. J. Ch. 186; 78 L. T. 150; 46 W. R. 346; 14 T. L. R. 250; 42 Sol. Jo. 308.

Annotations:—As to (1) *Apld. Re West Randt Proprietary* (1898), 42 Sol. Jo. 395. *Reid. Re African Gold Concessions & Development Co., Markham & Darter's Case*, [1899] 1 Ch. 414; *Re Watson*, [1899] 2 Ch. 509. As to (3) *Consd.*

ment had not been registered:—*Held*: the statements in the memorandum neither constituted a contract within

sect. 57 of the above Act nor dispensed with the necessity of registering the contract.—*Re PHILLIP-STEPHEN PHOTO,*

LITHO & TYPOGRAPHIC PROCESS Co., LTD., FERGUSON'S CASE (1891), 12 N. S. W. Eq. 11.—*AUS.*

Re Frost, [1899] 2 Ch. 207. *Reid. Re African Gold Concessions & Development Co., Markham & Darter's Case*, [1899] 1 Ch. 414.

1916. ———.]—*Re WEST RANDT PROPRIETARY, LTD.* (1898), 42 Sol. Jo. 395.

1917. ———. Sufficiency of statement in filed contract.]—A contract for the sale of a business to a co. for a sum payable in fully paid-up shares, filed under 1867 Act, s. 25, is sufficient if it states generally on the face of the contract the nature of the consideration for the issue of such shares, for example, leasehold premises, machinery & plant, etc., & such a contract complies with the requirements of sect. 25, although in order to identify the particular subject-matter of the contract reference would have to be made to a prior contract which had not been filed.—*Re FROST (S.) & Co., LTD.*, [1899] 2 Ch. 207; 68 L. J. Ch. 544; 80 L. T. 849; 48 W. R. 39; 15 T. L. R. 390, C. A.

Annotations:—Consd. Re African Gold Concessions & Development Co., Markham & Darter's Case, [1899] 1 Ch. 414; *Re Watson*, [1899] 2 Ch. 509.

1918. ———.]—A statement of the mere form or character of the consideration of a contract filed under 1867 Act, s. 25, *e.g.*, the sale to the co. of property the general nature of which does not appear on the face of the contract, is not a sufficient statement of the "nature of the consideration" within the rule of *Frost & Co.*, No. 1917, *ante*.—*Re WATSON (ROBERT) & Co., LTD.*, [1899] 2 Ch. 509; 68 L. J. Ch. 660; 81 L. T. 85; 48 W. R. 40; 43 Sol. Jo. 675; 7 Mans. 97.

1919. ———.]—An agreement in writing was made & filed under 1867 Act, s. 25, whereby a co. agreed to allot to vendors to the co., or their nominees, 22,500 fully-paid shares of 10s. each, & certain other shares of 10s. each, upon each of which 8s. was to be deemed to have been paid; & the vendors agreed to give to the co. possession of "the premises more particularly mentioned" in a previous unfiled agreement. Subsequently another agreement was filed whereby, in consideration of the vendors agreeing to give the co. immediate possession of "the lands & premises situate in the mining district of Millwood, in Cape Colony, more particularly mentioned & referred to in" the unfiled agreement, the co. agreed to allot to the vendors, or their nominees, 22,500 fully-paid shares of 10s. each. This agreement made no mention of the shares upon each of which 8s. was to be deemed paid:—*Held*: (1) in the winding up of the co., the agreements filed were sufficient under sect. 25 to enable the 22,500 shares allotted in pursuance thereof to be treated as fully paid, for the later agreement sufficiently showed the consideration which the shareholder was to give for the fully-paid shares & it did not signify that it omitted to state that there were also other shares passing for the same consideration.

(2) *Semble*: (WRIGHT, J.) if no sufficient contract within 1867 Act had been filed before the issue of the shares, the statement in the certificates that the shares issued to M. & D. [nominees of the vendors & members of the vendor syndicate] were fully paid would not have estopped the co. or its liquidator from (a) denying that the shares were fully paid in cash, because M. & D. knew they were to get vendors' shares not paid for in cash, & did not rely on the certificate as a statement that cash had been paid; or (b) denying

the filing or sufficiency of a contract in respect of the shares.

(3) *Semble*: (WRIGHT, J.) however, that if the filed contracts had been insufficient the case would have been one in which relief would properly have been granted under the Cos. Act, 1898 (c. 26).—*Re AFRICAN GOLD CONCESSIONS & DEVELOPMENT CO., MARKHAM & DARTER'S CASE*, [1899] 2 Ch. 480; 68 L. J. Ch. 724; 81 L. T. 145; 15 T. L. R. 491, C. A.; *affg. S. C.*, [1899] 1 Ch. 414.

Annotations:—As to (1) Reid. Re Frost (1899), 68 L. J. Ch. 544; *Re Watson*, [1899] 2 Ch. 509.

See, also, No. 1906, *ante*.

1920. Vendor.]—*Re MAYNARDS, LTD.*, No. 1915, *ante*.

1921. Purchaser.]—*Re MAYNARDS LTD.*, No. 1915, *ante*.

(c) *Necessity for and Sufficiency of Consideration.*

1922. Necessity for.]—*Re WEDGWOOD COAL & IRON CO., ANDERSON'S CASE*, No. 1940, *post*.

1923. ———.]—A co. limited by shares, formed under 1862 Act, has no power to issue shares as fully paid up, as a free gift or bonus, to its shareholders, although a contract to do so has been made without any fraudulent intent & registered under 1867 Act, s. 25.

A co. formed under 1862 Act was carried on for some years as a private co., all the shares which were issued being in the hands of a limited number of shareholders. It was then decided to throw the co. open to the public, but before doing so, the co. passed resolutions to allot a certain number of shares as fully paid to the directors & original shareholders. Accordingly, a contract was executed between the co. & the shareholders, & registered under 1867 Act, s. 25, by which it was agreed that those shares should be allotted to the directors & shareholders in consideration of their past services & expenses in forming the co. & establishing the business; & on the registration of this contract the shares were allotted as agreed. The co. proved unsuccessful & was wound up. The liquidator placed the directors & original shareholders on the list of contributories for the shares so allotted as unpaid shares:—*Held*: on the evidence no payment either in money or money's worth had been made for the shares, & the directors & shareholders must be held liable for the full nominal value of the shares.

If once you arrive at the conclusion that this stipulation that the shares were to be taken as paid up in full, was *ultra vires*, the co. cannot be estopped by putting into the document an untruth (LINDLEY, L.J.).—*Re EDDYSTONE MARINE INSURANCE CO.*, [1893] 3 Ch. 9; 62 L. J. Ch. 742; 69 L. T. 363; 41 W. R. 642; 9 T. L. R. 501; 37 Sol. Jo. 559; 2 R. 516, C. A.

Annotations:—Consd. Re Theatrical Trust, Chapman's Case, [1895] 1 Ch. 771. *Folld. Re Kharaskhoma Exploring & Prospecting Syndicate*, [1897] 2 Ch. 451. *Distd. Re Wragg*, [1897] 1 Ch. 796. *Reid. Re Innes* (1903), 89 L. T. 142. *Mentd. I. R. Comrs. v. Blott, I. R. Comrs. v. Greenwood*, [1921] 2 A. C. 171.

1924. ———.]—The co. agreed to purchase copyrights & other property at a price to be paid partly in fully paid-up shares. The agreement was put into writing, & filed under 1867 Act, s. 25, & the shares were then allotted to the vendor,

PART III. SECT. 20, SUB-SECT. 3.—
C. (c).

e. *Whether court will inquire into—Fraud.*—S. agreed with a trustee for a co. about to be formed to sell the goodwill & assets of his business for £3,500. The co. was duly formed &

adopted the agreement & of the 4,000 shares of £1 each, into which the capital was divided, 3,500 were allotted to S. as fully-paid in satisfaction of the purchase-money & 400 were allotted to him as contributory shares. Within 2 months after formation of the co., but after paying up the whole amount due

on the contributory shares, S. sold all his shares to two of debts. for £550. The co.'s balance-sheet for the first year showed a substantial loss & in the course of the second year it went into voluntary liquidation. On a summons by certain creditors calling on the debts. & the liquidator to show cause

Sect. 20.—Shares issued or credited as fully or partly paid: Sub-sect. 3, C. (c) & (d) i. & ii.]

who transferred some of them as fully paid up. On an application by him & his transferees to be taken off the list of contributories, the liquidator contended, *inter alia*, that there had been a partial failure of consideration, for which appcts. ought to account:—*Held*: (1) it was not the duty of the ct. to inquire in such cases whether the price given for the shares was reasonable or of a cash value equal to the nominal value of the shares; (2) there was no evidence to show that the consideration was illusory, & the shares must be treated as fully paid up.—*Re THEATRICAL TRUST, LTD., CHAPMAN'S CASE*, [1895] 1 Ch. 771; 64 L. J. Ch. 488; 43 W. R. 553; 11 T. L. R. 310; 39 Sol. Jo. 364; *sub nom. Re THEATRICAL TRUST, LTD., CHAPMAN'S CASE, BRANDON'S CASE, GREVILLE'S CASE*, 72 L. T. 461; 2 Mans. 304; 13 R. 462.

Annotations:—*As to* (1) *Apprvd. Re Wragg*, [1897] 1 Ch. 796. *Reid. Re Innes*, [1903] 2 Ch. 254. *As to* (2) *Reid. Re Common Petroleum Engine Co., Elsner & McArthur's Case*, [1895] 2 Ch. 759. *Generally, Reid. Mosely v. Koffyfontein Mines*, [1904] 2 Ch. 108.

1925. Sufficiency of—Whether court will inquire into.]—*Re THEATRICAL TRUST, LTD., CHAPMAN'S CASE*, No. 1924, *ante*.

1926. ———.]—(1) Two brothers, who carried on the business of working a steam boiler patent in partnership, arranged with six shipowners to form a private company to take over the business & patent rights in consideration of £6,000 payable half in cash & half in shares, the capital of the co. to be £25,000 in 2,500 shares of £10 each, which were to be distributed as follows: the six shipowners were each to take fifty shares & pay for them in cash for the purpose of raising the £3,000 payable in cash to the vendors, & the vendors were to take 300 fully-paid shares as the balance of their purchase-money. Of the remaining 1,900 shares, each of the six shipowners was to take 300 fully-paid shares for his own benefit, & 100 fully-paid shares were to be placed in the joint names of three of them, who, eventually, on the formation of the co., became directors, to be applied in rewarding persons who should bring business to the co. The co. was incorporated, & the only shareholders were the vendors & the six shipowners. In order to give effect to the above arrangement, an agreement was entered into between the vendors & the co. whereby the vendors purported to sell their business & patent rights to the co. for £25,000, as to £3,000 in cash & as to £22,000 by the allotment to the vendors or their nominees of 2,200 fully-paid shares, & this agreement was duly registered. Of these 2,200 shares, 300 were allotted to the vendors, & on the nomination of the vendors, the remaining 1,900 were allotted, as to 100 to the three directors jointly for the purpose above mentioned, & as to 1,800 to the three directors & the other three shipowners in equal shares for their own benefit, the whole of the 2,200 shares being so allotted as fully paid. Upon a summons by the liquidator in the winding up of the co. against the three directors to render them liable as contributories for payment of the full amount of all the shares allotted to them:—*Held*: the directors could

not be placed upon the list of contributories as holders of unpaid shares.

(2) Once you arrive at the conclusion that there was a real contract for sale & purchase, & that the co. did in fact get the property, it is really a matter of perfect indifference how the shares were divided among these eight shareholders (*VAUGHAN WILLIAMS, L.J.*).

(3) The ct. cannot go into the question of consideration (*COZENS-HARDY, L.J.*).—*Re INNES & Co., LTD.*, [1903] 2 Ch. 254; 72 L. J. Ch. 643; 89 L. T. 142; 51 W. R. 514; 19 T. L. R. 477; 47 Sol. Jo. 513, C. A.

1927. ———.]—*Re WRAGG, LTD.*, No. 1928, *post*.

1928. Evidence of—Appropriation of purchase-money for purpose of stamp duty.]—(1) Although a limited co. cannot release a shareholder from the obligation to pay for his shares either in money or money's worth, & cannot therefore issue its shares at a discount, it can, provided the contract is duly registered under 1867 Act, s. 25, buy property at any price it thinks fit, & can pay for such property in fully paid-up shares; & the transaction will be valid & binding upon its creditors if the co. has acted in it honestly & not colourably, & has not been so imposed upon by the vendor as to be entitled to be relieved from its bargain.

(2) In an agreement by a co. for the purchase of property by the issue of fully paid-up shares, a clause appropriating purchase-money to various items of the property for the purposes of stamp duty does not prove that those items were taken as actually representing the values thus attributed to them.

(3) Where fully-paid shares are allotted to vendors under a contract registered under 1867 Act, s. 25, as part of the price of the property purchased, it is not illegal for the vendors to make a profit, & the ct. will not go behind the contract & inquire whether the consideration represents the full value against which the shares are issued, unless the contract itself is impeached or the consideration appears on the face of the contract to be insufficient, or colourable, or illusory.—*Re WRAGG, LTD.*, [1897] 1 Ch. 796; 66 L. J. Ch. 419; 76 L. T. 397; 45 W. R. 557; 13 T. L. R. 302; 41 Sol. Jo. 385; 4 Mans. 179, C. A.

Annotations:—*As to* (1) *Consd. Hong Kong & China Gas Co. v. Glen*, [1914] 1 Ch. 527. *Reid. I. R. Comrs. v. Blott, I. R. Comrs. v. Greenwood*, [1921] 2 A. C. 171. *As to* (3) *Reid. Re London Health Electrical Institute* (1896), 75 L. T. 658; *Re Kharaskhoma Exploring & Prospecting Syndicate, Pyke & Gibson's Case* (1897), 77 L. T. 82; *Mosely v. Koffyfontein Mines*, [1904] 2 Ch. 108; *Gardner v. Iredale*, [1912] 1 Ch. 700; *Hong Kong & China Gas Co. v. Glen*, [1914] 1 Ch. 527; *I. R. Comrs. v. Blott, I. R. Comrs. v. Greenwood*, [1921] 2 A. C. 171.

(d) Filing.

i. The Duty to File.

1929. As between company & purchaser of shares—Whether non-registration amounts to fraud.]—(1) There is no fraud on the part of a co. towards a purchaser of shares in not registering a contract as to the issue of those shares as paid up.

(2) 1867 Act, s. 25, is in favour of creditors, &

why the shares allotted to S. as fully-paid should not be declared contributing shares on the ground that the sale by S. to the co. was illusory & a sham:—*Held*: where paid-up shares have been issued in consideration of property transferred or services rendered the value of the property, or

the agreement pursuant to which the shares were to be paid for in property or services is impeached for fraud, & the agreement between S. & the co. was not "illusory & a sham" nor fraudulent against either S.'s creditors or the co.—*Re SCHNEIDEMAN BROTHERS, LTD., SCOTT & MARTIN'S*

48.—N.Z.

PART III. SECT. 20, SUB-SECT. 3.—C. (d) i.

1. Special agreement — Exemption from payment in cash.]—To exempt a shareholder from liability to be called on under 1867 Act, s. 25, for payment in cash of the full amount of his shares.

does not apply as between the co. & the shareholders.

(3) The issue of the certificate is not necessary to the issue of shares within that sect.—*Re HEATON'S STEEL & IRON CO., BLYTH'S CASE* (1876), 4 Ch. D. 140; 36 L. T. 124; 25 W. R. 200, C. A.

Annotations :—*As to* (1) *Distd. Re Ambrose Lake Tin & Copper Co., Clarke's Case* (1878), 8 Ch. D. 635; *Re Barangah Oil Refining Co., Arnot's Case* (1887), 36 Ch. D. 702. *Reid. Re British Farmers Pure Linseed Cake Co., Potter & Brown's Cases* (1878), 38 L. T. 757; *Re Macdonald*, [1894] 1 Ch. 89; *Re Building Estates Brickfields Co., Parbury's Case* (1895), 2 Mans. 616; *Re African Gold Concessions & Development Co., Markham & Darter's Case* (1899), 80 L. T. 282. *As to* (3) *Reid. Re Ambrose Lake Tin & Copper Co., Clarke's Case* (1878), 8 Ch. D. 635; *Spitzel v. Chinese Corpn.* (1899), 80 L. T. 347. *Generally, Mentd. A.-G. v. Regent's Canal & Dock Co.*, [1904] 1 K. B. 263.

1930. As between company & allottee—Shares allotted for consideration other than cash.—*Re BARANGAH OIL REFINING CO., ARNOT'S CASE*, No. 1675, *ante*.

1931. — Company in voluntary winding up.—A liquidator in the voluntary winding up of a co. is an officer of the co. within the meaning of Companies Act, 1900 (c. 48), s. 7, & it is, therefore, his duty to pay out of the assets of the co. the stamp duty in respect of any unfilled contract constituting the title of an allottee of shares allotted for a consideration other than cash, & to file the contract when duly stamped.—*Re X. Co., LTD.*, [1907] 2 Ch. 92; 76 L. J. Ch. 529; 97 L. T. 50; 14 Mans. 227.

Enforcing filing—Refusal by registrar.—*See* No. 1964, *post*.

ii. Time of Filing.

1932. "At or before" the issue of shares—Contract & certificate of shares given to allottee late in one day—Contract filed following morning.—A contract for the issue of shares as fully paid-up was given to the allottee late in the day for the purpose of his getting it filed with the Registrar of Joint-Stock Cos., together with a certificate of the shares. The contract was filed on the following morning :—*Held* : the contract was filed "at the time of" the issue of the shares, & they were to be deemed fully paid-up.—*Re TUNNEL MINING CO., POOL'S CASE* (1887), 35 Ch. D. 579; 56 L. J. Ch. 1049; 56 L. T. 822; 3 T. L. R. 584; *sub nom. POOL v. TUNNEL MINING CO.*, 35 W. R. 565.

Annotations :—*Folld. Re Anglo-Colonial Syndicate* (1891), 65 L. T. 847. *Reid. Re Preservation Syndicate* (1895), 64 L. J. Ch. 723.

1933. — Agreement to allot sealed on day of registration—Agreement filed following day.—F., the promoter of a co., signed the memorandum of assocn. of a co., & twenty qualification shares were allotted to him. By an agreement, dated Jan. 21, 1888, the co. agreed to allot to each of the promoters seventy fully paid-up shares. On Jan. 25, the co. was registered, F. being appointed the managing director. The co.'s seal was affixed to the agreement, but there was no evidence on what day the seal was so affixed. On Jan. 26, 1888, the agreement was filed with the Registrar of Joint-Stock Companies under 1867 Act, s. 25. The twenty shares were not allotted to F. until Apr. 6, 1888, but the seventy shares purported to

be issued on Jan. 25, 1888, the date of the incorporation of the co., the share certificate bearing that date. In Aug. 1890, resolutions were passed for winding up the co. voluntarily, & F.'s name was placed upon the list of contributories in respect of eighty-seven shares, being the twenty original shares & sixty-seven of the seventy shares on the ground that he had paid nothing upon them. On summons, by the liquidators, to have F.'s name settled upon the list of contributories in respect of eighty-seven shares :—*Held* : (1) as to the twenty shares, the burden was upon F. to show that he had paid the amount due upon them, & he had not shown that he had discharged that duty; (2) as to the sixty-seven shares, the agreement being signed on Jan. 21, before the co. was incorporated, was not a binding agreement within 1867 Act, s. 25; (3) the presumption was that the agreement was sealed & delivered by the co. on Jan. 25, after the co. was incorporated, & that was the date of it; (4) though the agreement was not registered until Jan. 26, the delivery & filing were substantially contemporaneous, & the agreement was a binding agreement, & F. held the sixty-seven shares as fully paid up.—*Re ANGLO-COLONIAL SYNDICATE, LTD.* (1891), 65 L. T. 847; 8 T. L. R. 87; 36 Sol. Jo. 92.

1934. "Issue of shares"—Resolution for allotment & transfer of shares before contract filed—Certificate issued after contract filed.—A co. agreed to purchase property for paid-up shares & accordingly the directors passed a resolution to allot a corresponding number of shares to the vendors & their nominees. Two months afterwards, the agreement between the vendors & the co. was filed with the Registrar of Joint-Stock Cos. One of the nominees had sold twenty of the shares, & the transfer was registered three days before the agreement had been filed, but no certificate as to these shares was issued until a fortnight afterwards :—*Held* : the shares were not issued within the meaning of 1867 Act, s. 25, until the certificate was issued, & they were paid-up shares in the hands of the purchaser.—*Re IMPERIAL RUBBER CO., BUSH'S CASE* (1874), 9 Ch. App. 554; 43 L. J. Ch. 772; 30 L. T. 737; 22 W. R. 699, L. JJ.

Annotations :—*Expld. Re Heaton's Steel & Iron Co., Blyth's Case* (1876), 4 Ch. D. 140. In *Bush's Case*, the issue of the certificates was merely taken as evidence of the time when the shares were issued, but this must not be taken to mean that shares are not issued until the certificates are issued (*BRETT, J.A.*). *Re Ambrose Lake Tin & Copper Co., Clarke's Case* (1878), 8 Ch. D. 635. *Reid. Grenfell v. I. R. Comrs.* (1876), 1 Ex. D. 242; *Chicago Ry. Terminal Elevator Co. v. I. R. Comrs.* (1896), 75 L. T. 157.

1935. — — — No register of shareholders before contract filed.—A co. was formed for working a mine in Cornwall, the purchase-money for which was to be paid in fully paid-up shares to be allotted to the vendor or his nominees. On Jan. 18, the memorandum & arts. & the contract with the vendor were sent down by post from London to be registered in Cornwall. On the following day the directors met in London, in the belief that all the documents had been registered, & the vendor nominated the allottees of his paid-up shares, & the directors, resolved that they should be allotted accordingly. On the next day the managing director, finding that although the memorandum & arts. had been registered the

the instrument constituting the special contract, which brings the case within the exception in the sect., must itself be filed with the Registrar, & the omission to register it is not supplied by its being adopted & referred to in the registered arts. of assocn.—*Re*

GIBSON & CO. (1880), 5 L. R. Ir. 139.—*IR.*

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C. (d) ii.

g. "Issue of shares"—Not necessarily by issue of share certificates.]—

The issuing of the share certificates is not necessarily to be taken as the time of the issue of the shares, within the meaning of 1867 Act, s. 25; but the shares will be deemed to have been issued when all has been done that is requisite to make the allottees the

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contract had not been registered, told the secretary not to issue certificates nor allow any dealings with the shares till it had been registered. The contract was registered on Jan. 26. No register of shareholders nor any books of the co. were in existence till after Jan. 26, but before that day some of the paid-up shares had been transferred. No certificates were issued, nor was anything further done by the co. with reference to the shares till after Jan. 26. The books were afterwards made up, treating the shares as allotted on Jan. 19, & registering the transfers as made on the days on which they bore date:—*Held*: the shares were not to be considered as issued before the registration of the contract, & they were to be treated as fully paid-up shares.—*Re* AMBROSE LAKE TIN & COPPER CO., CLARKE'S CASE (1878), 8 Ch. D. 635; *sub nom.* *Re* AMBROSE LAKE TIN & COPPER CO., LTD., CLARKE'S CASE, TAYLOR'S CASE, 47 L. J. Ch. 696; 38 L. T. 587; 26 W. R. 601, C. A.

Annotations:—*Consd.* *Re* Staffordshire Gas & Coke Co., Rushworth's Case (1891), 66 L. T. 48. *Reid.* *Re* Preservation Syndicate (1895), 64 L. J. Ch. 723; *Re* Tunnel Mining Co., Pool's Case (1887), 35 Ch. D. 579; Spitzel v. Chinese Corpn. (1899), 80 L. T. 347.

1936. — Share subscribed for on memorandum of association—Registration of company.]—Deft. subscribed the memorandum of assocn. of pltf. co. for one share. Under an agreement, which was filed upon the registration of the co., & was subsequently adopted by the co., certain shares were issued to the vendors as fully-paid shares. One of these fully-paid shares was allotted & issued to deft. as the share for which he had subscribed the memorandum of assocn.:—*Held*: the share for which deft. had subscribed the memorandum of assocn. was issued to pltf. within the meaning of 1867 Act, s. 25, immediately upon the registration of the co., & deft. was liable to pay cash therefor.

Such a contract must be a contract to which the co. itself is a party, & this co. did not exist until it was registered, which was after these agreements were made (FRY, L.J.).—DALTON TIME LOCK CO. v. DALTON (1892), 66 L. T. 704, C. A.

Annotation:—*Folld.* *Re* Timmins, [1902] 1 Ch. 238.

1937. — — — — —.]—*Re* TIMMINS (EBENEZER) & SONS, LTD., No. 2011, *post*.

See, also, No. 1995, *post*.

1938. — — — Certificate of incorporation.]—A co. formed to take over the business of a vendor was incorporated on Aug. 9, 1870. The vendor signed the memorandum of assocn. for 1068 shares of £100 each, & executed an agreement on Oct. 21, 1870, for the sale of the business to the co. The consideration was £130,000, of which £106,800 was to be paid by the allotment of 1,068 fully paid-up shares to the vendor. The whole of the remaining 232 shares were applied for by & allotted to the other signatories to the memorandum of assocn. On motion under Companies Act, 1898 (c. 26), s. 1 (1), (4):—*Held*: (1) the shares mentioned in the agreement were the same shares as those subscribed for in the memorandum of assocn.; (2) the issue of the certificate of incorporation of the co. operated as the issue of all shares signed for in the memorandum of assocn.; (3) the co. must file a sufficient contract in writing

within 1867 Act, s. 25, to operate as if it had been duly filed on or before the issue of the shares so subscribed for.—*Re* WHITEHEAD & BROTHERS, LTD., [1900] 1 Ch. 804; 69 L. J. Ch. 607; 82 L. T. 670; 48 W. R. 585.

Annotations:—*As to* (2) *Reid.* *Re* Dawnay, [1900] W. N. 152; *Re* Timmins, [1902] 1 Ch. 238.

After issue of shares—Under 1862 Act, s. 35.]—*See* Sub-sect. 3, D. (a) ii., *post*.

Under 1898 Act.]—*See* Sub-sect. 3, D. (a), ii., *post*.

iii. Effect of Filing.

1939. Shares taken by directors—Breach of trust.]—*Re* WESTERN OF CANADA OIL, LANDS & WORKS CO., CARLING, HESPELER & WALSH'S CASES, No. 1897, *ante*.

1940. Agreement not mentioned in prospectus—Agreement bonâ fide & for good consideration.]—A syndicate was formed for the purchase of a coal mine from A., with a view to forming a co. to take the mine. The mine was accordingly agreed to be conveyed by A. to B., who was to establish a co. for taking over the mine, in consideration of £66,000, of which £42,000 were to be in paid-up shares of the intended co. The memorandum of assocn. stated that the capital was to be £200,000 in 20,000 shares of £10 each. The arts. of assocn. stated that the mine belonged to the persons named in the schedule of an agreement to be executed immediately after the registrations of the arts., & that 15,000 paid up shares were to be allotted to them in the proportions mentioned in the schedule. Soon afterwards B. declared himself a trustee for the co., & subsequently to this the agreement referred to in the arts. was executed, & by it B. declared that he had entered into the agreement for the purchase of the mine on behalf of the persons named in the schedule, being A. the members of the syndicate & their nominees, & that they declared they held the mine in trust for the co.; & that 15,000 paid up shares were to be allotted to them in the proportions therein mentioned. This agreement was registered under Cos. 1867 Act, s. 25. A., besides the shares representing the purchase-money of the mine, purchased 3,520 from one of the members of the syndicate, & other persons. The directors issued a large number of debentures on the security of the property of the co., but no other shares were issued except those 15,000 paid up shares. The co. being wound up:—*Held*: (1) the registered agreement was made *bonâ fide* & for good consideration; (2) was a sufficient contract in writing within 1867 Act, s. 25; (3) there was nothing in the circumstances to estop A. from claiming the shares which he had purchased, as paid up shares.

(4) *Qu.*: whether a memorandum in writing under which a person is to take paid up shares without any consideration, is a contract within the 1867 Act, s. 25.

(5) It appears to me, even if they had not given, as I think they have given, a valuable consideration, still the moment you have a duly registered contract sect. 25 of the Act does not apply (JESSEL, M.R.).—*Re* WEDGWOOD COAL & IRON CO., ANDERSON'S CASE (1877), 7 Ch. D. 75; 47 L. J. Ch. 273; 37 L. T. 560; 26 W. R. 442, C. A.

Annotations:—*As to* (1) *Reid.* *Re* Kharas Khoma Exploring

^a actual owners of the shares.—*Re* GIBSON & Co. (1880), 5 L. R. Ir. 139.—IR.

*h. Before registration of company.]—*Shares in the capital stock of the co., registered under Cos. Ordinance, which

have been subscribed for by the memorandum of assocn., are deemed to be issued at the date of the registration of the co. Consequently an agreement filed with the Registrar, subsequent to such date, although the share certificates were not issued until after

such filing, cannot be relied on to relieve the shareholder from a liability to pay for the shares in question.—*Re* RED DEER MILL & ELEVATOR CO., MACDONALD'S CASE (1908), 1 Alta. L. R. 538.—CAN.

& Prospecting Syndicate, [1897] 2 Ch. 451. *As to* (2) *Reid. Re Ince Hall Rolling Mills Co.* (1882), 23 Ch. D. 545, n. *As to* (3) *Consd. Re Wragg*, [1897] 1 Ch. 796. *Reid. Guinness v. Land Corp. of Ireland* (1882), 22 Ch. D. 349; *Christchurch Gas Co. v. Kelly* (1887), 3 T. L. R. 634; *Re Eddystone Marine Insce.*, [1893] 3 Ch. 9. *Generally, Mentd. Re South Durham Brewery Co.* (1885), 31 Ch. D. 261; *Re Alabama, New Orleans, Texas & Pacific Junction Ry.*, [1891] 1 Ch. 213.

1941. Shares issued at a discount—To existing shareholders.]—A co. limited by shares under 1862 Act has no power to issue shares at a discount so as to render the shareholder liable for a smaller sum than that fixed for the value of the shares by the memorandum of assocn.; & such issue will be invalid although the contract with the shareholder under which the shares were issued has been registered under 1867 Act, s. 25.

Shares credited with 18s. paid up were allotted to existing shareholders as fully paid up, & an agreement containing the terms of the allotment was registered in assumed compliance with 1867 Act, s. 25. Before any petition for winding up was presented, the allottees of the new shares applied for rectification of the register by striking out their names as holders of the new shares:—*Held*: as the co. had no power to issue the new shares as fully paid up, appcts. were entitled to have their names taken off the register.—*Re ALMADA & TIRITO Co.* (1888), 38 Ch. D. 415; 57 L. J. Ch. 706; *sub nom. Re ALMADO & TIRITO Co.*, *ALLEN'S CASE*, 59 L. T. 159; 36 W. R. 593; 4 T. L. R. 534; 1 Meg. 28, C. A.

Annotations:—Distd. Re Railway Time Tables Publishing Co., Ex p. Sandys (1889), 42 Ch. D. 98. *Appld. Re Zoedone Co., Ex p. Higgins* (1889), 60 L. T. 383. *Consd. Ooregum Gold Mining Co. of India v. Roper, Wallroth v. Roper*, [1892] A. C. 125; *Re Railway Time Tables Publishing Co., Ex p. Welton*, [1895] 1 Ch. 255; *Re Theatrical Trust, Chapman's Case*, [1895] 1 Ch. 771. *Reid. Re Faure Electric Accumulator Co.* (1888), 40 Ch. D. 141; *Re Briton Medical & General Life Assocn.* (1889), 5 T. L. R. 502; *Re Weymouth & Channel Islands Steam Packet Co.* (1890), 39 W. R. 5; *Metropolitan Coal Consumers' Assocn. v. Scrimgeour* (1895), 44 W. R. 35; *Lock v. Queensland Investment & Land Mortgage Co.*, [1896] 1 Ch. 397; *Welton v. Saffery*, [1897] A. C. 299; *Re Wragg*, [1897] 1 Ch. 796; *Hong Kong & China Gas Co. v. Glen*, [1914] 1 Ch. 527; *Re Pilkin* (1916), 85 L. J. Ch. 318. *Mentd. Re Karaskhoma Exploring & Prospecting Syndicate, Pyke & Gibson's Case* (1897), 66 L. J. Ch. 675; *Re Innes*, [1903] 2 Ch. 254.

1942. Shares issued to vendor—As purchase-money.]—*Re WRAGG, LTD.*, No. 1928, *ante*.

1943. Shares issued as bonus—To persons taking up debentures.]—A co. issued by way of bonus to each person taking a £10 debenture of the co. two shares in the co. of £5 each purporting to be fully paid up. Previously to the issue of these bonus shares, agreements were filed with the Registrar of Joint-Stock Cos. providing for their issue as fully paid up. The co. went into liquidation:—*Held*: the co. had no power to issue shares as fully paid up by way of bonus to persons taking debentures, & the holders of such shares must be placed on the list of contributories for the full amount of their shares.—*Re RAILWAY TIME-TABLES PUBLISHING Co., LTD.* (1893), 62 L. J. Ch. 935; 68 L. T. 649.

Annotation:—Reid. Re Railway Time Tables Publishing Co., Ex p. Welton (1894), 71 L. T. 682.

1944. — Recital in agreement that for con-

sideration—No consideration.]—*Re EDDYSTONE MARINE INSURANCE Co.*, No. 1923, *ante*.

iv. *Failure to File.*

1945. Liability of original allottee—With notice of circumstances of issue.]—*Re ESSEX BREWERY Co.*, *BARNETT'S CASE*, No. 1545, *ante*.

1946. — Nominee of vendor to company —& mortgagee of property sold.]—The mtgees. of an estate which was by an unregistered contract contracted to be sold to a co. for a consideration, partly in cash & partly in paid-up shares, agreed with the vendor to accept payment of their mtge. debt partly in cash & partly in paid-up shares, & in pursuance of this agreement some of the vendors' shares were allotted to them as fully paid up, & they released their charge. Upon the winding up of the co.:—*Held*: they must be treated as holders of unpaid shares.—*Re BRITISH FARMERS' PURE LINSEED OIL CAKE Co., LTD.*, *POTTER & BROWN'S CASE* (1878), 48 L. J. Ch. 56; 38 L. T. 757; 26 W. R. 839, C. A.

1947. — Allottee nominee of person entitled to allotment—Estoppel of company by certificate.]—The rule that when a stranger for value takes shares issued as fully paid up from a shareholder, without notice that the registration required by 1867 Act, s. 25, has not been effected, the co. is estopped by the certificate, does not apply where such stranger is the original allottee & has allowed the person entitled to allotment to act as his agent to do all things necessary to place the shares in the name of such stranger.—*Re NORHAM CASTLE SHIP Co., LTD.*, *JAMIESON'S CASE*, (1887) 4 T. L. R. 303.

1948. — Without notice that shares not paid up—Estoppel of company by certificate.]—An original allottee of shares in a co. is not prevented by the mere fact of his being the original allottee from obtaining the benefit of the estoppel arising from the representation of the co. in the share certificate that the shares are fully paid.

Shares in a co. were allotted to P., & a certificate was sent to him on which it was stated that they were fully paid up. This was not the fact, but P. was not aware that it was untrue, & there was nothing to put him upon inquiry; & he had acted as a shareholder on the faith of the representation contained in the certificate. The co. was afterwards ordered to be wound up:—*Held*: the co. were estopped from denying that the shares were fully paid, & they must be treated as such in the winding-up.—*Re BUILDING ESTATES BRICKFIELDS Co.*, *PARBURY'S CASE*, [1896] 1 Ch. 100; 65 L. J. Ch. 104; 73 L. T. 506; 44 W. R. 107; 40 Sol. Jo. 67; 2 Mans. 616.

Annotations:—Consd. Re Veuve Monnier, Ex p. Bloementhal, [1896] 2 Ch. 525. *Reid. Re African Gold Concessions & Development Co.*, *Markham & Dartor's Case*, [1899] 1 Ch. 414.

1949. — — —.]—Applt. lent money to a limited co. upon the terms that he should have as collateral security fully paid-up shares in the co. & the co. handed to applt. certificates for 10,000 shares of £1 each. The certificates stated that he was the registered holder of the shares,

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C. (d) iv.

k. Liability of allottee — Onus of proof.]—Where a person contracts to sell land to a joint-stock co., & by way of payment agrees to take fully paid-up shares in the co., on the co. going into liquidation such shareholder will be liable to the full amount of such shares unless he can show that the contract was registered under Cos. Act, 1882, s. 34. The onus of proof

does not rest on the liquidators.—*Re BRUCE'S PATENT OATMEAL & MILLING Co., LTD.*, *BRAYSHAW'S CASE* (1890), 8 N. Z. L. R. 483.—N. Z.

l. — Agreement adopted by directors.]—A person who had sold a paper mill, etc., to a limited co. formed for the purpose of acquiring it & carrying on the business, for the sum of £12,000, agreed to take £8,500 of the price in fully paid-up shares of the co. This agreement appeared in the minutes

of the directors of the co. & was carried out by the issue of shares to the vendor, but was never filed with the Registrar of Joint-Stock Cos. The co. having become insolvent & gone into liquidation the liquidators proposed to place the vendor on the list of contributories in respect of shares so issued & held by him with liability to the amount of the uncalled capital effeering to them. The vendor maintained that the shares must be treated as fully paid up &

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& that on each of them the full amount had been paid. No money had in fact been paid upon the shares, which were issued from the co. direct to applt., but he did not know this & believed the representation that they were fully-paid shares. An order having been made to wind up the co., applt. was placed on the list of contributories:—*Held*: since the co. had obtained the loan by a representation that the shares were fully paid, which applt. believed & acted upon, the co. & the liquidator were estopped from alleging that the shares were not fully paid & applt. was entitled to have his name removed from the list of contributories.—*BLOOMENTHAL v. FORD*, [1897] A. C. 156; 66 L. J. Ch. 253; 76 L. T. 205; 45 W. R. 449; 13 T. L. R. 240; 4 Mans. 156, H. L.; *reversg.* S. C. *sub nom.* *Re VEUVE MONNIER ET SES FILS, LTD., Ex p. BLOOMENTHAL*, [1896] 2 Ch. 525, C. A. *Annotations*:—*Reid. Re African Gold Concessions & Development Co., Markham & Darter's Case*, [1899] 1 Ch. 414; *Dixon v. Kennaway*, [1900] 1 Ch. 833; *Gresham Life Assoc. Soc. v. Crowther*, [1914] 2 Ch. 219.

1950. ——— Payment by third party indebted to company.]—MONARCH MOTOR CAR CO. v. PEASE (1903), 19 T. L. R. 148.

1951. ——— Contract to allot fully paid-up shares—Allotment of shares not fully-paid.]—Re MACDONALD, SONS & CO., No. 1482, ante.

——— **When shares not paid for in cash.]—See Sub-sect. 3, B. (b), ante.**

1952. Liability of transferee—Without notice of circumstances of issue.]—Shares in a limited co. were issued as fully paid-up shares by virtue of a contract not registered as required by 1867 Act, s. 25. The co. issued certificates of these shares as fully paid-up shares. Some of them were afterwards transferred for value to a person who had no notice of any irregularity in their issue, & took them as fully paid up on the faith of the certificates. The co. having been ordered to be wound up, the official liquidator sought to make the transferee liable as the holder of shares on which nothing had been paid:—*Held*: as against a transferee who took the shares without notice that they had not been paid up in cash, the co. was estopped by the certificates from saying they had not been so paid up, & the official liquidator was in the same position.—*Re BRITISH FARMERS' PURE LINSEED CAKE CO.* (1878), 7 Ch. D. 533; *sub nom. Re BRITISH FARMERS' PURE LINSEED OIL CAKE CO., LTD., NICHOLLS'S CASE*, 47 L. J. Ch. 415; 38 L. T. 45; 26 W. R. 334, C. A.; *affd. sub nom. BURKINSHAW v. NICOLLS*, 3 App. Cas. 1004, H. L.

Annotations:—*Consd. Re Church & Empire Fire Insee. Fund, Andress' Case* (1878), 8 Ch. D. 126. *Distd. Re Stapleford Colliery Co., Barrow's Case* (1880), 49 L. J. Ch. 498; *Re London Celluloid Co.* (1888), 39 Ch. D. 190; *Re Norham Castle Ship Co., Jamieson's Case* (1888), 4 T. L. R. 303. *Consd. Low v. Bouverie*, [1891] 3 Ch. 82. *Distd. Re National Pure Water Engineering Co., Follett's Case* (1892), 8 T. L. R. 499. *Consd. Re Eddystone Marine Insee.* (1894), 10 T. L. R. 274; *Re Building Estates Brickfields Co., Parbury's Case*, [1896] 1 Ch. 100. *Reid. Re Newport & South Wales Shipowner's Co., Rowland's Case* (1880), 42 L. T. 785; *Re Southport & West Lancashire Banking Co., Fisher's Case, Sherrington's Case* (1885), 31 Ch. D. 120; *Re Vulcan Ironworks Co.*, [1885] W. N. 120; *Christchurch Gas Co. v. Kelly* (1887),

3 T. L. R. 634; *Re Hall* (1887), 37 Ch. D. 712; *Re Briton Medical & General Life Assocn.* (1889), 5 T. L. R. 502; *Re Railway Time Tables Publishing Co., Ex p. Sandys* (1889), 42 Ch. D. 98; *Re Anglo Colonial Syndicate* (1891), 65 L. T. 847; *Tomkinson v. Balkis Consolidated Co.*, [1891] 2 Q. B. 614; *Ooregum Gold Mining Co. of India v. Roper, Wallroth v. Roper*, [1892] A. C. 125; *London Trust Co. v. Mackenzie* (1893), 62 L. J. Ch. 870; *Henderson v. Williams* (1894), 43 W. R. 274; *Re Macdonald*, [1894] 1 Ch. 89; *Re Theatrical Trust, Chapman's Case, Brandson's Case, Greville's Case* (1895), 2 Mans. 304; *Re African Gold Concessions & Development Co., Markham & Darter's Case*, [1899] 1 Ch. 414; *Friary Holroyd & Healey's Breweries v. Singleton*, [1899] 2 Ch. 261; *Re McMahon, Fuller v. McMahon*, [1900] 1 Ch. 173; *Ruben v. Great Fingall Consolidated*, [1904] 1 K. B. 650; *Re West Coast Gold Fields, Rowe's Trustee's Claim*, [1906] 1 Ch. 1; *Re Jubilee Cotton Mills*, [1923] 1 Ch. 1. *Mentd. British Farmers' Pure Linseed Cake Co., Potter & Brown's Cases* (1878), 38 L. T. 757; *Re Veuve Monnier, Ex p. Bloomenthal*, [1896] 2 Ch. 525; *Islington Vestry v. Hornsey U. C.*, [1900] 1 Ch. 695; *Whitechurch v. Cavanagh*, [1902] A. C. 117; *Re Brazilian Rubber Plantations & Estates* (1911), 103 L. T. 882.

1953. ——— Transfer by vendor to company.]

—A co., not registered under 1867 Act, issued shares as fully paid up, & also certificates of those shares describing them as fully paid up, & made the annual returns giving them the same description. The co. entered into a contract with G. to purchase from him a mill & machinery in Nottingham, part payment for which was to be made to G. in "fully paid-up shares." They were not, in fact, paid up, & there was no contract with respect to them such as is required by 1867 Act, s. 25. G., who was really the vendor of this mill & machinery, & promoter & managing director of the co., received the shares. He was himself at the same time making a contract with B. for the purchase of other landed property in another county, Cornwall, & B. agreed to accept a part of the purchase-money in fully paid-up shares of the co. B. had just before bought this Cornwall property from N., & B.'s purchase-money for it was paid to N. through B.'s solr., who also acted, in the conveyance, for N. The conveyance was made, not by N. to B. & then by B. to G., but, at B.'s desire, was made direct from N. to G., & 200 shares held by G. were handed over to N., who swore that he only received them as trustee for B. N.'s name was entered on the register of the co. as the holder of the shares, & he once sent a proxy to G. to vote at a general meeting, describing himself therein as a shareholder in the co. The certificates of the shares were given to B. himself. The co. was ordered to be wound up:—*Held*: (1) under the circumstances N. was not liable to be placed on the list of contributories in respect of the 200 shares; (LORD CAIRNS, C.) (2) in a matter of this kind the official liquidator was not entitled, when putting in force 1867 Act, s. 25, to disregard the actual transactions that have taken place between the parties; (3) if shares are taken in the course of business for valuable consideration, on the person who asserts that he who took the shares had notice that they were not actually paid up, lies the burden of proof of that notice; (4) 1867 Act, s. 25, applies to a co. generally, & not to its liquidation alone; (LORD BLACKBURN) (5) effect of the share certificate by way of estoppel discussed (*see No. 1795, ante*).—*BURKINSHAW v. NICOLLS* (1878), 3 App. Cas. 1004; 48 L. J. Ch. 179; 39 L. T. 308; 26 W. R. 819, H. L.; *affg. S. C.*

that no liability attached to him in respect of them:—*Held*: he must be placed on the list of contributories with liability as contended for by the liquidators.—*COUSTONHOLM PAPER MILLS CO., LTD. (LIQUIDATORS) v. LAW* (1891), 18 R. (Ct. of Sess.) 1076.—*SCOT.*

m. Right of shareholder—Agreement

to give paid-up shares as bonus.]—The promoters, by an agreement in writing, assigned a certain special claim to trustees for a co. when formed, the consideration being 2,500 fully paid-up shares in such co. To induce persons to take up shares the promoters decided to offer 1,000 of such paid-up shares as a bonus *pro*

rata to all subscribers of 100 shares or over, up to a certain number. The agreement between the promoters & shareholders provided that appct., in consideration of having applied for 100 shares, would receive from the promoters forty fully paid-up shares in the co. by way of bonus. No reference to the paid-up shares was made

Sect. 20.—Shares issued or credited as fully or partly paid: Sub-sect. 3, C. (d) iv. & v., & D. (a) i., ii. & iii. & (b) i.]

1961. — Breach of contract to issue fully-paid shares.]—A., the holder of debentures of a limited co. by arrangement with the co. exchanged his debentures for shares in the co. which were issued as fully paid up. No contract in writing in respect to the shares was filed with the Registrar of Joint-Stock Cos. as required by 1867 Act, s. 25, & accordingly, in the winding up of the co., A. was held liable as contributory in respect of the shares as unpaid shares:—*Held*: A. was entitled to prove in the winding-up against the co. for damages in respect of their breach of contract in not issuing to him fully paid-up shares.—**GREAT AUSTRALIAN GOLD MINING CO., Ex p. APPELYARD** (1881), 18 Ch. D. 587; 50 L. J. Ch. 554; 45 L. T. 552; 30 W. R. 147.

Annotations:—*Dbtd. & N.F. Re Addlestone Linoleum Co.* (1887), 37 Ch. D. 191. *Reid. Re London Celluloid Co., Ex p. Bayley & Hanbury* (1888), 57 L. J. Ch. 843; *Re Railway Time Tables Publishing Co., Ex p. Welton*, [1899] 1 Ch. 108.

1962. —]—*Re ADDLESTONE LINOLEUM CO., No. 1839, ante.*

1963. — No lien as vendor on property sold to company.]—**LONDON METALLURGICAL CO., LTD. v. COLES, LONDON METALLURGICAL CO., LTD. v. WALKER, LONDON METALLURGICAL CO., LTD. v. COLES, No. 1958, ante.**

Shares not allotted before winding up.]—*See No. 1864, ante.*

v. Stamp Duties.

1964. Sufficiency of stamp—How tested—On refusal of registrar to file.]—An application was made for a *mandamus* to compel the Registrar of Joint-Stock Cos. to file, under 1867 Act, s. 25, a contract which he had refused to file on the ground that it was insufficiently stamped:—*Held*: the proper mode of questioning the legality of the registrar's refusal was by obtaining the opinion of the Comrs. of Inland Revenue, & appealing from their decision to the High Ct. under ss. 18, 19, & 20 of the Stamp Act, 1870 (c. 97), & therefore, as there was another appropriate remedy, a *mandamus* must be refused.—**R. v. JOINT STOCK COS. REGISTRAR** (1888), 21 Q. B. D. 131; 57 L. J. Q. B. 433; 59 L. T. 67; 52 J. P. 710; 36 W. R. 695; 4 T. L. R. 513, D. C.

Annotations:—*Mentd. R. v. Lambourn Valley Ry.* (1888), 22 Q. B. D. 463; *R. v. Incorporated Law Soc.*, [1895] 2 Q. B. 456; *R. v. Davies*, [1911] 2 K. B. 669; *R. v. Christ's Hospital, Ex p. Dunn*, [1917] 1 K. B. 19.

D. Relief of Shareholder.

(a) Under Companies Act, 1862 (c. 89), s. 35.

i. When Granted.

See, now, 1908 Act, s. 32.

1965. Where no contract filed—Transfer of business from old to new company.]—A new co. was formed under 1862 & 1867 Acts, for purchasing the assets, & carrying on the business of an old one. The members of the two cos. were the same persons. The transaction was to be effected, & the purchase-money satisfied, by fully paid-up shares. The shares were issued by the new to the old co.; but

no contract in writing was filed as required by 1867 Act, s. 25. The question, therefore, was whether, under that sect. the shares could be considered as fully paid up. A motion was made by the new co. to rectify its register by striking out the names of all the allottees in order to file the contract, & then replace the names:—*Held*: the register might be rectified accordingly.—**Re DROITWICH SALT CO., LTD.** (1874), 43 L. J. Ch. 581; 22 W. R. 767.

Annotation:—*Reid. Re Darlington Forge Co.* (1887), 56 L. J. Ch. 730.

1966. — New company solvent.]—**Re FEDERATED, LTD.** (1897), 41 Sol. Jo. 839.

1967. — Sale of business to company—All shares issued to vendors or nominees—All debts provided for.]—The members of a firm sold their assets to a co. formed for the purpose under a verbal contract. All the shares in the co. were issued to the partners or their nominees. The shares were issued as paid up to the extent of the purchase-money. After the lapse of fourteen years the ct., on being satisfied that all debts were provided for, rectified the register of members, by striking out the names of all the shareholders, & directing the issue of new shares, after a proper agreement had been executed & filed under 1867 Act, s. 25.—**Re DARLINGTON FORGE CO.** (1887), 34 Ch. D. 522; 56 L. J. Ch. 730; 56 L. T. 627; 35 W. R. 537.

Annotations:—*Reid. Re Preservation Syndicate* (1895), 64 L. J. Ch. 723. *Mentd. Re Maynards*, [1898] 1 Ch. 515.

1968. — All ordinary shares issued to vendor.]—**Re NOTTINGHAM BREWERY, LTD. & REDUCED** (1888), 4 T. L. R. 429.

1969. Where insufficient contract filed—Sale of property to company—Proof of solvency.]—**Re SOUTH AFRICA SALTPETRE FIELDS, LTD.** (1897), 41 Sol. Jo. 508.

1970. Contract filed after shares issued—Shareholders ignorant of non-registration.]—A co. issued fully paid-up shares as part of the consideration under a contract, before the registration of the contract. Upon proof that the persons to whom the shares were issued did not know at the time of issue that the contract had not been registered, the register of shareholders of the co. was ordered to be rectified by striking out their names to the intent that the shares might be validly reissued to them as fully paid-up shares.—**Re NEW ZEALAND KAPANGA GOLD MINING CO. Ex p. THOMAS** (1873), L. R. 18 Eq. 17, n.; 42 L. J. Ch. 781; 21 W. R. 782.

Annotations:—*Folld. Re Denton Colliery Co., Ex p. Shaw* (1874), L. R. 18 Eq. 16; *Re Droitwich Salt Co.* (1874), 22 W. R. 767. *Reid. Re Darlington Forge Co.* (1887), 34 Ch. D. 522.

1971. —]—Where fully paid-up shares had been issued in pursuance of a contract which had not been registered in accordance with 1867 Act, s. 25, on an application 1862 Act, s. 35, to which the co. consented, the ct. made an order to rectify the register by striking out the names of the holders, & that shares should be reissued after the registration of the contract, it appearing that the holders had accepted the shares in ignorance of the omission to register the contract.—*Re*

their names removed from the list of contributories.—**Re WAIMEA CREEK GOLD-DREDGING CO., LTD.** (1895), 13 N. Z. L. R. 303.—N.Z.

n. Agreement referred to & adopted in articles of association.]—Omission to register an agreement is not supplied by its being adopted & referred to in the registered arts. of assocn.—**Re GIBSON & Co.** (1880), 5 L. R. Ir. 139.—IR.

PART III. SECT. 20, SUB-SECT. 3.—D. (a) i.

o. Where no contract filed—Interests of creditors.]—At the date of the formation of a ltd. co. an agreement was entered into between the co. & certain persons from whom the co. purchased the premises & stock of the business which the co. was formed to carry on, whereby it was agreed that the vendors should take 3,000 fully

paid-up shares in part discharge of the purchase-money. This agreement was not filed with the Register of Joint-Stock Cos. More than six years afterwards the vendors applied to the co. to file the agreement, & issue new shares of the like amount. The co. declined to do so, unless under an order of the ct. to that effect. The ct. refused to make such order without being satisfied that creditors of the co. would not be pre-

DENTON COLLIERY Co., *Ex p. SHAW* (1874), L. R. 18 Eq. 16.

Annotation:—*Reid. Re Darlington Forge Co.* (1887), 34 Ch. D. 522.

1972. ———.]—*Re BROAD STREET STATION DWELLINGS Co.*, [1887] W. N. 149.

1973. ——— *By mistake*.]—Agreement for the sale of the P. Co. of fully-paid shares in the C. Co. in consideration of the allotment, to the holders of the shares, of fully-paid shares in the P. Co., provided that before the issue of any of the shares to be allotted a sufficient contract in writing should be filed with the Registrar of Joint-Stock Cos. By mistake the contract was not filed until after the shares had been issued. On discovering the mistake, one of the allottees gave notice of motion for an order to rectify the register; but before the motion was heard the co. was ordered to be wound up:—*Held*: rectification should only be ordered on the terms that due provision should be made for all the debts & liabilities of the P. Co. which had accrued between the dates of issuing the shares & giving the notice of motion.—*Re PRESERVATION SYNDICATE*, [1895] 2 Ch. 768; 64 L. J. Ch. 723; 73 L. T. 341; 39 Sol. Jo. 690; 2 Mans. 466; 13 R. 695.

1974. ——— *Proof of solvency*.]—*Re BROAD STREET STATION DWELLINGS Co.*, No. 1972, *ante*.

1975. Where contract filed—Shares issued at a discount.]—*Re ALMADA & TIRITO Co.*, No. 1941, *ante*.

ii. Nature of Relief.

1976. By rectification of register—Cancellation of existing issue—Issue after contract filed.]—*Re NEW ZEALAND KAPANGA GOLD MINING Co.*, *Ex p. THOMAS*, No. 1970, *ante*.

1977. ———.]—*Re DROITWICH SALT Co., LTD.*, No. 1965, *ante*.

1978. ———.]—*Re DENTON COLLIERY Co.*, *Ex p. SHAW*, No. 1971, *ante*.

1979. ———.]—The ct. has no jurisdiction to order a contract, involving the issue of shares as fully paid up, to be filed *nunc pro tunc* by the Registrar of Joint-Stock Cos.; but may, on proper evidence, rectify the register by striking out the allotment, in order that the shares may be reissued as fully paid up after registration of the contract.—*Re HARWICH HARBOUR, DOCKS, WHARVES, & WAREHOUSES Co.* (1875), 45 L. J. Ch. 56.

Annotation:—*Reid. Re Preservation Syndicate*, [1895] 2 Ch. 768.

1980. ———.]—*Re DARLINGTON FORGE Co.*, No. 1967, *ante*.

1981. ———.]—*Re BROAD STREET STATION DWELLINGS Co.*, No. 1972, *ante*.

1982. ———.]—*Re NOTTINGHAM BREWERY, LTD. & REDUCED*, No. 1968, *ante*.

1983. ———.]—*Re FEDERATED, LTD.*, No. 1966, *ante*.

1984. ———.]—*Re SOUTH AFRICA SALT-PETRE FIELDS, LTD.*, No. 1969, *ante*.

1985. By filing contract *nunc pro tunc*.]—*Re*

judicially affected.—*Re DUBLIN & WICKLOW MANURE Co.*, *Ex p. O'BRIEN* (1884), 13 L. R. Ir. 198.—*IR.*

p. ———.]—*DREW, PETITIONER* (1898), 35 Sc. L. R. 322.—*SCOT.*

q. ———.]—Arts. of assocn. were duly registered, but through oversight a contract made with the vendors of the property for the issue to them of certain fully paid-up shares in the co. had not been filed. The shares were issued in terms of the contract before the omission was discovered. The proceedings having all been *bond fide*, & the shareholders & creditors of the

company consenting, the ct. allowed the amendment of the register, by having the names of the allottees of the fully paid-up shares struck off to allow of the registration of the contract above referred to, & thereafter to re-issue such fully paid-up shares to the vendors.—*Re CONTAT'S COLLIERIES* (1898), 15 S. C. 12.—*S. AF.*

PART III. SECT. 20, SUB-SECT. 3.—D. (b) i.

1988 i. Where no written contract.]—The provision that "the ct., if satisfied that the omission to file the contract

HARWICH HARBOUR, DOCKS, WHARVES, & WAREHOUSES Co., No. 1979, *ante*.

1986. By alteration of articles—Property acquired for cash instead of shares—Shares paid for in cash.]—A co. having discovered that certain shares which had been allotted to pltf. as fully-paid shares for the purchase of his business & property were not fully paid, in consequence of the non-registration of the contract as required by 1867 Act, s. 25, passed a resolution that the purchase should be for cash instead of shares, & that a conveyance of the property & business should be executed by pltf., no conveyance of the property having been executed up to that date. The co. thereupon paid the money to pltf. by cheque, & got the conveyance, & pltf. paid to the co. the same amount by cheque in respect of the shares which had been allotted to him:—*Held*: the resolution, being *bond fide*, was not *ultra vires* the co., & pltf. was not liable on the shares.—*IBBOTSON v. IBBOTSON BROTHERS & Co., LTD.* (1898), 14 T. L. R. 278, C. A.

Annotation:—*Reid. Re African Gold Concessions & Development Co.*, *Markham & Darter's Case*, [1899] 1 Ch. 414.

iii. On What Terms.

1987. Where company being wound up—Provision for debts incurred after issue of shares.]—*Re PRESERVATION SYNDICATE*, No. 1973, *ante*.

(b) Under Companies Act, 1898 (c. 26).

i. Jurisdiction to Grant.

1988. Where no written contract.]—*Re TOM-TIT CYCLE Co., LTD.* (1899), 43 Sol. Jo. 334.

1989. Where contract filed inaccurate.]—*Re TOM-TIT CYCLE Co., LTD.* (1899), 43 Sol. Jo. 334.

1990. "Issue for a consideration other than cash"—Part of consideration other than cash.]—*Re TOM-TIT CYCLE Co., LTD.* (1899), 43 Sol. Jo. 334.

1991. Where sufficient contract filed.]—A co. was formed to take over the business carried on by J. J. signed the memorandum of assocn. for 6,500 shares of £1 each. The co. was registered on Oct. 4, 1897; on Oct. 8 a contract in writing between J. & the co. was executed, whereby J. agreed to sell his business to the co. in consideration of £6,500 payable by the allotment to him of 6,500 fully paid-up shares of £1 each in the co. The 6,500 shares were duly allotted to J. under the contract. No other shares other than those were ever applied for by or allotted to J., & there was evidence to show that the 6,500 shares for which J. signed the memorandum of assocn. were considered by all parties to be the same 6,500 shares issuable to him under the contract, & that J. did not intend by so signing the memorandum of assocn. to render himself liable to take any shares other than the 6,500 mentioned in the contract. On motion made under Companies Act, 1898 (c. 26), s. 1 (1), (4), for an order for filing a fresh contract in writing, or in the alternative for filing a memorandum specifying the consideration for which the shares were issued:—*Held*: (1) the case was not

or a sufficient contract was accidental or due to inadvertence, or that for any other reason it is just & equitable to grant relief," has no application where there was no contract at all in existence at the time of the issue of the shares. In any case, before granting relief, appct. must satisfy the ct. that creditors will not be injuriously affected by the order.—*Re RED DEER MILL & ELEVATOR Co.*, *MACDONALD'S CASE* (1908), 1 Alta. L. R. 538.—*CAN.*

r. Where contract filed after specified time.]—An application under Cos. Act, 1898 (c. 26), s. 1, for leave to

Sect. 20.—Shares issued or credited as fully or partly paid: Sub-sect. 3, D. (b) i., ii., iii., iv. & v.]

within the Act; (2) the contract filed under 1867 Act, s. 25, was a proper & sufficient contract; (3) the object of the application was not to get rid of any liability under that contract, but to obtain indirectly the decision of the ct. whether or not J. was under some liability in respect of the shares for which he signed the memorandum of assocn., & it was not contemplated by 1898 Act that it should be used for the decision of such a question, & the motion was refused.—*Re JARVIS (F. W.) & Co., LTD.*, [1899] 1 Ch. 193; 68 L. J. Ch. 145; 79 L. T. 727; 47 W. R. 186; 43 Sol. Jo. 113; 6 Mans. 116.

Annotations:—As to (1) *Distd. Re Whitehead*, [1900] 1 Ch. 804. *Folld. Re Dawnay* (1900), 83 L. T. 47; *Re Timmins*, [1902] 1 Ch. 238.

1992. ——A co. was incorporated with the object of acquiring the business of D. D. signed the memorandum of assocn. for 4,069 shares. D. subsequently entered into an agreement with the co. to sell his business to it for 4,069 fully-paid shares. After this agreement had been duly filed, 4,069 shares were under it allotted to D. as fully paid. Upon motion to file a memorandum in writing under Companies Act, 1898 (c. 26), s. 1 (4), setting forth that the shares allotted to D. were the shares for which he signed the memorandum of assocn.:—*Held*: the ct. had no power under 1898 Act to grant the relief asked.—*Re DAWNAY (ARCHIBALD D.), LTD.* (1900), 83 L. T. 47; 48 W. R. 600; 16 T. L. R. 474; 44 Sol. Jo. 592.

Annotation:—*Folld. Re Timmins*, [1902] 1 Ch. 238.

1993. ——*Re TIMMINS (EBENEZER) & SONS, LTD.*, No. 2011, *post*.

See, also, Nos. 380–383, *ante*.

1994. After repeal of 1867 Act, s. 25.]—Notwithstanding the repeal of the above section by Companies Act, 1900 (c. 48), s. 33, the ct. has, in a case in which no contract as required by sect. 25 has been filed with respect to shares issued before the repeal, power under Companies Act, 1898 (c. 26), s. 1, to give relief by ordering the filing of a contract or a memorandum in lieu of a contract, which shall operate in relation to the shares as if a contract had been duly filed before their issue.

Qu.: whether notwithstanding 1900 Act, s. 33, 1867 Act, s. 25, has not still some operation as regards transactions to which it applied before the commencement of 1900 Act.

Form of memorandum ordered to be filed under 1898 Act, s. 1.—*Re BRUTTON & BURNEY, LTD.*, *Re BURNEY'S NEW CROSS BREWERY Co., LTD.*, [1901] 1 Ch. 637; 70 L. J. Ch. 309; 84 L. T. 130; 49 W. R. 360; 17 T. L. R. 272; 45 Sol. Jo. 293, C. A.

1995. — & Companies Act, 1898 (c. 26).]—The above Act gave power to the ct. to grant relief from the inadvertent omission to file at a particular time the memorandum of contract required by 1867 Act, s. 25. 1867 Act, s. 25, was repealed by Companies Act, 1900 (c. 48), s. 33. 1908 Act repealed the previous Cos. Acts, but 1898 Act was not re-enacted:—*Held*: Interpretation Act, 1889 (c. 63), s. 38, preserved the operation of 1898 Act, & in view of the fact that this was a proper case for the ct. to grant relief under that Act, the ct. directed that the necessary memorandum should be filed.—*Re WILKINSON SWORD Co., LTD.* (1913), 29 T. L. R. 242; 57 Sol. Jo. 340.

file a contract or a memorandum in lieu of a contract may be presented by one or more persons holding shares of the class affected & where an original

contract has been filed but not timeously the ct. may authorise the filing of a memorandum under the above sect.—*Re FERGUSON* (1901), 4 F. (Ct.

ii. The Application.

1996. How made—Whether by motion or summons.]—The judge to whom the Companies (Winding-up) business is assigned has jurisdiction under Companies Act, 1898 (c. 26), to grant relief for non-compliance with 1867 Act, s. 25, in cases where no order has been made to wind up the co., but it is more convenient that applications for such relief should be made to the judges of the Ch. Div., exercising their ordinary Chancery jurisdiction. Where, however, such applications are made to the judge to whom the winding-up business is assigned the notices of motion should not be entitled “Companies (Winding-up).”

The jurisdiction given by 1898 Act, is a jurisdiction which ought as a rule to be exercised in ct., & not in chambers.—*Re CONCESSIONS ACQUISITIONS SYNDICATE, LTD.* (1898), 68 L. J. Ch. 49; 79 L. T. 666; 5 Mans. 348.

1997. ——An application under the Companies Act, 1898 (c. 26), s. 1, for leave to file a contract or a memorandum in lieu of a contract, may be made either by motion or summons, but preferably by summons, & if by summons it should be heard in open ct. & not in chambers, following the better practice on applications to rectify the register of shareholders. The application, if made by shareholders, may be made by some only, & not necessarily by all, of the shareholders affected.

Where a memorandum in lieu of a contract is approved by the ct. & ordered to be filed with the Registrar of Joint-Stock Cos. under sub-sect. 4, it is not necessary to file a copy of the order as well as the memorandum, but the memorandum should state on the face of it that it has been approved by the ct. & directed to be filed by the order.

Forms of order & memorandum under the Act.—*Re WHITEFRIARS FINANCIAL Co., LTD.*, *Re REEVES & SON, LTD.*, [1899] 1 Ch. 184; 68 L. J. Ch. 79; 79 L. T. 546; 6 Mans. 72.

1998. By whom made—Some only of shareholders affected.]—(1) *Semble*: on applications for relief under Companies Act, 1898 (c. 26), where no contract for the issue of shares as fully paid has been filed, or only a defective contract, it may be proper in future cases for the ct. to direct notice of the application to be given, so that any one desiring to oppose may attend.

(2) In the circumstances:—*Held*: appcts. should have leave to file the contract; (3) an office copy of the order should be filed at the same time.—*Re NORTHERN CREOSOTING & SLEEPER Co., LTD.* (1898), 79 L. T. 407; 43 Sol. Jo. 63; 5 Mans. 347.

1999. ——*Re WHITEFRIARS FINANCIAL Co., LTD.*, *Re REEVES & SON, LTD.*, No. 1997, *ante*.

2000. To what court.]—*Re CONCESSIONS ACQUISITIONS SYNDICATE, LTD.*, No. 1996, *ante*.

2001. How entitled.]—*Re CONCESSIONS ACQUISITIONS SYNDICATE, LTD.*, No. 1996, *ante*.

2002. Affidavit in support—Particulars of “inadvertence.”]—Upon an application for relief under Companies Act, 1898 (c. 26), where no contract to make shares fully paid has been filed, or only a defective contract, it is not sufficient for appct. to state in his affidavit in support that the omission to file a contract was due to “inadvertence” on his part. He must set out in his affidavit the particulars of the inadvertence.—*Re*

of Sess.) 64.—SCOT.

19941. After repeal of 1867 Act, s. 25.]—*WADDIE & Co., LTD.*, PETITIONERS (1900), 38 Sc. L. R. 212.—SCOT.

VICTORIA BRICK WORKS CO., LTD., SEATON'S CASE (1898), 5 Mans. 350.

iii. *The Hearing.*

2003. Whether in chambers or in court.]—*Re CONCESSIONS ACQUISITIONS SYNDICATE, LTD.*, No. 1996, *ante*.

2004. —.]—*Re WHITEFRIARS FINANCIAL CO., LTD., Re REEVES & SON, LTD.*, No. 1997, *ante*.

2005. Notice of hearing.]—*Re NORTHERN CREOSOTING & SLEEPER CO., LTD.*, No. 1998, *ante*.

iv. *Grounds for Granting or Refusing Relief.*

2006. Omission to file contract—Ignorance of law—"Inadvertence."—*Re JACKSON & CO., LTD.*, No. 1904, *ante*.

2007. —.]—*Re HOWARD'S STORES, LTD.* (1903), 47 Sol. Jo. 768.

2008. Insufficient contract filed—Neglect by shareholder to examine filed contract.]—*S. & B.*, accountants in a large way of business, applied under Companies Act, 1898 (c. 26), for relief from the consequences of having taken certain fully-paid shares in a co., in respect of which a sufficient contract had not been filed before issue. Appcts. had been given their fully-paid shares by R., the "governing director" of the co., in return for circulating the prospectus of the co. among their customers with personal letters recommending the shares; & they alleged that they were induced to believe that these formed part of the vendor's shares under an agreement for sale of the business to the co. by R. which had been duly filed. The shares were in fact not transferred to them by the vendor, but directly allotted to them by the co., & were not covered by any separate contract:—*Held*: the evidence showing that appcts. had not made any sufficient inquiry as to the truth of the statements in the prospectus they were circulating, or as to the real value of the shares, were not entitled to be relieved from the consequence of not taking the trouble to examine the filed contract; & in the exercise of the judicial discretion given by the above Act, it was not "just & equitable" that they should be so relieved at the cost of *bond fide* contributories & creditors.—*Re ROXBURGHE PRESS, SPIERS & BEVAN'S CASE*, [1899] 1 Ch. 210; 68 L. J. Ch. 111; 80 L. T. 280; 47 W. R. 281; 15 T. L. R. 132; 6 Mans. 57.

2009. Sufficient contract filed—After shares issued—Identity of vendor's shares with shares subscribed for on memorandum.]—*Re JARVIS (F. W.) & CO., LTD.*, No. 1991, *ante*.

2010. —.]—*Re DAWNAY (ARCHIBALD D.), LTD.*, No. 1992, *ante*.

2011. —.]—Seven persons signed the memorandum of assocn. of a co., formed for

carrying on a business, for specified numbers of shares amounting in the aggregate to 750 shares. On Mar. 3, 1893, the co. was incorporated. The total capital consisted of 1,000 shares, of which 750 were mentioned in the memorandum, & 118 had been issued & paid for in cash, leaving a balance of 132 shares. The memorandum & arts. referred to an agreement between the signatories & the co. for the sale of the business to the co., & this agreement was executed on Mar. 4, 1893. It referred to the 750 shares, & stated that they were to be fully-paid shares. On Mar. 22 it was filed under the Cos. Acts, & on Apr. 15 the 750 shares were allotted to the signatories. The signatories were advised that they were liable to pay for the 750 shares in cash, & applied to the ct. for liberty to file a memorandum stating that the shares were issued to them as part of the consideration for the assignment of the business:—*Held*: (1) the 750 shares must be taken to have been issued at the date of the registration of the co.; (2) the fact that the shares were identified, in the sense that the parties intended the shares referred to in the agreement & allotted to the subscribers to be the same as those for which they signed the memorandum, was not sufficient to enable the ct. to allow a memorandum to be filed; (3) there was no co. in existence at the date of their signature, so there could not then be a contract to pay for these shares otherwise than in cash, & there could not be a subsequent contract for that purpose.—*Re TIMMINS (EBENEZER) & SONS, LTD.*, [1902] 1 Ch. 238; 71 L. J. Ch. 121; 50 W. R. 134; 18 T. L. R. 125; 46 Sol. Jo. 104; 9 Mans. 47.

2012. —.]—*Re WHITEHEAD & BROTHERS, LTD.*, No. 1938, *ante*.

Liability of subscribers to memorandum generally, *see* Sect. 7, sub-sect. 6, *ante*.

v. *Nature of Relief.*

2013. Sufficient contract filed after allotment—Memorandum to be filed.]—A co. was formed on the reconstruction of another co., the shareholders in which took shares credited as partly paid up in the new co. These shares were issued pursuant to two agreements, but before these agreements were filed with the Registrar of Joint-Stock Cos., the directors allotted a number of the shares. Subsequently the agreements were filed. The co. moved for an order that the two filed contracts should operate as if they had been filed at or before the issue of the shares:—*Held*: as the contracts were actually on the file, an order could not well be made under Companies Act, 1898 (c. 26), s. 1 (1), that the same contracts should be filed; & the case came under sect. 1 (4), & a memorandum must be filed in accordance with that sect.—*Re LUCKY GUSS, LTD.* (1898), 79 L. T. 722; 15 T. L. R. 82.

PART III. SECT. 20, SUB-SECT. 3.—
D. (b) iv.

a. Omission to file contract—Failure to repudiate on knowledge of liability—*Acquiescence*.]—K., a director of the co., made an advance to it in consideration of his receiving certain security, & in addition, 150 fully paid-up shares. This amount becoming due, & the co. not being in a position to pay it, it was agreed between K. & the co. that the loan should be renewed & a further advance made, & that K. should receive, in addition to the security he held, a further lot of 300 fully paid-up shares. By its memorandum of assocn. it was provided that 3,000 fully paid-up shares should be allotted to the vendors of the claim, or promoters of the co. K. thought his

450 shares were part of these; but what he actually got was what purported to be fully paid-up bonus shares, of an issue subsequent to the original shares. No agreement in writing had been filed, under Cos. Act, 1892, s. 34, with reference to these 450 shares. In his capacity of director K. attended a meeting of directors, at which a legal opinion was read advising that the kind of shares he held might be subject to a liability. On July 4, 1899, K. attended another meeting of directors, & offered to forego a sum of £242 if that amount was to go against any liability he might incur in respect of those shares. The co. was subsequently wound up, & it was only on the day that the winding-up resolution was confirmed, Sept. 25, 1899, that he first attempted to repudiate the shares.

He was placed on the list of contributories, & a call made:—*Held*: as K. knew on July 4, 1899, if not earlier, that the shares issued to him were not fully paid-up shares, & that it was possible a liability to pay calls attached in respect of them, & as he had taken no steps to repudiate them, or have his name taken off the shareholders' register, until after the winding up, he must be taken to have assented to the transaction as it stood, & therefore he was liable as a contributory.—*Re BELL HILL GOLD-MINING & SLUICING CO., LTD. (IN LIQUIDATION), Re KNIGHT* (1900), 19 N. Z. L. R. 164.—N.Z.

t. — *Inadvertence*.]—*Re FERGUSON* (1901), 4 F. (Ct. of Sess.) 64; 39 Sc. L. R. 39; 9 S. L. T. 224.—SCOT.

Sect. 20.—Shares issued or credited as fully or partly paid: Sub-sect. 3, D. (b) v., vi. & vii.; sub-sect. 4. Sect. 21: Sub-sect. 1.]

2014. Where insufficient contract filed—Supplementary contract to be entered into & filed.]—Re JACKSON & CO., LTD., No. 1904, ante.

2015. Supplementary contract filed before allotment—Original contract not in allottee's possession—Stamped copies of both agreements & office copy order to be filed.]—Prior to the incorporation of a co., the promoter, on behalf of the intended co., entered into an agreement with the vendor for the purchase of certain patents. By this agreement the promoter undertook to pay all promotion expenses, in consideration of which he was to be entitled to have fully-paid shares in the co. allotted to him to the extent of 10 per cent. of the subscribed capital for the time being. This agreement was not filed. Shortly after the incorporation of the co. a supplemental agreement was entered into between the promoter & the co. by which the co. adopted the former agreement & agreed to allot to the promoter certain fully-paid shares, & also from time to time further fully-paid shares according to the amount of fresh capital subscribed, which shares were to be accepted by him in satisfaction of the shares agreed to be allotted to him by the first agreement. In pursuance of the second agreement, which was duly filed, the shares were allotted to the promoter. The co. subsequently went into liquidation, & the liquidator settled the promoter on the list of contributories in respect of the shares, there being no sufficient contract filed to satisfy 1867 Act, s. 25. On an application by the promoter for relief under Companies Act, 1898 (c. 26), s. 1:—*Held*: (1) the promoter was entitled to the relief asked, & as the original agreements were not in his possession, he must file with the Registrar of Joint-Stock Cos. copies of both agreements, which must first be properly stamped, together with an office copy of the order on the present application, & (2) must pay the official receiver's costs of the application.—*Re MAYS' METALS SEPARATING SYNDICATE, LTD., SMITHSON'S CASE* (1898), 68 L. J. Ch. 46; 79 L. T. 663; 43 Sol. Jo. 64; 5 Mans. 342.

Annotations:—As to (1) *Folld. Re Northern Creosoting & Sleeper Co.* (1898), 79 L. T. 407. *Reid. Re Concessions Acquisitions Syndicate* (1898), 68 L. J. Ch. 49. *As to (2) N.F. Re Northern Creosoting & Sleeper Co.* (1898), 79 L. T. 407.

See, also, No. 1995, ante.

2016. Where no contract in existence—Memorandum to be filed.]—Re WHITEFRIARS FINANCIAL Co., LTD., *Re REEVES & SON, LTD.*, No. 1997, ante.

vi. The Order.

2017. Form of.]—Re WHITEFRIARS FINANCIAL Co., LTD., *Re REEVES & SON, LTD.*, No. 1997, ante.

2018. — Approval of memorandum—By judge.]—Re WHITEFRIARS FINANCIAL Co., LTD., *Re REEVES & SON, LTD.*, No. 1997, ante.

2019. — By registrar.]—Re HOWARD'S STORES, LTD., No. 2007, ante.

2020. Office copy to be filed.]—Re MAYS' METALS SEPARATING SYNDICATE, LTD., SMITHSON'S CASE, No. 2015, ante.

2021. —.]—Re NORTHERN CREOSOTING & SLEEPER Co., LTD., No. 1998, ante.

2022. Form of memorandum.]—Re WHITEFRIARS FINANCIAL Co., LTD., *Re REEVES & SON, LTD.*, No. 1997, ante.

2023. —.]—Re BRUTTON & BURNEY, LTD., *Re BURNEY'S NEW CROSS BREWERY Co., LTD.*, No. 1994, ante.

— Approval of.]—*See* Nos. 1997, 2007, ante.

vii. Costs.

2024. Of official receiver.]—Re MAYS' METALS SEPARATING SYNDICATE, LTD., SMITHSON'S CASE, No. 2015, ante.

2025. Of liquidator—On what scale.]—Upon an application by a shareholder relief was granted in respect of liability for shares issued as fully paid, but in respect of which no proper contract had been filed, upon payment of the costs by him. The question arose whether these should be as between solr. & client, or as between party & party:—*Held*: the costs being entirely in the discretion of the ct. in the present case party & party costs only should be allowed, & while no general rule could be laid down as to costs, an appct. should give the fullest information to the liquidator to enable him to decide whether he should go to the expense of opposing the application.—*Re FARMER'S UNITED, STEPHENSON'S CASE*, [1900] 2 Ch. 442; 69 L. J. Ch. 684; 83 L. T. 406.

2026. — Liability of applicant for.]—Re FARMER'S UNITED, STEPHENSON'S CASE, No. 2025, ante.

SUB-SECT. 4.—RIGHT OF SHAREHOLDERS IN WINDING UP.

Right to share in surplus assets.]—*See* No. 1836, ante.

See, generally, Sect. 36, sub-sect. 12, D., Sect. 37, sub-sect. 9, D., Sect. 38, sub-sect. 7, post.

SECT. 21.—CALLS ON SHARES.

SUB-SECT. 1.—IN GENERAL.

2027. Meaning—Not payment on allotment.]—The payment required on allotment is not a call.—*CROSEY v. BANK OF WALES* (1863), 4 Giff. 314; 8 L. T. 301; 9 Jur. N. S. 595; 66 E. R. 726.

— Under 1845 Act, s. 16.]—*See* Part IX., Sect. 8, sub-sect. 5, post.

2028. When owing—From day of making—Distinguished from payable.]—A call is owing from the day on which it is made, although it is "payable" on a subsequent day.—*Re CHINA STEAMSHIP & LABUAN COAL Co., LTD., DAWES'S CASE* (1869), 38 L. J. Ch. 512.

Annotations:—*Consd. Faure Electric Accumulator Co. v. Phillipart* (1888), 58 L. T. 525. *Mentd. Re Cawley, Ex p. Hallett* (1889), 58 L. J. Ch. 633.

2029. — — — Member liable though share forfeited before date of payment.]—*FAURE ELECTRIC ACCUMULATOR Co., LTD. v. PHILLIPART*, No. 2049, post.

Compare Nos. 2394, 2395, post.

2030. Calls "due"—Whether calls not yet made included.]—*NEW BALKIS EERSTELING, LTD. v. RANDT GOLD MINING Co.*, No. 2821, post.

PART III. SECT. 20, SUB-SECT. 3.—D. (b) vi.

2017i. Form of.]—*Re JASPER LIQUOR Co., LTD.* (1915), 31 W. L. R. 719; 8 W. W. R. 1078.—CAN.

2018 i. — Approval of memorandum.]—*Re DUBLIN UNITED TRAMWAYS*

***Co.* (1896), LTD., [1901] 1 I. R. 340.—IR.**

PART III. SECT. 21, SUB-SECT. 1.

2027 i. Meaning—Not payment on allotment.]—T. agreed to subscribe for shares on the terms that he should pay 20 per cent on signing the application & 10 per cent each successive month

until they were fully paid:—*Held*: the instalments agreed to be paid by T. were not "calls," & T.'s liability to pay the balance of the purchase price of his shares did not consist of the liability of a holder of shares not fully paid to a "call" but consisted only of his liability under the contract.—*Re*

2031. Time for payment—How fixed.]—JOHNSON v. LITTLE'S IRON AGENCY, No. 2145, *post*.

2032. — No date fixed by resolution—Date fixed by subsequent resolution—Does not date back.]—Re CAWLEY & Co., No. 2401, *post*.

2033. How payable—May be made payable by instalments.]—ARCHITECTS, CIVIL ENGINEERS, ETC. INSURANCE Co. v. WILSON, No. 2108, *post*.

— Under Companies Clauses Acts.]—See Part IX., Sect. 8, sub-sect. 5, *post*.

Compare No. 8603, *post*.

— Satisfaction.]—See Sub-sect. 6, *post*.

Interval between calls.]—Compare Part IX., Sect. 8, sub-sect. 5, B., *post*.

Whether court will order a call to be made—To satisfy judgment.]—See No. 8602, *post*.

— Where company in liquidation.]—See No. 2040, *post*.

See, also, No. 2034, *post*.

2034. Must be made equally—On all shares—Shares held by directors as trustees for company.]—The directors of a joint-stock co., in order to procure their Act of Parliament, subscribed for a large number of shares, & signed a declaration that they held them in trust for the co., but did not pay the deposit on, or register them. Afterwards, at a special general meeting of the co., it was resolved that the trust should be annulled, & the shares transferred to the secretary, to be held by him at the disposal of the board. The directors then proceeded to make calls on the registered shares:—*Held*: (1) the directors were primarily liable in respect of the shares subscribed for in trust for the co., as any other trustee would be, although they might be entitled to indemnity from their *cestuis que trust*; (2) it was the duty of the directors to make the calls in respect of all such shares, equally with the calls on the registered shares, & the ct. would compel the directors to put all the shareholders on an equal footing according to their proportions, with respect to the calls to be made upon them.—PRESTON v. GRAND COLLIER DOCK Co. (1840), 11 Sim. 327; 2 Ry. & Can. Cas. 335; 59 E. R. 900; *sub nom*. PRESTON v. GUYON, PRESTON v. HALL, 10 L. J. Ch. 73; 5 Jur. 146.

Annotations:—As to (2) *Reid*. Foss v. Harbottle (1843), 2 Hare, 461; Galloway v. Hallé Concerts Soc., [1915] 2 Ch. 233.

2035. — Of one class—Exercise of special powers under articles.]—There is *prima facie* an implied condition of equality between shareholders in a co., & it is *prima facie* entirely improper for directors to make a call on part of a class of shareholders without making a similar call on all the members of that class. Even if under the

arts. of assocn. calls can be so made, the power is exercisable only in a proper case, & the fact that the members in question have been dilatory in paying previous calls, & have caused the co. trouble & expense in enforcing them, is not a sufficient reason.—GALLOWAY v. HALLÉ CONCERTS SOCIETY, [1915] 2 Ch. 233; 84 L. J. Ch. 723; 113 L. T. 811; 31 T. L. R. 469; 59 Sol. Jo. 613; [1915] H. B. R. 170.

2036. — Court will interfere to enforce equality.]—PRESTON v. GRAND COLLIER DOCK Co., No. 2034, *ante*.

2037. Power of directors—To make call—Whether fiduciary—On behalf of shareholders.]—(1) A director of a co. is not in the position of a trustee of his shares for the general body of shareholders, & under ordinary circumstances he may deal with them as freely as any other shareholder, provided he does not part with his qualification. (2) But he is a trustee of his power of making calls for the general body of shareholders, & must not use it for his own benefit, without regard to their interests. By the arts. of assocn. of a co., the directors had power to refuse to register the transfer of shares until the calls due on them were paid. But this rule was not to apply to a transfer which had been lodged for registration before the call was declared. On Apr. 17, the directors agreed to make a call in order to prevent the transfer of numerous shares which was threatened by some of the shareholders, but the declaration of the call was postponed until Apr. 23, when it was formally made. On Apr. 18, one of the directors transferred some of his shares to his clerk, under circumstances which showed that he did so to escape liability, & the transfer was left for registration on the same day, & registered on Apr. 20, the other directors being cognisant of the transaction. The co. was afterwards wound up:—*Held*: inasmuch as it appeared that the formal declaration of the call had been postponed in order to assist the transferor in getting the transfer registered, the registration was void, & the transferor was put on the list of contributories in respect of the shares.

(3) There is no inherent power in the directors of a co., apart from the provisions of the arts. of assocn., to refuse to register a proper transfer of shares.—*Re* NATIONAL PROVINCIAL MARINE INSURANCE Co., GILBERT'S CASE (1870), 5 Ch. App. 559; 39 L. J. Ch. 837; 23 L. T. 341; 18 W. R. 938. L. J.

Annotations:—As to (1) *Consd.* *Re* South London Fish Market Co. (1888), 39 Ch. D. 324. As to (2) *Consd.* *Re* Cawley (1889), 42 Ch. D. 209. *Reid.* Alexander v. Automatic Telephone Co., [1900] 2 Ch. 56.

PORT ARTHUR WAGGON Co., LTD., TUDHOPE'S CASE (1920), 47 O. L. R. 565.—CAN.

a. Time for payment—No date fixed by resolution—Date fixed by subsequent verbal directions.]—Where by resolution of directors a call is made, but no time or place of payment therein fixed, none being required by the rules of the co., subsequent verbal directions thereon are not sufficient.—CUSHING v. LADY BARKLY GOLD MINING Co. (1883), 9 V. L. R. 108.—AUS.

b. — Date fixed by notice of call.]—A call in respect to shares in a co. is not properly authorised by a resolution which does not fix a time when the call is payable. The fixing of the date in the notice sent to the shareholders does not fix a time when the call is payable. The fixing of the date in the notice sent to the share-

holders does not cure the defect.—CANADIAN MOTOR SALES CORPN., LTD. v. WILSON (1920), 1 W. W. R. 282.—CAN.

c. — Notice inconsistent with resolution.]—A co. by resolution of the directors made certain calls to be paid on particular days named, but by the notice published they were made payable on different days. Deft. had written to the co., enclosing his note for four of the calls, saying that for the balance he would send his note soon, & requesting them to accept this offer, as he had been absent in Europe, & had no knowledge of any of the calls. The co., however, declined:—*Held*: the calls were illegal, being authorised by the resolution, & deft. was not estopped from disputing them.—LONDON GAS Co. v. CAMPBELL (1856), 14 U. C. R. 143.—CAN.

d. Must be made equally—On all

shares.]—The Act of incorporation of the plff. co. authorised the directors to make such equal assessments from time to time on all the shares as they might deem necessary & expedient; the directors in making the first assignment expressly excluded \$250,000 of stock subscribed in U.S.A.:—*Held*: this was not an equal assessment, & was therefore bad.—EUROPEAN & NORTH AMERICAN RY. Co., *etc.* v. MCLEOD (1875), 3 Pug. 3.—CAN.

e. — On all shareholders—Interference by court.]—Where a call is made upon all stockholders without discrimination, or partiality, the ct. will never interfere to determine whether it was necessary, or not. If calls are made in such way as to favour one set of stockholders, & impose an unequal burden upon others, an equity might, perhaps, be found for interference.—CHRISTOPHER v. NOXON (1883), 4 O. R. 672.—CAN.

Sect. 21.—Calls on shares: Sub-sects. 1 & 2.]**2038. — On behalf of creditors.]—**

Re WINCHAM SHIPBUILDING, BOILER & SALT CO., POOLE, JACKSON, & WHYTE'S CASE, No. 2138, *post*.

2039. — On sale of undertaking.]—(1) A

limited co. was empowered by its memorandum of assocn. to sell its undertaking for shares or securities of any other similar co., or for any other consideration. The co. sold their undertaking, & in accordance with one of the terms of the sale called up their unpaid capital & paid the amount to the purchasing co.:—*Held*: the call was not *ultra vires*.

(2) The memorandum & arts. of assocn. of a limited co. empowered the co. to make calls, fourteen days' notice to be given of any such call, & to serve the notice upon any member of the co. either personally or through the post by letter addressed to such member at his registered address. No provision was made as to the service of notice upon the representatives of a deceased member. After the death of a member, the co. made a call upon his shares, & gave notice thereof through the post by letter addressed to him, which did not reach his exors., who did not know that he had been a member, & was returned to the co. marked "Gone away":—*Held*: under the circumstances the call had been properly made, & there had been sufficient notice of the

call & the exors., upon being informed that the testator was a member of the co. & of the making of the call, were liable to pay such call out of his assets.

(3) A deceased member of a limited co. or his estate remains a member of a co., for the purposes of the arts. of assocn., so long as his name remains on the register without notice to the co. of his death.—*NEW ZEALAND GOLD EXTRACTION CO. (NEWBERRY-VAUTIN PROCESS) v. PEACOCK*, [1894] 1 Q. B. 622; 63 L. J. Q. B. 227; 70 L. T. 110; 9 R. 669, C. A.

Annotations:—*As to* (1) *Refd. Re Bank of South Australia* (2), [1895] 1 Ch. 578; *Bisgood v. Henderson's Transvaal Estates*, [1908] 1 Ch. 743. *As to* (2) *Consd. Allen v. Gold Reefs of West Africa*, [1899] 2 Ch. 40. *Refd. James v. Buena Ventura Nitrate Grounds Syndicate*, [1896] 1 Ch. 456; *Bisgood v. Henderson's Transvaal Estates*, [1908] 1 Ch. 743. *As to* (3) *Refd. James v. Buena Ventura Nitrate Grounds Syndicate*, [1896] 1 Ch. 456; *Allen v. Gold Reefs of West Africa*, [1899] 2 Ch. 40. *Generally, Mentd. Wall v. London & Northern Assets Corp.*, [1898] 2 Ch. 469.

2040. — After order for winding up.]—

When an order has been made for the winding-up of a co. by the ct., the power of the directors to make calls is *ipso facto* at an end, & the only power to make calls is in the liquidator in the winding-up.

—*FOWLER v. BROAD'S PATENT NIGHT LIGHT CO.*, [1893] 1 Ch. 724; 62 L. J. Ch. 373; 68 L. T. 576; 41 W. R. 247; 37 Sol. Jo. 232; 3 R. 295.

2041. — To assign call—Call determined on but not made.]—Assignment by directors, in con-

2038 i. Power of directors—To make call—Whether fiduciary—On behalf of creditors.]—Where a co., incorporated by statute, became insolvent:—*Held*: one of the partners, being also a judgment creditor of the co., was entitled to a decree compelling the directors to make calls upon the stock of subscribers, notwithstanding a clause in the statute declaring the shares of defaulters should be forfeited, the forfeiture being cumulative to all other remedies to which a creditor was entitled.—*HARRIS v. DRY DOCK CO.* (1859), 7 Gr. 450.—CAN.

i. — Not secured by bye-law.]—An Act incorporating a joint-stock co. directed that the stock should be divided into 200 shares, to be secured in such manner as the bye-laws of the co. should direct, & should be paid in such sums & at such times as the directors should appoint:—*Held*: it was not essential to the right of the co. to sue for calls of stock, that bye-laws for securing the same should be made, provided the directors who made the calls were duly appointed.—*PORTLAND & LANCASTER STEAM FERRY CO. v. PRATT* (1850), 7 N. B. R. (2 All.) 17.—CAN.

k. — To release shareholder from calls.]—The directors of a co., by a composition deed executed whilst the co. was a going concern, & under powers conferred by the arts. of assocn., purported to release a shareholder from payment of the balance then unpaid on his shares, but the shareholder's name remained on the register:—*Held*: the release was no answer to an action by the liquidator of the co. for calls made by the directors before liquidation & subsequent to the date of the deed. A co. has no power to release a shareholder from payment of either past or future calls.—*COLONIAL FINANCE, MORTGAGE INVESTMENT & GUARANTEE CO. v. GOLDSMITH* (1909), 8 C. L. R. 241; 25 N. S. W. W. N. 79.—AUS.

h. — Calls made by quorum only.]—A call of 4 per cent on the first instalment of 5 per cent on the capital stock made by a quorum only, & not by a majority of the directors:—*Held*: a good call, under plts.' Act

of incorporation.—*ONTARIO INSURANCE CO. v. IRELAND* (1856), 5 C. P. 139.—CAN.

k. — .]—By 37 Vict. c. 5, s. 32, not less than three directors were constituted a quorum for the transaction of business. By sect. 30 it was provided that directors should be elected by the shareholders at the annual meeting, & that vacancies should be filled in the manner provided by bye-laws, which a majority of directors for the time being was empowered to make but which had never in fact been made. In Mar. 1874, three of the directors appointed A. a director to fill a vacancy, & in Sept. 1874, a call was made by four directors, one of whom was A., who seconded the resolution:—*Held*: although A. was not legally a director, the call was valid, three of the directors who made it being legally qualified.—*BANK OF LIVERPOOL v. BIGELOW* (1878), 3 R. & C. 236.—CAN.

l. — To delegate powers.]—A board of directors cannot delegate to its officers or to third parties its statutory powers to make calls.—*Re BOLT & IRON CO., HOVENDEN'S CASE* (1885), 10 P. R. 434.—CAN.

m. — To rescind resolution.]—When certain calls were made by directors, who were bound to pay up all calls due by them before they acted in any way as directors, & before these calls were paid or anything done upon them, they were rescinded:—*Held*: the directors were authorised to rescind the resolution for these calls, although they had not paid them.—*DUBLIN & DROGHEDA RY. CO. v. NASH* (1841), 6 I. L. R. 239; *Jebb & B.* 116.—IR.

n. Place for payment—Not named in resolution—Named in circular.]—Plts.' Act of incorporation provided that stockholders should pay up their shares "by such instalments & at such times & places as the directors of the said corp. shall appoint." It provided also for the appointment of a managing director, "to whom shall be delegated the special management of the business of the society." The directors passed a resolution, ordering a call, payable in two payments on days specified, & directing the secretary

to notify the stockholders according to the Act. A notice signed by the managing director "by order," was published, & a circular signed by him sent to each shareholder, in which the place of payment was mentioned; but there was no meeting of directors between the passing of the resolution & the day named for payment. In an action for this call:—*Held*: a fatal objection that the directors had appointed no place of payment, the advertisement & circular being the act of the managing director only.—*PROVIDENT LIFE ASSURANCE & INVESTMENT CO. v. WILSON* (1865), 25 U. C. R. 53.—CAN.

o. — Named in notice of call.]—Plts.' Act of incorporation enabled the directors to make calls at such times as they might deem requisite, provided that successive calls should be made at intervals of not less than two months between such calls, that no call should exceed 10 per cent, & that thirty days' notice should be given of every such call:—*Held*: not necessary that the calls should be made by bye-law, but that a resolution was sufficient, & the resolution need not name the place of payment of the calls; this could be done in the notice.—*UNION FIRE INSURANCE CO. v. O'GARA*, *UNION FIRE INSURANCE CO. v. SHOOLBRED* (1883), 4 O. R. 359.—CAN.

p. To whom payable—No person fixed by resolution—Assumption of subsequent resolution authorising person named in notice.]—The arts. of assocn. of plts. co. provided that calls should be paid "to the persons & at the time & place appointed by the directors." By a resolution of the directors a call of 5s. per share was made payable at the co.'s office on Dec. 29. A notice requesting payment to the manager, dated from the co.'s registered office & signed by the manager was sent to & received by deft.:—*Held*: the call was properly made, & although the resolution did not specify the person to whom the call was payable, it must be assumed, in the absence of evidence to the contrary, that the directors had, by a subsequent resolution, authorised the manager to issue the notice appointing himself as the person to whom the call was payable.—*SYDNEY*

sideration of further time being given for payment of a debt already due, of a call already determined on, & made a few days afterwards:—*Held*: not an interference with the discretion which directors are bound to exercise in making calls, & consequently a valid assignment, enforceable after an order to wind up under supervision.—*Re SANKEY BROOK COAL CO.* (1870), L. R. 9 Eq. 721; 39 L. J. Ch. 223; 22 L. T. 62; *sub nom. Re SANKEY BROOK COAL CO., Ex p. ALLIANCE BANK*, 18 W. R. 427.

Annotations:—*Consd. Re International Life Assee. Soc. Gibbs & West's Case* (1870), L. R. 10 Eq. 312; *Re Pyle Works* (1890), 44 Ch. D. 534. *Mentd. New Zealand Gold Extraction Co. (Newbery-Vautin Process) v. Peacock*, [1894] 1 Q. B. 622.

— *By way of mortgage.*—*See Sect. 34, sub-sect. 1, E., post.*

2042. Prospective liability for—Whether a debt.]
—*WHITTAKER v. KERSHAW*, No. 2603, *post.*
See, generally, Sect. 24, sub-sect. 1, A. (c) i., post.

SUB-SECT. 2.—THE RESOLUTION.

2043. Directors voting not validly appointed.]
Under 1856 Act, seven persons, including defts., signed the memorandum & arts. of assocn. for an intended co., the capital of which was to be £12,000 in 240 shares, & which was thereupon duly registered. By the arts., the number of directors was to be five, of whom three were to be a quorum; & the first directors were to be determined on by the subscribers. At a meeting of three of the subscribers, defts. not being present, five persons, including defts., were appointed directors, & one of defts. afterwards acted as a director, & was present at a meeting of shareholders approving of the resolution & appointment. Before seventy shares were taken, the three directors made a call, defts. not being present at the meeting, nor afterwards assenting to the resolution:—*Held*: the co. could not sue them for the call upon their shares, the directors not having been duly appointed.

& *PROVINCIAL LAND CO. v. LE WARNE* (1892), 13 N. S. W. L. R. 238.—*AUS.*

q. *Assignment by company before liquidation—Right to make calls.]—Re QUEEN CITY REFINING CO.*, 6 C. L. T. 89.—*CAN.*

r. *Stock not formally subscribed for.]*
—Defts., as partners, had been appointed agents of pliffs., on condition that they should become holders of 200 shares of the capital stock of the co. In pursuance of this agreement they were entered in the stock register of the co. for that number of shares, under the partnership name; & 200 shares of the original stock were allotted to them & the usual certificate sent. They did not, however, formally subscribe for the stock. A draft upon the firm for the first call was accepted & paid, as arranged with one of defts. Subsequently E. wrote to pliffs. that he was about retiring from the firm, & desiring to be informed as to the position of the "stock subscribed for by them":—*Held*: defts. were liable, & could not be heard to say that they had not subscribed for the stock.—*NATIONAL INSURANCE CO. v. EGLESON* (1881), 29 Gr. 406.—*CAN.*

s. *Made before organisation of company—Whether valid.]*—Deft. signed an agreement to take shares in a co. which was being formed. Subsequently the co. was incorporated under another name, deft. being named as a shareholder, but no reference being made to previous acts of promotion. The meeting to organise was after-

wards held:—*Held*: calls made previous to the date of the meeting for organisation were invalid, there being no one at that time who had power to make calls.—*HALIFAX CARETTE CO., LTD. v. MOIR* (1895), 28 N. S. R. 45.—*CAN.*

t. *How payable.]*—Where the balance of the amount due on shares is payable "on call within eighteen months after allotments," the balance is not payable within eighteen months except upon call, but on the expiry of the eighteen months it becomes due & payable without call.—*GRAHAM ISLAND COLLIERIES v. MCLEOD* (1913), 19 B. C. R. 114.—*CAN.*

a. *Authorisation verbally given—Whether valid.]*—Where a call had not been authorised at any meeting of directors nor been expressed in writing, although evidence was given that authorisation for the call had been verbally given by all the directors:—*Held*: the call was not regular.—*Re CONSOLIDATED INVESTMENTS, LTD., DUNLOP'S CASE*, [1919] 3 W. W. R. 105.—*CAN.*

b. *Invalid call—Whether declaration of invalidity necessary before subsequent calls made.]*—Where a call is invalid, it is not necessary for the directors to declare it void before a further call is made which is not in excess of the co.'s power of making calls; but where a call is made to replace an invalid call the irregular call should first be declared void.—*WHYTE v. LADY ROXBURGH GOLD-*

Semble: they could not be competent to make calls until the whole capital was subscribed, & therefore, defts. were not liable at all.—*HOWBEACH COAL CO., LTD. v. TEAGUE* (1860), 5 H. & N. 151; 2 L. T. 187; 6 Jur. N. S. 275; 8 W. R. 264; 157 E. R. 1136; *sub nom. HOWBEACH COAL CO. v. TEAGUE*, *HOWBEACH COAL CO. v. BENNETT*, 29 L. J. Ex. 137.

Annotations:—*Consd. Re English, etc. Rolling Stock Co., Lyon's Case* (1866), 35 Beav. 646; *York Tram. Co. v. Willows* (1882), 8 Q. B. D. 685; *Briton Medical, General & Life Assocn. v. Jones* (1889), 61 L. T. 384; *Dawson v. African Consolidated Land & Trading Co.*, [1898] 1 Ch. 6. *Reid. Ornamental Pyrographic Woodwork Co. v. Brown* (1863), 2 H. & C. 63. *Mentd. Re London & Southern Counties Freehold Land Co.* (1885), 31 Ch. D. 223; *Re Liverpool Household Stores Assocn.* (1890), 59 L. J. Ch. 616.

2044. —.]—GARDEN GULLY UNITED QUARTZ MINING CO. v. MCLISTER, No. 2144, *post.*

2045. — Effect of 1862 Act, s. 67.]—Certain directors of a co. were appointed at a meeting which was convened after a notice of only thirteen days had been given of such meeting, whereas by the deed of settlement of the co. fourteen days' notice of such meeting ought to have been given. The appointment of such directors was afterwards confirmed by a confirming meeting & at the next annual general meeting. The directors made a call, which deft. resisted on the ground that it was an invalid act, as the directors had been illegally appointed. The defect in the appointment was not discovered till after the making of the call:—*Held*: the call was properly made, as the defect in the appointment of the directors had been cured, & their acts validated by sect. 67 of the above Act, & there was nothing in that sect. to limit its operation to the validation of acts & contracts affecting persons outside, & not members of the co.—*BRITON MEDICAL, GENERAL & LIFE ASSOCN. v. JONES* (2) (1889), 61 L. T. 384.

Annotation:—*Reid. Tyne Mutual Steamship Insce. Assocn. v. Brown* (1896), 74 L. T. 283.

See, now, 1908 Act, s. 74.

Appointment of directors generally, *see Sect. 28, sub-sect. 1, post.*

2046. Directors voting after retiring by rotation

DREDGING CO., LTD. (1903), 22 N. Z. L. R. 831.—*N.Z.*

PART III. SECT. 21, SUB-SECT. 2.

2043 i. Directors voting not validly appointed.]—Sect. 67 of Cos. Act, 1890, should be construed liberally. Where *de facto* directors can make a call in the honest belief that they were duly appointed, such call is valid under the sect. notwithstanding the discovery afterwards of a defect in their appointments.—*ESSENDON LAND & FINANCE ASSOCN. v. KILGOUR* (1897), 24 V. L. R. 136.—*AUS.*

2043 ii. —.]—In an action by a co. against a shareholder for payment of a call, defender pleaded that the call had not been validly made, on the ground that the directors who made the call had not had the requisite qualification, in respect that their shares, though registered in their own names, were truly held in trust for another:—*Held*: defence was "irrelevant" inasmuch as the directors were *ex facie* of the register the holders of the shares & must be held entitled to all the privileges of shareholders as they were liable to all the obligations.—*GALLOWAY SALOON STEAM PACKET CO. v. WALLACE* (1891), 19 R. (Ct. of Sess.) 330; 29 Sc. L. R. 264.—*SCOT.*

c. *Two calls made by one resolution—Whether separate calls.]*—A co.'s call is made when the resolution is passed for it, not when the call is payable. Therefore where a co.'s rules

Sect. 21.—Calls on shares: Sub-sects. 2 & 3.]

—**No fresh election—Effect of provision in articles as to defective appointments.]**—The arts. of assocn. of a co. incorporated under Cos. Acts, 1862–1890, provided that the directors should be elected annually, & should hold office from Feb. 20, of the year of election till the following Feb. 20, when they should retire; but that all acts of persons acting as directors, notwithstanding any defect in their appointment, or disqualification, should be as valid as if they had been duly appointed & qualified. No annual election of directors having taken place, the directors whose terms of office had expired made a call upon the members of the co.:—*Held*: the call was invalid.—*TYNE MUTUAL STEAMSHIP INSURANCE ASSOCN. v. BROWN* (1896), 74 L. T. 283; 1 Com. Cas. 345.

2047. No quorum at meeting—Subsequently confirmed by quorum.]—A resolution was passed by the directors of a joint-stock co. that at any meeting of directors three should form a quorum. At a meeting at which two directors only were present, a resolution was passed authorising a call. This resolution was subsequently confirmed at a meeting at which the necessary quorum was present. Less than 21 days' notice, required by the co.'s arts. of assocn. was given of the call. At another meeting of the directors a resolution was passed that, if any shareholder did not pay his call by a certain day, his shares should be forfeited. A shareholder not having so paid his call, his shares were forfeited:—*Held*: the call was validly made, the forfeiture was valid, & the shareholder could only be required to pay the amount of the call.—*Re PHOSPHATE OF LIME CO., LTD., AUSTIN'S CASE* (1871), 24 L. T. 932.

Annotation:—Mentd. York Tram. Co. v. Willows (1882), 8 Q. B. D. 685.

2048. —.]—Where the arts. of assocn. of a co. provide that "the business of the co. shall be conducted by not less than" a specified number of directors, the words are imperative, not merely directory: consequently a call made or a forfeiture of shares declared by less than the specified number of directors is invalid.

The arts. of assocn. of a limited co. provided by art. 35 that "the business of the co. should be conducted by not less than five nor more than seven directors"; also that the office of director should be vacated on bkpcy. or insolvency, & that "the directors might determine the quorum necessary for the transaction of business." The arts. named six persons only as directors, of whom B. was one. These directors fixed three of their number as a quorum. In Oct., 1877, the number of directors being then reduced by death to five, B. became insolvent, & therefore disqualified as a director. In Nov. the co. passed, at an ordinary meeting, a resolution altering art. 35 by sub-

stituting "three" directors for "five." This resolution was admitted to be invalid as not having been passed in accordance with the arts. In Dec. the four remaining directors made a call. B. having made default in payment of this call, as well as a former call made prior to his insolvency, the same directors passed a resolution declaring his shares forfeited. The co. afterwards passed a resolution for a voluntary winding up, in the course of which it turned out that there were surplus assets available for division among the shareholders:—*Held*: the second call & the forfeiture, having been made & declared by four directors only, were invalid; & therefore, B. was entitled, on payment of his calls to the liquidator, to be treated as a shareholder, & to participate in the surplus assets accordingly.—*Re ALMA SPINNING CO., BOTTOMLEY'S CASE* (1880), 16 Ch. D. 681; 50 L. J. Ch. 167; 43 L. T. 620; 29 W. R. 133.

Annotations:—Refd. York Tram. Co. v. Willows (1882), 8 Q. B. D. 685. *Mentd. Faure Electric Accumulator Co. v. Phillpart* (1888), 58 L. T. 525.

2049. —.]—By the arts. of assocn. of pltf. limited co., in liquidation, it was provided that the board of directors should consist of not less than three or more than seven directors. Calls were to be made by the board of directors. If any casual vacancy occurred in the office of directors, it might be filled up by the board of directors. Any member whose shares had been declared forfeited was notwithstanding to be liable to pay all calls owing upon such shares at the time of the forfeiture, & the interest, if any, thereon. If any member did not pay the amount of any call for which he was liable, it was provided that he should pay interest for the same from the day appointed for the payment thereof to the time of actual payment, at the rate of 10 per cent. *per annum*. Deft. was a director of pltf. co. & a shareholder in it to a large extent. At a meeting of directors held on Nov. 7, 1882, a call of £1 per share was made, payable on Dec. 6. Before Dec. 19, 1882, by the resignation of some of the directors, their number was reduced to two, of whom deft. was one. At a meeting held on Dec. 19, 1882, these two, deft. being in the chair, elected three other directors, & the board thus constituted passed a resolution that notice be sent to shareholders who had not paid the call, that, in default of its payment by Dec. 30, their shares would be liable to forfeiture. They also made a second call of £1 per share, payable on Jan. 20, 1883. At a meeting of the same directors held on Jan. 3, 1883, deft. in the chair, it was resolved that the shares on which the first call had not been paid should be forfeited. Amongst the names of the shareholders in arrear that of deft. was included. Upon an action to recover the amount of the said two calls & interest upon them from the day on which they respectively became payable, at the rate of 10 per cent. *per annum*, till

provided that "no call or calls shall exceed the sum of one pound per share, & there shall be an interval of one month between the making of any calls," & two calls had been made at one meeting but with an interval of a month between the time for payment of the calls:—*Held*: there had been a contravention of the rules.—*HODGSON v. FERMOY EXTENDED GOLD MINING CO.* (1866), 3 W. W. & A'B. 70.—*AUS.*

d. —.]—Pltfs.' Act of incorporation enabled the directors to make calls at such times as they might deem requisite, provided that successive calls should be made at intervals of not less than two months between such calls, that no such call should exceed 10 per cent, & that thirty

days' notice should be given of every such call. A resolution was passed by which a call was made of 10 per cent, payable on Mar. 1, & it was thereby further resolved that a further call of 10 per cent be made payable on Sept. 1:—*Held*: clearly not a call of 20 per cent but two calls of 10 per cent each; & the fact of the second call being illegal did not invalidate the first call, because contained in the same resolution.—*UNION FIRE INSURANCE CO. v. O'GARA, UNION FIRE INSURANCE CO. v. SHOOLBRED* (1883), 4 O. R. 359.—*CAN.*

e. —.]—The arts. of assocn. of a co. authorised the directors from time to time to make calls, provided that no call should exceed 2s. 6d. per share; & declared that "a

call shall be deemed to have been made when the resolution of the board of directors authorising such call was passed." At a meeting of directors they resolved to make a fifth call of 2s. 6d. payable on Jan. 1, 1908, & a sixth call of 2s. 6d. payable on Mar. 31, 1908. A shareholder, having declined to pay on the ground that the resolution was truly a call for 5s. & therefore invalid, the ct. repelled the objection, holding that there were two separate calls, each for 2s. 6d.—*UNIVERSAL CORPN., LTD. v. HUGHES*, [1909] S. C. 1434; 46 Sc. L. R. 839; 2 S. L. T. 37.—*SCOT.*

f. Must state time & place for payment of call.]—Deft. signed an agreement to take shares in a co. which was being formed. Subsequently

payment or judgment:—*Held*: (1) the two directors who were alone in office at the commencement of the meeting held on Dec. 19, not being sufficient in number to form a properly constituted board, although sufficient to form a quorum of a properly constituted board, had no power to act so as to increase the number of directors, or to make a call, as between the co. & the ordinary shareholders; (2) as deft. was a director, in the chair, & assisted in passing the resolutions for the second call & for the forfeiture of the shares on the non-payment of the first call, deft. was estopped from disputing the validity of such resolutions, & was liable to pay the amount of the calls; (3) the second call was "owing" immediately after it was made, & therefore deft. was liable to pay it, although in fact his shares had been forfeited before the day appointed for the payment of such second call; (4) deft. was liable to pay interest at the rate of 10 per cent. *per annum* upon the first call from the day upon which it became payable up to the date of forfeiture, but he was not liable to pay any interest on the second call because his shares had been forfeited before the day for payment of such second call had arrived.—*FAURE ELECTRIC ACCUMULATOR CO., LTD. v. PHILLIPART* (1888), 58 L. T. 525; 4 T. L. R. 365.

2050. Necessity for signature of minute.—(1) By the arts. of assocn. of a joint-stock co. a call was to be deemed to have been made at the time when the resolution authorising it was passed; but notice of it was to be given to every shareholder, notifying that it had been made, & in any action for a call it should be sufficient to prove that deft. was holder of the shares, & that such notice had been given, & should not be necessary to prove any other matter. Further it was provided that minutes should be made of all resolutions of directors, & any such minutes, if signed by any person purporting to be chairman of any meeting of directors, should be receivable in evidence without further proof. The minute of the resolution for a call was not signed, but at a subsequent meeting a minute was signed, not by the same chairman, confirming the former one. In an action for a call, this second minute being the only evidence that the call was made:—*Held*: the arts. did not dispense with proof of the call, & the proof was not sufficient.

(2) *Semble*: there was no valid call, the minute of it not having been signed.—*CORNWALL GREAT CONSOLIDATED LEAD & COPPER MINING CO., LTD. v. BENNETT* (1860), 5 H. & N. 423; 29 L. J. Ex. 157; 6 Jur. N. S. 539; 157 E. R. 1246.

2051. Conditions precedent under constitution of

the co. was incorporated under another name, deft. being named as a shareholder, but no reference being made to previous acts of promotion, the meeting to organise was afterwards held:—*Held*: a resolution passed at the organisation meeting "that shareholders who have not paid up their stock be notified to pay the same within ten days to the acting treasurer," & a notice sent out requiring payment, were both invalid, no certain day or place for payment having been appointed by the resolution.—*HALIFAX CARETTE CO., LTD. v. MOIR* (1895), 28 N. S. R. 45.—CAN.

g. No evidence as to form & contents—Presumed to have conformed to terms of notice of call.—Where no evidence is produced as to the form or contents of a resolution referred to in a notice to pay a call, it must be presumed that the resolution conformed to the terms of the notice & was a

resolution making the call payable at the place specified in the notice.—*NEW ZEALAND FARMERS FERTILISER CO., LTD. v. PILBROW*, [1920] N. Z. L. R. 832.—N.Z.

PART III. SECT. 21, SUB-SECT. 3.

h. Sufficiency of notice—Whether time & place of payment must be stated.—Notice of calls containing neither time or place when calls are payable is bad.—*OLUNES & BLACKWOOD CO. v. COULTER* (1870), 1 V. R. (Law) 192.—AUS.

k. — — —.—A notice signed by the secretary of a co. to pay a call at the co.'s registered office on or before a specified date is a sufficient notice of the time & place for payment & of the person to whom the call is to be paid within arts. of assocn. requiring such notice to specify the time & place of payment & the person to whom such call was to be paid.—*NEW ZEALAND*

company—Resolution to continue company if capital not fully subscribed—Call before resolution invalid.—A clause in the arts. of assocn. of a co. registered under 1862 Act, provided that in case the whole of the shares into which the nominal capital of the co. was divided should not be subscribed for or allotted, the registered members of the co. for the time being should, if the directors should by resolution so declare, be & continue associated for the objects thereof; & the regulations for the management of the co. should be in force & binding on such members in like manner as if the whole of the shares into which the nominal capital was divided had been subscribed for & allotted, & the business of the co. might be commenced from that time:—*Held*: until the whole of the capital was subscribed for or allotted, or the directors had passed a formal resolution for continuing the co., the directors had no power to make a call, & a call so made could not be recovered against a shareholder.—*NORTH STAFFORD STEEL, IRON & COAL CO. (BURSLEM), LTD. v. WARD* (1868), L. R. 3 Exch. 172, Ex. Ch.

See, also, No. 1603, *ante*.

2052. Presumption of bona fides.—*ODESSA TRAMWAYS CO. v. MENDEL*, No. 1533, *ante*.

2053. Must state amount of call—& time of payment.—*Re CAWLEY & CO.*, No. 2401, *post*.

— — — — — *See, also*, Part IX., Sect. 8, subsect. 5, *post*.

Resolution at general meeting—Insufficient notice of meeting.—*See* No. 2127, *post*.

SUB-SECT. 3.—NOTICE OF CALL.

2054. Sufficiency of notice—Articles requiring repetition—Notice that company will require money insufficient.—Where the arts. of assocn. of a co. require a notice of call to be repeated within a certain time, a notice that the co. will require money at that time, but not a repetition of the former notice, is not sufficient.—*CHUBWA TEA CO. OF ASSAM, LTD. v. BARRY* (1866), 15 L. T. 449.

— — — — — **Place of payment & payee included in notice—Omitted from resolution.**—*See* No. 1603, *ante*.

2055. By whom given—Liquidator in voluntary winding up—Resolution by directors before winding up—No notice given by directors.—*STONE v. CITY & COUNTY BANK, COLLINS v. CITY & COUNTY BANK*, No. 1603, *ante*.

2056. Service of notice—By post—Sufficiency of address.—Where, by a co.'s arts. of assocn., a notice of call on a member may be served by sending it through the post in a letter addressed to such

FARMERS FERTILISER CO., LTD. v. PILBROW, [1920] N. Z. L. R. 832.—N.Z.

l. — — —.—Notice of a call published in a newspaper in one district is sufficient to render the shareholders residing in that district liable to pay the call, notwithstanding that the notice may not have been published in other districts where stock is held.—*PROVINCIAL INSURANCE CO. v. WORTS* (1883), 9 A. R. 56.—CAN.

m. — — —.—A rule of a co. provided that notice of a call should be published "five days prior to the day on which the call was made payable, to be reckoned inclusive of the day of publication & the day of payment":—*Held*: publication on a specific day more than five days prior to the date of payment was sufficient.—*GREENWOOD v. CROWN PRINCE GOLD-MINING CO.*, 1 J. R. N. S. 41.—N.Z.

n. Service of notice—By post.—

Sect. 21.—Calls on shares: Sub-sects. 3 & 4, A. & B. (a).]

member at his registered place of abode, it is not necessary to follow literally the address on the register, but a substantially accurate designation of the registered place of abode is enough.—*LIVERPOOL MARINE INSURANCE CO. v. HAUGHTON* (1874), 23 W. R. 93.

2057. — After death of member.]—*NEW ZEALAND GOLD EXTRACTION CO. (NEWBERRY-VAUTIN PROCESS) v. PEACOCK*, No. 2039, *ante*.

2058. — Shareholder out of jurisdiction—Sent to last known address in jurisdiction—Duplicate to last known address out of jurisdiction.]—A notice of call was sent to a contributory out of the jurisdiction, by a letter posted & directed to his last known place of residence in England, & at the same time by a letter posted & directed to him at the place out of the jurisdiction where he was last quartered on military duty. It did not appear upon the evidence that the notice had not come to his hands:—*Held*: the notice was well served within 11 & 12 Vict. c. 45, s. 108.—*Re DIRECT EXETER, PLYMOUTH & DEVONPORT RY. CO., Ex p.*

At the hearing of a plaint by a co. against a shareholder for calls it was objected that the notice of calls was not published in newspapers as required by the rules:—*Held*: notice by circular instead of by publication in the newspapers was not sufficient notice of the calls.—*SOLOMON v. COLLINGWOOD QUARTZ MINING CO.* (1867), 4 W. W. & A.B. 128.—*AUS.*

o. — A call was made by the directors of pltf. bank. By the resolution providing for the calls, the mailing of a circular to each of the shareholders was made an essential part of the notice. The cashier swore that circulars had been prepared, printed in part, & that it was the duty of the junior clerk to fill them up & mail them. The clerk swore that he had filled them up & mailed them, but, on cross-examination, said he had not read the print, & did not know what it was about. Deft. did not deny that he had received a circular. The ct. having power to draw inferences of fact as a jury, found that notices had been mailed in sufficient time.—*BANK OF LIVERPOOL v. BIGELOW* (1878), 12 N. S. R. (3 R. & C.) 236.—*CAN.*

p. — The notice of two calls, one payable on July 27, the other on Aug. 27, was mailed at M., on June 27, addressed to the firm at O., which was received by one of defts. There was not any affirmative evidence that it was not communicated by him to his co-partner:—*Held*: such notice was insufficient, as "not less than thirty days' notice" was required; & the mailing of a notice on June 27, requiring a call to be paid on July 27, was not in time; otherwise the notice was sufficiently established.—*NATIONAL INSURANCE CO. v. EGLESON* (1881), 29 Gr. 406.—*CAN.*

q. — The Act under which the calls sued for were made provided that thirty days' notice of every call should be given. The resolution making the call was passed on Aug. 3, 1881, the call to be payable on Sept. 6. Notice to defts., F. & B., was mailed in T. on Aug. 5, & would reach O. post-office, where F. & B. lived, at 7 p.m. on Aug. 6. The post-office closed at 7.30 p.m., but the letter could not have been obtained on that evening without personal application to the postmaster. It was received on Aug. 8:—*Held*: the notice must be deemed to have been given upon the mailing & was good.—*UNION FIRE INSURANCE CO. v. FITZ-SIMMONS, ETC.* (1882), 32 C. P. 602.—*CAN.*

r. — The charter of a co. provided that one month's notice of calls should be given:—*Held*: sending such notice by post was not a compliance with this provision.—*ROSS v. MACHAR* (1885), 8 O. R. 417.—*CAN.*

s. — Shareholder secretary of company.]—By the arts. of assocn. of a co. it was provided that notice of calls be given by one advertisement, to be inserted in one or more of the leading newspapers fourteen days at least before the call is to take place. In an action against deft. for the amount of a call & interest thereon, evidence was given that deft., who was both secretary of the co. & a shareholder, had signed the notice of the call sent to the other shareholders, but it was not shown that any advertisement had been inserted in newspapers:—*Held*: deft. had received sufficient notice of the call.—*SUGAR LOAF MINING CO. v. PILE* (1874), 4 Q. S. C. R. 62.—*AUS.*

t. — By advertisement.]—An action was brought for calls from a shareholder of a co. The deed of settlement provided that calls should be made "at such times & places as the directors may determine by one or more advertisement or advertisements in one or more of the daily newspapers published at S. & at M. respectively." The calls were made by one advertisement in a S. newspaper & a M. newspaper, & the advertisements in these papers fixed one day for payment of the calls at S. & another for payment of the calls at M. On demurrer to a plea setting up as a defence that "no time" was fixed because two different times had been fixed, & that different times could not be fixed for S. & M.:—*Held*: the advertisements had been given in compliance with the deed.—*MELBOURNE & NEWCASTLE MINING CO. v. HODGSON* (1864), 1 W. W. & A.B. 205.—*AUS.*

u. — Effect of irregularity—Notice containing mistake in name of company.]—The notice of a call in a co. need not state the name of the co. correctly or even at all. If the notice is in fact reasonably sufficient to satisfy the whole body of shareholders in the co. that a call in that co. has been made, it is sufficient.—*MCDUGALL v. MOONLIGHT EXTENDED QUARTZ MINING CO.* (1888), 14 V. L. R. 987.—*AUS.*

v. — Whether notice required.]—No notice of a call having been made, or to pay the call, need be given to a

D'URBAN (1854), 24 L. J. Ch. 701; 23 L. T. O. S. 250; 18 Jur. 781; 2 W. R. 538, L. JJ.

2059. — Many shareholders abroad.]—A co. formed to carry on business in London & Paris & having numerous shareholders resident in France, was ordered to be wound up; & when a call became necessary, it was proposed to serve them with the summons for making the call by the post:—*Held*: for the mere purpose of making the call such service would be sufficient, it being open to the contributory so served to raise the question of the validity of the service when proceedings to enforce payment should be taken.—*Re GENERAL INTERNATIONAL AGENCY CO., LTD., Ex p. LIQUIDATOR* (1867), 16 L. T. 725; 15 W. R. 973, L. JJ.

Annotation:—Consd. Re Anglo-African S.S. Co. (1886), 32 Ch. D. 348.

2060. — Re LAND CREDIT CO. OF IRELAND, LTD. (1870), 39 L. J. Ch. 389.

2061. Effect of irregularity—Notice given in old name of company—Valid.]—*SHACKLEFORD, FORD & CO. v. DANGERFIELD*, No. 2740, *post*.

2062. — Length of notice—Invalid resolution confirmed by valid resolution.]—*Re PHOSPHATE*

shareholder to make him liable to pay.—*LEGAL & GENERAL LIFE ASSURANCE CO. v. GILL* (1878), 4 V. L. R. 204.—*AUS.*

c. — After shares forfeited for non-payment of former calls.]—The arts. of assocn. of a co. provided that "21 days' notice at least shall be given of the time & place appointed by the directors for payment of every call," & "a call shall be deemed to have been made at the time when the directors' resolution authorising such a call shall have been passed." Rule 29 provided that "any shareholder whose shares had been forfeited shall notwithstanding be liable to pay to the co. all calls owing on such shares at the time of forfeiture." A call was made on June 14, payable in equal instalments upon July 21 & Aug. 23 following. On June 28, before the date when notice of the call required to be given to the shareholders, the shares of a member of the co. were forfeited in respect of non-payment of former calls. He received no notice of call of June 14 until Aug. 13, when a circular intimating it was sent to him:—*Held*: he was liable for this call notwithstanding the want of statutory notice, since that having ceased to be a shareholder, before the time for giving notice had expired, he was not entitled to that notice; his liability to pay the call arose under Rule 29 without notice.—*FERGUSON v. CENTRAL HALLS CO., LTD.* (1881), 8 R. (Ct. of Sess.) 997; 18 Sc. L. R. 714.—*SCOT.*

d. Evidence of notice.]—The production of a certificate of indebtedness for unpaid calls on stock in a co. incorporated by letters patent under Manitoba Joint-Stock Cos. Act, 1902, c. 30, made in accordance with sect. 53 of the Act, is *prima facie* evidence of notice of the call as well as of the other matters referred to in that sect.—*MORDEN WOOLLEN MILLS CO. v. HECKELS* (1908), 17 Man. L. R. 557.—*CAN.*

e. — Where applt., who had been a director of a co., was sued for calls owing by him to the co., & it was proved that at a meeting of directors he had seconded a resolution, which was carried, that his own shares, amongst others, should be forfeited for non-payment of calls:—*Held*: he was estopped from disputing that he had received notice of the calls.—*PALMER v. MAPOURIKA GOLD-DREDGING CO., LTD.* (1904), 23 N. Z. L. R. 585.—*N.Z.*

f. Construction of.]—The 21 days' notice of a call, required by 1845 Act,

OF LIME CO., LTD., AUSTIN'S CASE, No. 2047, *ante*.

—Whether shareholder indebted.]—See No. 2395, *post*.

Proof of notice.]—See No. 8033, *post*.

SUB-SECT. 4.—LIABILITY.

A. In General.

2063. Conditions precedent—Subscription of capital—Whether subscription of whole necessary.]—HOWBEACH COAL CO., LTD. v. TEAGUE, No. 2043, *ante*.

2064. ———— Whether subscription sufficient to enable company to carry on business necessary.]—A person who has subscribed for shares in a joint-stock co. is liable for calls in respect thereof, although, at the time of action brought, not half the capital intended to be raised was subscribed for, nor yet a sufficient sum to enable the co. to carry on the business for which it was formed.—ORNAMENTAL PYROGRAPHIC WOODWORK CO. v. BROWN (1863), 2 H. & C. 63; 2 New Rep. 81; 32 L. J. Ex. 190; 8 L. T. 506; 9 Jur. N. S. 578; 11 W. R. 600; 159 E. R. 27.

Annotations:—Apld. English, etc. Rolling Stock Co.,

s. 22, must be exclusive of the first & last days.—*Re JENNINGS* (1851), 1 L. Ch. R. 236.—IR.

PART III. SECT. 21, SUB-SECT. 4.—A.

g. Condition precedent—Execution of deed.]—L. applied by letter for thirty shares in a co., enclosing £30, the deposit on thirty shares, & undertaking to take any less number allotted to him, to pay calls, & to execute the deed of assocn. He was allotted 25 shares & applied for & got returned the £5 excess. He never had a notice in writing of the allotment. His name was published in the list of shareholders. He never executed the deed. The co. was registered. L. being sued for calls pleaded that he had not executed the deed:—*Held*: the summons should be dismissed.—GUIDING STAR GOLD MINING CO. v. LUTH (1867), 4 W. W. & A'B. 94.—AUS.

h. — No liability till condition fulfilled.]—The project of the establishment of a co., for the purpose of carrying on building operations, involved the acquisition of the works of an existing co., & the extension of the business by providing additional capital, buildings & machinery, the holders of stock in the existing co. to surrender the same & accept stock in the new concern, the capital stock of which was fixed at \$100,000 & the paid up capital at \$50,000. A subscription list was opened, & was signed by a number of persons for an amount something less than the paid up capital. A committee of subscribers to the new stock was appointed to act with the directors of the co. with a view to the immediate commencement of operations, & a call of 25 per cent on the stock was made & was paid by 27 out of 49 subscribers. After certain liabilities had been incurred for machinery, materials, etc., the project was abandoned, & a petition was filed to have the persons who paid the call made upon the stock made contributories in winding-up proceedings:—*Held*: the stock subscriptions being conditional upon an arrangement for the union of the two bodies going through as a whole, & the project having fallen through, there was a failure of consideration, & there was nothing to prevent the subscribers who paid the call from recovering back the amounts paid by them; the payment of the call, under the circum-

stances, did not waive the condition.—*Re VICTOR WOOD WORKS, LTD.* (1909), 43 N. S. R. 368; 7 E. L. R. 55.—CAN.

k. Sufficiency of evidence of liability.]—By the Act incorporating a co. it is provided that in an action against a shareholder for calls, a certificate under the seal of the co., & purporting to be signed by one of their officers, to the effect that debt. is a shareholder, that such calls have been made, & that so much is due by him, shall be received in all cts. of law as *prima facie* evidence to that effect. The certificate put in evidence on the trial certified that debt. was the holder of fifty shares, that certain calls had been made, & that he was indebted to the co. in a sum named, being the amount of the calls:—*Held*: the certificate was not evidence against debt., in the absence of other evidence that debt. was a shareholder of the co.—STADACONA INSURANCE CO. v. RAINSFORD (1881), 21 N. B. R. 309.—CAN.

l. Agreement not to make calls—Admissibility as evidence.]—Where certain shareholders of a co. sought to restrain a call on stock on the ground that it was being made in contravention of the terms of a certain unwritten agreement, alleged to have been entered into between all the promoters when the co. was formed:—*Held*: evidence of such agreement was inadmissible, since it was contradictory of the written agreement entered into by plffs. when subscribing for their shares, viz., to take stock & pay the calls when duly made.—CHRISTOPHER v. NOXON (1883), 4 O. R. 672.—CAN.

m. Liability determined by terms of agreement.]—Under the Winding-up Act, R. S. C. 1906, c. 144, leave will not be granted to call up the whole amount remaining unpaid on shares where the time fixed for payment by the terms of the shareholder's application has not arrived, since, in sect. 58 of the Act, which reads, "provided that no call shall compel payment of a debt before the maturity thereof," the debt referred must be held to be the debt created by the contributory's application for shares & the co.'s acceptance of it & payable as therein set out.—*Re ALLIANCE INVESTMENT CO. (CANADA), LTD. (IN LIQUIDATION), McCausland's Case*, [1919] 1 W. W. R. 17.—CAN.

n. Liability of bankrupt.—Calls made after discharge obtained.]—An insolvent trader, who has obtained his

Lyon's Case (1866), 35 Beav. 646. Distd. North Stafford Steel, etc. Co. v. Ward (1868), L. R. 3 Exch. 172. Refd. Peirce v. Jersey Waterworks Co. (1870), L. R. 5 Exch. 209. Mentd. Hulls v. Estcourt (1863), 32 L. J. Ex. 193.

Compare Nos. 2123, 2124, *post*.

2065. Where calls have not been made—Liability for future calls—Not a debt.]—WHITTAKER v. KERSHAW, No. 2603, *post*.

Issue of shares at discount—Whether amount credited as paid up liable to be called—Apart from winding up.]—See No. 1821, *ante*.

B. Who are Liable.

(a) In General.

2066. Person to whom shares issued credited as fully-paid—Company estopped from recovering.]—Where a co. issues shares to directors as fully paid-up shares, & afterwards endeavours to recover a call on such shares:—*Held*: the co. are prevented by estoppel from recovering the amount of such calls.—CHRISTCHURCH GAS CO. v. KELLY (1887), 51 J. P. 374; 3 T. L. R. 634.

2067. Married women—No separate estate—Not liable.]—UNION DEBENTURE CO., LTD. v. BAKER (1896), 12 T. L. R. 299.

See 1908 Act, s. 128.

discharge, is not liable for calls made, after he has obtained his discharge, in respect of shares held by him in a joint-stock co., when the order for the winding up of such co. has been made prior to the time of the insolvent trader obtaining his discharge.—PUNNETT v. VINAYAK PANDURANG (1872), 9 Bom. 27.—IND.

o. Calls of an improper amount—Acquiescence essential.]—In order that a shareholder may become liable for calls of greater amount than provided for in the arts. of assocn. of the co., it must be shown that he in some way acquiesced in calls of an improper amount being made, & is estopped from denying that the calls are valid, notwithstanding a provision in the arts. that after the expiration of one month after a call is made it shall be conclusively presumed as against a member that it was properly & validly made.—MIDAS GOLD-DREDGING CO., LTD. v. HENRY (1904), 23 N. Z. L. R. 158.—N.Z.

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p. *Cestui que trust*.]—A person who has not become or agreed to become a member of a co. cannot be made liable for calls due on shares held in another person's name in such co. The fact that shares are held in trust for a person not a member of the co. does not enable the co. to pass over the trustee, & fasten the liability of a shareholder directly upon such *cestui que trust*, although it may be unable to enforce the performance of the obligations of a shareholder by the trustee.—MELBOURNE & BINGERA MINING SYNDICATE, LTD. v. BROUGHAM (1886), 12 V. L. R. 902.—AUS.

q. —.]—A. purchased railway stock, the transfer for which was taken & registered in name of B. A. deposited the certificates of registration with a bank, in security of advances made to him. Calls having been made upon B. as registered owner of the stock, he certified the bank that the same was truly the property of A., & called on them either to take the stock & relieve him of the calls or to hand him the certificates. The bank having refused to accept either alternative:—*Held*: they were bound to relieve B. of the calls in which he had become liable.—BARRON v. NATIONAL BANK

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Legatee — Liability to indemnify executor — After estate distributed.]—See EXECUTORS & ADMINISTRATORS.

Signatory to memorandum.]—See No. 1808, ante. Person contracting to take shares.]—See, generally, Sect. 17, ante.

Party contracting to indemnify shareholder — Assignment of right of indemnity to company.]—See CHOSER IN ACTION, Vol. VIII., p. 431, No. 84. Trustees.]—See Sect. 12, sub-sect. 5, B., ante. Executors.]—See Sect. 24, sub-sect. 1, post.

(b) *As between Vendor and Purchaser.*

2068. General rule.]—The seller has a right to be indemnified by the buyer against future calls.—MAXTED v. PAINE, No. 2217, post.

2069. —.]—Held: the transferor was entitled to be indemnified by the transferee against calls on shares purchased.—ROBERTS v. YARDLEY (1887), 3 T. L. R. 438.

See, also, No. 2377, post.

— Bankruptcy of transferee before registration.]—See BANKRUPTCY & INSOLVENCY, Vol. IV., p. 277, Nos. 2590, 2591.

2070. Sale accompanied by blank transfer.]—Pltf., being the owner of thirty railway shares, sold them to deft. & sent them to him at his request, with a blank transfer. The railway co. afterwards made calls on these shares, & pltf., who remained the apparent owner of them, the shares not having been registered in deft.'s name, was compelled to pay the calls, & brought an action to recover the amount so paid:—Held: under these circumstances there was no undertaking implied by law, on the part of deft. to indemnify pltf. against all subsequent calls, nor any evidence of such an undertaking in point of fact.—HUMBLE v. LANGSTON (1841), 7 M. & W. 517; 2 Ry. & Can. Cas. 533; 11. & W. 72; 10 L. J. Ex. 442; 151 E. R. 871.

Annotations:—Appld. Sayles v. Blane (1849), 14 Q. B. 205. Dist. Walker v. Bartlett (1856), 18 C. B. 845; Grissell v. Bristowe (1868), L. R. 3 C. P. 112. Consd. Maxted v. Paine (1871), L. R. 6 Exch. 132. Refd. Shaw v. Fisher (1848), 12 Jur. 152; Bayley v. Wilkins (1849), 7 C. B. 886; Re Monmouthshire & Glamorganshire Joint-Stock Banking Co., Ex p. Cape's Exors. (1852), 22 L. J. Ch. 601; Kellock v. Enthoven (1874), L. R. 9 Q. B. 241. Mentd. Phene v. Gillan (1845), 5 Hare, 1; Bargate v. Shortridge (1855), 25 L. T. O. S. 204; Mathew v. Blackmore (1857), 1 H. & N. 762; R. v. Storks (1857), 5 W. R. 563; Moule v. Garrett (1872), L. R. 7 Exch. 101.

2071. Transfer of shares while call unpaid contrary to articles.]—S., the treasurer & secretary of a mining co., executed a transfer of certain shares, then standing in his own name, into the name of H., as a security for a debt due to him. At the date of the transfer S. was indebted to the co. in respect of unpaid calls. After the directors had become informed of this circumstance they applied to H. for payment of a call subsequently made, & also for what was due by S. prior to the transfer.

OF SCOTLAND (1852), 24 Sc. Jur. 278.—SCOT.

r. Contributory—Even though barred by limitation.]—Once a member of a co. is upon the list of contributories, unless he succeeds in showing as against the liquidator that he should not have been put on the list of contributories, he is liable for all those matters in respect of which he may be charged in the event of the co. being wound up, i.e. to the extent of his original share held in the co. which remains unpaid he is liable to contribute to the assets of the co. for payment of the debts due to creditors & the expenses of the winding up. He

is therefore liable in respect of unpaid calls, even though, as against the co., the realisation of such calls may have become barred by limitation.—JAGANNATH PRASAD v. U. P. FLOUR & OIL MILLS CO., LTD. (1916), 1 L. R. 38 All. 347.—IND.

PART III. SECT. 21, SUB-SECT. 4.—B. (b).

2068 i. General rule.]—The registered holder of shares has a right of action against his transferee to recover calls paid by him in respect of such shares although the transferee may have parted with the shares before such calls were payable, & the transferee

By one of the rules of the co. no transfer of shares was to be valid unless all calls then due upon the shares were first paid by the transferor:—Held: (1) the conduct of the directors amounted to an acknowledgment of the validity of the transfer, & H. was entitled to a first charge upon the shares upon payment of the call made subsequently to the transfer; (2) the co. could not declare such shares forfeited on the refusal of the transferee to satisfy such demand, though he was only a mtgee. of the shares; (3) the co. had a lien upon the shares in respect of unpaid calls in priority to the assignees of S., who had become bkpt.—WATSON v. EALES (1857), 23 Beav. 294; 26 L. J. Ch. 361; 28 L. T. O. S. 243; 3 Jur. N. S. 53; 53 E. R. 115.

Annotation:—As to (1) Refd. Re Royal British Bank, Ex p. Walton, Ex p. Hue (1857), 26 L. J. Ch. 545.

Irregular transfers generally, see Sect. 23, sub-sect. 12, post.

2072. Transferor made liable as past member—Transferee discharged by liquidator.]—Deft., a contributory who was the holder of shares in a co., was unable to pay the calls. Pltf., who was the original holder of the shares, had transferred them within a period of one year from the winding-up of the co. to deft., & he had been placed on the list of contributories class B. & compelled to pay in consequence of the non-payment by deft. Deft. had been discharged by the liquidator:—Held: pltf. was rightly placed on the list of contributories, & deft. was bound to indemnify him for all payments made in consequence of his non-fulfilment of his liabilities.—ROBERTS v. CROWE (1872), L. R. 7 C. P. 629; 41 L. J. C. P. 198; 27 L. T. 238.

Annotations:—Refd. Kellock v. Enthoven (1874), L. R. 9 Q. B. 241. Mentd. Bonner v. Tottenham & Edmonton Permanent Investment Bldg. Soc., [1899] 1 Q. B. 161.

2073. Refusal by transferee to accept delivery.]—CRAIB v. MILLER, No. 2227, post.

2074. Sale to jobber—Resale to transferee—Privity of contract.]—Pltfs. instructed their brokers to sell forty shares in a joint-stock co., & those shares were sold accordingly by them to M., another broker. M. afterwards sold them again on the Stock Exchange, & in accordance with the practice of that body, deft. was, a few days afterwards, named to pltfs. as the purchaser, the practice being that on the arrival of a certain day termed "the name day," the name of the last purchaser is given to the broker of the original vendor, & inserted in the transfer deed. A deed of transfer was then prepared & executed by pltfs., a blank being left for the amount of the consideration; the blank was afterwards filled up with £145, the price at which deft. bought, & that sum was paid to pltfs., who received the difference between that & £202 10s. from their immediate purchaser, & the transfer with the share certificates was sent to deft. The co. was shortly afterwards wound up. Deft. never executed

has in turn the same right of action against his transferee.—THOMPSON v. DAUNT (1889), 10 N. S. W. L. R. 132; 5 N. S. W. W. N. 127.—AUS.

2068 ii. —.]—The transferor of shares, where registration of the transfer is lawfully refused by the directors of the co., is entitled to recover from the transferee the amount of subsequent calls which he has been compelled to pay.—KEBBELL v. OLLIVIER (1900), 19 N. Z. L. R. 462.—N.Z.

s. Transferor continuing as registered holder—Transferee not recognised by company.]—A., a subscriber for five shares in the D. & D. Ry. Co., in Feb. 1836, executed a parliamentary con-

the transfer, nor registered himself as a shareholder, & pltf. had been compelled to pay two calls on the shares, one of the calls being made on the day on which deft., in ignorance of the fact, instructed his broker to buy. The bill was filed for specific performance of the contract as stated in the deed of transfer:—*Held*: (1) there was a privity of contract between the parties, founded on the usage of the Stock Exchange; (2) deft. could not be treated as having bought in ignorance of a call, of which he, or at least his brokers, must have had previous notice; (3) as pltf., instead of stating the actual transaction, prayed for specific performance of a contract which was never, in fact, entered into, the bill must be dismissed without prejudice to any other that might be filed.—*HAWKINS v. MALTBY* (1867), 3 Ch. App. 188; 37 L. J. Ch. 58; 17 L. T. 397; 16 W. R. 209, L. C.; *subsequent proceedings* (1869), 4 Ch. App. 200, L. C.

Annotations:—As to (1) *Consd.* *Hodgkinson v. Kelly* (1868), L. R. 6 Eq. 496. *Refd.* *Coles v. Bristowe* (1868), L. R. 6 Eq. 149; *Grissell v. Bristowe* (1868), L. R. 3 C. P. 112; *Maxted v. Paine* (1871), L. R. 6 Exch. 132. *Generally*, *Mentd.* *Torrington v. Lowe* (1868), 17 W. R. 78.

2075. ———.]—Pltf., a holder of forty shares in a public co., agreed, through his brokers on the Stock Exchange, to sell that number to a jobber for £202 10s. Deft. subsequently directed his broker to buy 100 shares, & in accordance with the custom of the Stock Exchange the name of deft. was passed to the pltf.'s brokers as the purchaser of the forty shares. Pltf. executed a transfer deed of the shares to deft., the consideration afterwards inserted by pltf.'s brokers being £145, which was the price deft. had agreed to pay. Deft. paid to pltf. the £145, & received the deed & the share certificates, the difference between the £145 & £202 10s. being paid by the jobber. Deft. never executed the deed, or registered the transfer, or repudiated the sale, & the co. was ordered to be wound up:—*Held*: there was a contract between pltf. & deft., entitling pltf. to indemnity by deft.—*HAWKINS v. MALTBY* (1869), 4 Ch. App. 200; 38 L. J. Ch. 313; 20 L. T. 335; 17 W. R. 557, L. C.

Annotations:—*Refd.* *Davis v. Haycock* (1869), L. R. 4 Exch. 373; *Re* *International Contract Co., Hughes' Claim* (1872), L. R. 13 Eq. 623.

2076. ———.]—A. bought of a jobber on the Stock Exchange shares in a co., & afterwards, the co. having in the meantime stopped payment, B. sold to another jobber on the Stock Exchange shares in the same co. at a lower price for the same settling day. On the name day A.'s name was given to B. as the purchaser of B.'s shares; B. executed a transfer of the shares to A., & delivered the transfer & certificates to A.'s broker, who paid him the price for which A. purchased the shares; A. afterwards repaid his own broker, & took away the transfer & certificates, but did not execute the transfer, & it was never registered:—*Held*: A. was liable to indemnify B. against all consequences flowing from the ownership of the shares subsequent to the execution of the transfer, & this liability arose from the nature of A.'s original contract, according to the custom of the Stock Exchange, by which the buyer or seller of shares undertakes to buy or sell from or to the person whose name is given to him on the name day.—*HODGKINSON v. KELLY* (1868), L. R. 6 Eq. 496; 37 L. J. Ch. 837; 16 W. R. 1078.

Annotations:—*Folld.* *Fenwick v. Buck* (1871), 24 L. T. 274.

tract, covenanting for himself, his exors., administrators, & assigns, to pay the amount of the shares he subscribed for, & afterwards, in May 1836, sold his shares & assigned his

scrip to B. In the Aug. of that year 6 & 7 Will. IV, c. 132, was passed, incorporating the subscribers into a co., but A. continued as the registered proprietor of their shares in the books

of the co., & B. never claimed any rights as such assignee, & was never recognised as such by the co.:—*Held*: A. continued liable for the amount of calls on foot of the said five shares,

Refd. *Davis v. Haycock* (1869), L. R. 4 Exch. 373; *London Founders' Asscn. & Palmer v. Clarke* (1887), 3 T. L. R. 709. *Mentd.* *Re Smith, Knight, Weston's Case* (1868), 4 Ch. App. 20.

2077. ———.]—Deft. purchased, through his brokers on the Stock Exchange, for May 15 fifty shares in a co., & on the name day (the 14th) his brokers issued a ticket for the shares in his name to the selling jobber. On the 16th the same jobber bought of pltf., through pltf.'s broker on the Stock Exchange, thirty shares in the same co., & having, in conformity with the usage of the Stock Exchange, divided deft.'s ticket, he handed to pltf.'s broker, in part performance of his contract, a ticket containing deft.'s name as purchaser of ten shares. Pltf.'s broker having, according to usage, paid to the jobber the sum stated on the ticket, being the price at which deft. had bought, delivered to deft.'s brokers a transfer to deft. at that price, duly executed by pltf., together with the share certificates. Deft.'s brokers thereupon repaid to pltf.'s broker the purchase-money, which was at their urgent request repaid to them by deft., who also received from them & retained the transfer & share certificates, but did not otherwise adopt the contract.

Deft.'s purchase of shares was made before May 10, at a substantial price; on that day the co. stopped payment & pltf.'s shares were sold on the 16th at a discount exceeding the nominal value, that is, the amount paid up on the shares. Up to the 10th a transfer of the shares might have been registered without difficulty, but after that day the directors refused to register transfers.

Two calls having been made on the ten shares, which pltf. as registered holder had been compelled to pay, he brought an action against deft. to recover the amount, alleging a contract by deft. to purchase the shares of pltf. & to indemnify pltf. against calls:—*Held*: (*KELLY, C.B., & FIGOTT, B.*) deft. had contracted as alleged, & he was therefore liable to repay to pltf. the calls so paid by him, & the declaration was rightly framed; (*CHANNEL & CLEASBY, B.B.*) no such contract existed as alleged, & therefore, without deciding that pltf. had no remedy at law against deft., pltf. could not recover upon the declaration as framed.—*DAVIS v. HAYCOCK* (1869), L. R. 4 Exch. 373; 38 L. J. Ex. 155; 20 L. T. 954.

Annotations:—*Consd.* *Bowring v. Shepherd* (1871), L. R. 6 Q. B. 309. *Refd.* *Fenwick v. Buck* (1871), 19 W. R. 597.

2078. ———.]—Deft., through his brokers, purchased on the Stock Exchange of a jobber 100 shares in a joint-stock limited co., for 15th of May, 1866. On the name day, May 14, the brokers handed a ticket with deft.'s name as the buyer to the jobber. This ticket having been, according to the custom of the Stock Exchange, divided, a "split" for fifteen shares came through various hands to the broker of pltf., who was the registered holder of fifteen shares, & had, through his broker, sold fifteen shares to another jobber for delivery on May 15. On the receipt of deft.'s name pltf. executed a transfer of the shares to him, & pltf.'s broker handed the transfer & the certificates of the shares to deft.'s brokers, who accepted them on behalf of deft., & paid pltf.'s broker the price. Deft.'s brokers in handing in his name acted by the express authority of deft., & in accepting the transfer & paying the price they acted according to the custom of the Stock

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Exchange, though without any express authority of deft. The co. stopped payment on May 10, & on May 11 a petition was presented, & an order of the Ct. of Ch. for winding up the co. was afterwards made. On May 18, deft. refused to accept the shares, & pltf. was afterwards compelled to pay a call as the registered holder of the shares, upon which he brought an action against deft. for not indemnifying him against the calls:—*Held*: deft. was bound by the acceptance of the transfer by the brokers on his behalf & payment of the price, & a contract then arose between pltf. & deft., by which deft. was bound to indemnify pltf.—*BOWRING v. SHEPHERD* (1871), L. R. 6 Q. B. 309; 40 L. J. Q. B. 129; 24 L. T. 721; 19 W. R. 852, Ex. Ch.

Annotation:—*Mentd. Platt v. Rowe* (Trading as Chapman & Rowe) & Mitchell (1909), 26 T. L. R. 49.

2079. ———.]—B. bought of a jobber on the Stock Exchange shares in a co. for the next account day, which was the 27th of April. On May 10, which was the day on which the co. stopped payment, F. sold shares in the co. to a jobber on the Stock Exchange for cash, & the name of B. was passed to F.'s broker as the ultimate purchaser in the usual course of the Stock Exchange. F. executed a transfer to B., who paid the purchase money, & received the transfer & certificates, but did not execute the transfer, which was never registered. The co. was wound up & F. was placed on the list of contributories, & compelled to pay calls. On bill filed by F. to obtain repayment from B. of the amount of the calls & for an indemnity:—*Held*: the case came within the principle of *Hodgkinson v. Kelly*, No. 2076, ante, & decree made in favour of pltf. with costs.—*FENWICK v. BUCK* (1871), 24 L. T. 274; 19 W. R. 597.

2080. ———. **Purchaser's name passed as transferee without authority.**]—A. authorised his broker to sell shares in a co.; B. authorised the same broker to buy shares in the same co. A sold-note was sent to A. upon which B.'s name appeared as purchaser, & a transfer was executed by A. & the purchase money paid to him. B. did not authorise the jobber to insert his name as a purchaser, & his name was not placed upon the register. The co. being wound up A.'s name was placed upon the list of contributories:—*Held*: B. must indemnify A. for all liability upon the shares subsequent to the transfer.

The co. was wound up in June, 1866, & A. filed a bill for indemnity in Nov. following but withdrew it in consequence of the decisions. Subsequently these decisions were not maintained:—*Held*: pltf. in now filing his bill was not debarred from relief on the ground of delay.—*PENDER v. FOX* (1872), 20 W. R. 966.

Authority of brokers generally, see STOCK EXCHANGE.

2081. ———. **Name of infant passed as transferee—Liability of jobber.**]—A jobber or dealer in shares on the Stock Exchange contracted to purchase pltf.'s shares in a co., & gave in to pltf.'s brokers a ticket with the name of the intended transferee, which had been passed on to him. After the execution of the transfer it was discovered that the transferee was an infant, of which neither

party was previously aware, & pltf. became liable for calls. In a suit by pltf. against the jobber, seeking to make him liable to indemnify him in respect of the shares:—*Held*: as by the usage of the Stock Exchange the jobber was, in the absence of fraud, discharged from liability when he had given the name of the transferee & paid for the shares, & as he had given all the further information required by the vendor, the suit against him could not be sustained.—*RENNIE v. MORRIS* (1872), L. R. 13 Eq. 203; 41 L. J. Ch. 321; 25 L. T. 862; 20 W. R. 227.

Annotations:—*Overd. Nickalls v. Merry* (1875), L. R. 7 H. L. 530. *Refd. Maynard v. Eaton* (1873), 9 Ch. App. 416, n.

2082. ———.]—Pltf. through a stock-broker contracted with deft., a jobber, for sale of shares. On name day the jobber gave pltf.'s broker a ticket with the name of the intended purchaser, L., which had been passed to him by another jobber. A transfer to L. was executed by pltf., but on discovery of L. being an infant, the transfer was never registered. Pltf. claimed indemnity against calls:—*Held*: deft. was not discharged from liability to the vendor until a person was named who was capable of contracting.—*NICKALLS v. MERRY* (1875), L. R. 7 H. L. 530; 45 L. J. Ch. 575; 32 L. T. 623; 23 W. R. 663, H. L.; *affg. S. C. sub nom. MERRY v. NICKALLS* (1872), 7 Ch. App. 733, L. JJ.

Annotations:—*Consd. Maynard v. Eaton* (1873), 9 Ch. App. 416, n. *Refd. Brown v. Black* (1873), L. R. 15 Eq. 363; *Dent v. Nickalls* (1874), 30 L. T. 644; *Heritage v. Paine* (1876), 2 Ch. D. 594. *Mentd. Robinson v. Mollett* (1875), L. R. 7 H. L. 802; *Speight v. Gaunt* (1883), 9 App. Cas. 1; *Ellis v. Pond*, [1898] 1 Q. B. 426; *Levitt v. Hamblet*, [1901] 2 K. B. 53; *Oliver v. Bank of England*, [1902] 1 Ch. 610; *Sheffield Corpn. v. Barclay*, [1903] 2 K. B. 580; *Yonge v. Toynbee*, [1910] 1 K. B. 215.

2082a. ———. **Jobber accepting infant's transferee.**]—Where defts., stock jobbers, accepted an infant as transferee of pltf.'s shares:—*Held*: they were liable to pltf. to indemnify him against calls.—*HERITAGE v. PAINE* (1876), 2 Ch. D. 594; 45 L. J. Ch. 295; 34 L. T. 947.

Annotation:—*Mentd. Re Richardson, Ex p. St. Thomas's Hospital*, [1911] 2 K. B. 705.

2083. ———. **Subsequent rescission & compromise—Liability of purchaser.**]—Deft. purchased, through his broker, 300 shares in a joint-stock co., & gave directions that they should be transferred into the name of his son, G. On the same day pltf. instructed his broker to sell 100 shares in the co., & they were bought by deft.'s broker, on his account, through a jobber in the ordinary way, & were transferred to G., & were registered in his name. At that time G. was an infant, of which fact pltf. was not aware. Soon afterwards the co. was wound up voluntarily, & G. then brought an action by his father, as next friend, against pltf., who was an auditor of the co., charging him with fraud in selling the shares, knowing that the co. was in an insolvent condition, & claiming damages. The action was compromised on the terms that all charges of fraud should be withdrawn, & that the purchase money should be repaid to G. The liquidators, on discovering that G. was an infant, substituted the name of the pltf. for his as a contributory of the co. Pltf. then filed a bill against deft., charging that he was the real purchaser of the shares, & that pltf. was not aware of that fact when he entered into the compromise with G., & claiming to be indemnified by

made after the said assignment, as the proprietor thereof, within the statute.—*DUBLIN & DROGHEDA RY. Co. v. NASH* (1841), 6 I. L. R. 239; *Jebb & B. 116.—IR.*

t. Transfer to company — Transfer

illegal—*Transferor's name replaced on register.*]—Certain shareholders in a public co. sold their shares to B., the managing director of the co., as he alleges, in trust for the co. Later, the director by minute approved

of the transfers to the managing director for behoof of the co. & the names of the sellers were removed from the register, & the name of the co. alone was registered & entered upon the list of shareholders. Six years

deft. against all loss in respect of the transaction :—*Held* : pltf. was entitled to be indemnified, & he was not precluded from maintaining the suit by the compromise with G. On appeal :—*Held* : the compromise was an effectual bar to pltf.'s claim to relief, & the fact of his ignorance that deft. was the real owner of the shares was immaterial.—*MAYNARD v. EATON* (1874), 9 Ch. App. 414; 43 L. J. Ch. 641; 30 L. T. 241; 22 W. R. 457, L. C. & L. JJ.

See, generally, STOCK EXCHANGE.

2084. Transfer to nominee of purchaser.]—Pltf. sold on the Stock Exchange twenty shares in a joint-stock co. to P. for the account day. Deft., on a different day, & at a different price, but for the same account day as that for which pltf. had sold, bought of P. in like manner, on the Stock Exchange, twenty shares in the same co. Before the account day deft. gave the name of C. as the transferee of the shares he had bought, & a deed of transfer of the shares from pltf. to C. was duly made under seal, & executed by both pltf. & C. & the purchase money paid to pltf. The co. being shortly afterwards in a course of winding-up, & the liquidators refusing to register the transfer of pltf.'s shares, pltf. was put on the list of contributories in respect of such shares, & obliged to pay a call on them :—*Held* : pltf. was not entitled to be indemnified by deft. against such call.—*TORRINGTON v. LOWE* (1868), L. R. 4 C. P. 26; 38 L. J. C. P. 121; 19 L. T. 316; 17 W. R. 78. *Annotation* :—*Consd. Maxted v. Paine* (1871), L. R. 6 Exch. 132.

2085. —.]—A., through his broker, sold shares to a jobber, from whom B. had agreed to purchase the same number of shares, giving the name of C., one of his workmen, as the person to whom the shares were to be transferred. A. executed the transfer to C., & afterwards received the purchase-money; but from the winding-up of the co. the transfer was not registered, & shares still remained in the name of A. :—*Held* : B., as the real purchaser & equitable owner, was bound to indemnify A. against all calls in respect of the shares.—*CASTELLAN v. HOBSON* (1870), L. R. 10 Eq. 47; 39 L. J. Ch. 490; 22 L. T. 575; 18 W. R. 731.

Annotations :—*Reid. Maxted v. Paine* (1871), L. R. 6 Exch. 132; *Brown v. Black* (1873), L. R. 15 Eq. 363; *Maynard v. Eaton* (1873), 9 Ch. App. 416, n.; *Nickalls v. Merry* (1875), L. R. 7 H. L. 530; *Hardoon v. Belillos*, [1901] A. C. 118. *Mentd. Ramage v. Womack*, [1900] 1 Q. B. 116; *Tolhurst v. Associated Portland Cement Manufacturers* (1900), *Tolhurst v. Associated Portland Cement Manufacturers* (1900) & *Imperial Portland Cement Co.*, [1903] A. C. 414.

2086. —.]—*MAXTED v. PAINE*, No. 2217, *post*.

2087. — Without authority of nominee—Delay in repudiation—Subsequent dealings.]—Pltf. sold shares in a co. through a broker, to W., who was the managing director of the co. On the settling day the broker, by W.'s instructions, gave the name of G., as the real purchaser, & the transfers were made out to G., & sent to him. W. also passed a cheque on the co.'s bankers for the amount of the purchase money to the debit of G., & informed G. what he had done. G. refused to execute the transfers, but did not inform pltf., or return the transfers, but retained them till the co. was wound up, & then handed them to the secretary as a security for the money carried to his debit :—*Held* : G. was precluded by his conduct from denying that he was the purchaser

of the shares, & he was bound to indemnify pltf. against the calls, & to pay the costs of pltf. & W.—*SHEPHERD v. GILLESPIE* (1868), 3 Ch. App. 764; 38 L. J. Ch. 67; 19 L. T. 196; 16 W. R. 1133, L. JJ.

Annotations :—*Reid. Coles v. Bristowe* (1868), L. R. 6 Eq. 149; *Cruse v. Paine* (1868), L. R. 6 Eq. 641; *Paine v. Hutchinson* (1868), 16 W. R. 553; *Crabb v. Miller* (1871), 24 L. T. 219; *Maynard v. Eaton* (1873), 9 Ch. App. 416, n.

2088. Delay by vendor in claiming indemnity.]—*PENDER v. FOX*, No. 2080, *ante*.

The contract for sale of shares generally.]—*See* Sect. 17, *ante*.

Refusal by director to register transfer.]—*See* Sect. 13, sub-sect. 5, *ante*.

Effect of winding up on transfers.]—*See, generally, Sect. 23, sub-sect. 14, post*.

Pleading.]—*See* No. 2117, *post*.

Liability of transferee of shares issued as fully-paid—Notice of circumstances of issue.]—*See* No. 1851, *ante*.

(c) *On Death of Shareholder.*

See Sect. 24, sub-sect. 1, *post*.

(d) *Shares owned by Married Women.*

2089. Whether husband or wife liable—Shares owned by wife before marriage—Formalities required by company not complied with by husband—Dividends received by husband.]—The deed of settlement of a banking co. provided that the husband of a female shareholder should not be entitled to be a shareholder until he had gone through certain formalities set out in such deed. A. married B., a female shareholder. A. did not comply with these formalities, but received the dividends from time to time declared on the shares, & signed the dividend warrants in this manner, "A. pro B." :—*Held* : A. was properly put on the list of contributories.—*Re NORTH OF ENGLAND JOINT-STOCK BANKING CO., BURLINSON'S CASE* (1849), 3 De G. & Sm. 18; 18 L. J. Ch. 250; 13 L. T. O. S. 278; 13 Jur. 849; 64 E. R. 361.

Annotation :—*Reid. Re Northumberland & Durham District Banking Co., Ex p. Luard* (1859), 29 L. J. Ch. 185.

2090. — Dividends not received by husband.]—The deed of settlement of a banking co. provided that the husband of a female shareholder should not be entitled to be a shareholder until he had gone through certain formalities set out in such deed. A. married B., a female shareholder, but took no steps whatever in respect of the shares, & never received any dividend :—*Held* : A. was properly put on the list of contributories.

Semble : in this case the name of B. ought to be put on the list of contributories with that of A.—*Re NORTH OF ENGLAND JOINT-STOCK BANKING CO., SADLER'S CASE* (1849), 3 De G. & Sm. 36; 18 L. J. Ch. 251; 13 L. T. O. S. 320; 13 Jur. 674; 64 E. R. 369.

Annotation :—*Reid. Re Northumberland & Durham District Banking Co., Ex p. Luard* (1859), 29 L. J. Ch. 185.

2091. — Shares remaining registered in wife's unmarried name—Effect of notice of marriage.]—1856 Act has not taken away the liability of the husband of a female shareholder to be placed on the list of contributories in her right in respect of shares belonging to her, but in respect of which he has done no act to make himself a member of the co.

afterwards, the directors having been advised that the co. was not entitled to hold its own shares, the names of the original holders of the shares were replaced on the register :—*Held* : on a

petition at the instance of the sellers for rectification, the directors having approved of the transfer to B. for behoof of the co., the names of petitioners had been properly removed

from the register & the co. was not entitled to replace them.—*GARDINERS v. VICTORIA ESTATES CO., LTD.* (1885), 12 R. (Ct. of Sess.), 1356; 22 Sc. L. R. 888.—*SCOT*.

Sect. 21.—Calls on shares: Sub-sect. 4, B. (d) & C. (a) & (b); sub-sect. 5, A. (a).]

L. was, before her marriage, the registered owner of shares in a banking co. Upon her marriage a settlement was executed, by which the shares were assigned to trustees upon trusts excluding the husband, but the trustees did not accept the trusts, & the shares continued registered in the lady's former name. It was not proved that the co. had notice of the marriage or of the settlement. The co. was afterwards registered under Joint Stock Banking Companies Act, 1857 (c. 49), & wound up under 1856 Act & the above Act of 1857:—*Held*: the name of the husband in right of his wife must be placed on the list of contributories as well as that of the wife.

Semble: notice to the co. of the marriage & of the settlement would not have altered the case.—*Re NORTHUMBERLAND & DURHAM BANKING CO., LUARD'S CASE* (1860), 1 De G. F. & J. 533; 29 L. J. Ch. 269; 2 L. T. 3; 6 Jur. N. S. 331; 8 W. R. 297; 45 E. R. 468, L. JJ.

Annotation:—*Appld. Re Northumberland, etc. Banking Co., Ex p. Dixon's Exors.* (1860), 1 Drew. & Sm. 225.

2092. — Shares acquired by wife after marriage—Out of separate estate.]—A married woman became, by such description, a registered shareholder in a joint-stock banking co., having purchased the shares with money arising from her separate estate. The husband occasionally received the dividends on the shares, but always signed the receipts as his wife's agent. Though not a registered shareholder, he attended some meetings, & once held the proxy of an absent shareholder, which, according to the deed of settlement, a shareholder alone could do, & he took part in the proceedings. Previously to the dissolution of the co., his name had been substituted, without his consent, for that of his wife, in the share register:—*Held*: he was not a contributory under Joint-Stock Companies Winding-up Act, 1848 (c. 45), & his name was, upon motion, ordered to be struck out of the list.

Semble: liability to creditors of the co. is not of itself sufficient to make a person a "contributory" within that Act.—*ANGAS'S CASE* (1849), 1 De G. & Sm. 560; 63 E. R. 1194; *sub nom. Re NORTH OF ENGLAND JOINT-STOCK BANKING CO., Ex p. ANGAS*, 12 L. T. O. S. 346; 13 Jur. 76.

Annotation:—*Distd. Re North of England Joint-Stock Banking Co., Burlinson's Case* (1849), 3 De G. & Sm. 18.

2093. — Intention to bind separate estate.]—The separate estate of a married woman is bound by her debts, obligations, & engagements, contracted for herself upon the credit of that estate; & whether such obligations were so contracted must be judged of by the circumstances of each particular case. There is nothing in the nature of a joint-stock co., in the absence of any special clauses in the deed of settlement, to prevent a married woman being a shareholder in her own right, so as to bind her separate estate. Therefore, where a married woman, having separate estate, contracted to take shares in her own name in a joint-stock co., which was afterwards wound up, the ct., being of opinion that such contract was entered into upon the credit of her separate estate, & that the deed of settlement did not exclude married women from being shareholders so as to

bind their separate estates, placed the married woman on the list of contributories in her own right, so as to bind her separate estate.—*Re LEEDS BANKING CO., MATTHEWMAN'S CASE* (1866), L. R. 3 Eq. 781; 36 L. J. Ch. 90; 15 L. T. 266; 12 Jur. N. S. 982; 15 W. R. 146.

Annotation:—*Reid. Butler v. Cumpston* (1868), L. R. 7 Eq. 16.

2094. — Knowledge of company.]—*Re FIRE RE-INSURANCE CORPN., BELCHER'S CASE*, [1883] W. N. 94.

2095. — By gift—Formalities required by company not complied with.]—Shares in a joint-stock co. were transferred for value to I., a married woman, described as the wife of R., who, as to some of the shares, signed the notice of transfer, & expressed his approval thereof. I. paid a call, & received dividends, which were paid to, received, & acknowledged by her. It turned out that the shares were purchased in I.'s name by her aunt, who died, leaving by her will all her property to I. to her separate use. Certain provisions in the deed of settlement relating to a female shareholder marrying were not complied with. Upon the winding up of the co.:—*Held*: neither I. nor R. were liable to be retained on the list of contributories.—*Re NORTHUMBERLAND & DURHAM DISTRICT BANKING CO., Ex p. RHODES* (1859), 7 W. R. 510.

2096. Extent of husband's liability—Purchase of shares by company—Under constitution of company.]—*Re VALE OF NEATH & SOUTH WALES BREWERY CO., WHITE'S CASE*, No. 2575, *post*.

2097. — Shares remaining registered in wife's name—Death of wife before winding up.]—A, a *feme sole*, being entitled to shares in a co., married B. Nothing was done with the shares, which continued to be in the name of A. A. died:—*Held*: B. was not liable as a contributory, under Joint-Stock Companies Winding-up Act, 1848 (c. 45), in respect of losses or liabilities as to the shares before or after the coverture.—*Re VALE OF NEATH BREWERY CO., KLUHT'S CASE* (1850), 3 De G. & Sm. 210; 19 L. J. Ch. 385; 15 L. T. O. S. 84; 14 Jur. 898; 64 E. R. 448.

Annotation:—*Reid. Re Vale of Neath & South Wales Brewery Co., Ex p. Wood* (1853), 22 L. J. Ch. 365.

2098. — Shares owned by wife before marriage—Settlement before marriage to use of wife.]—A woman, being entitled absolutely to shares in a co., married in May, 1878, & before the marriage the shares were settled for her own benefit. Upon the winding up of the co.:—*Held*: the liability of the husband to contribute to the assets of the co. was not limited by Married Women's Property Act, 1874 (c. 50), to the interest acquired in right of his wife, but he was liable as a contributory in his own right under 1862 Act, s. 78.—*Re WEST OF ENGLAND BANK, Ex p. HATCHER* (1879), 12 Ch. D. 284; 48 L. J. Ch. 723; 41 L. T. 181; 27 W. R. 907.

See, generally, HUSBAND & WIFE.

C. Extent.

(a) *Interest.*

See Civil Procedure Act, 1833 (c. 42), s. 28.

2099. Power to order—Notice of intention to charge—Interest provided for in articles.]—A notice of a call on a contributory under a volun-

PART III. SECT. 21, SUB-SECT. 4.—C. (a).

a. *Where shares forfeited for non-payment of call—Construction of articles.]*—Deft. was shareholder in co. which had made call which deft. had not paid, & deft.'s shares were forfeited

for non-payment of this call. Later, the co. made a second call, payable by instalments. By the arts. of assocn. it was provided that any member whose shares have been forfeited shall notwithstanding be liable to pay, & shall forthwith pay to co. all calls, instalments, interest & expenses, etc.,

until payment at rate of 10 per cent, & the directors may enforce payment of such moneys or any part thereof as they think fit. The co. sued deft. for amount of second call before last two instalments had become due:—*Held*: whole call was "owing" at time of forfeiture & deft. was liable.—*LAND*

tary winding up under the supervision of the ct., stated that if the call was not paid at the time appointed, interest would be charged thereon at the rate of 5 per cent. The articles provided for interest on calls:—*Held*: the notice that interest would be charged came within Civil Procedure Act, 1833 (c. 42), s. 28, & the ct. ordered the contributory to pay the call, with interest thereon up to the date of payment.—*Re OVEREND, GURNEY & Co., Ex p. LINTOTT* (1867), L. R. 4 Eq. 184; 36 L. J. Ch. 510; 16 L. T. 228; 15 W. R. 617.

Annotations:—*Consd. Re Overend, Gurney* (1868), 18 L. T. 504. *Apld. Re Welsh Flannel & Tweed Co.* (1875), L. R. 20 Eq. 360.

2100. — Condition precedent.—By the arts. of assocn. of a co. overdue calls were to carry interest at 25 per cent., & by clause 50, it was provided that the forfeiture of a share should involve the extinction at the time of the forfeiture of all interest in, & all claims & demands against, the co. in respect of the share, & all other rights incident to the share, but that the shareholder should, notwithstanding, be liable "to pay to the co. all calls owing on such share at the time of such forfeiture":—*Held*: (1) upon the construction of the arts., a member whose shares had been forfeited for non-payment of a call was liable to pay the call, but not any interest upon it; (2) interest was not payable under Civil Procedure Act, 1833 (c. 42), s. 28, no notice having been given after the forfeiture claiming interest on the sum made payable by clause 50.—*Re BLAKELY ORDNANCE CO., STOCKEN'S CASE* (1868), 3 Ch. App. 412; 37 L. J. Ch. 230; 17 L. T. 554; 16 W. R. 322, L. J.

Annotations:—*As to* (1) *Consd. Faure Electric Accumulator Co. v. Phillipart* (1888), 58 L. T. 525. *Generally, Mentd. Re Accidental & Marine Insee. Corpn., Bridger's Case, Neill's Case* (1869), 4 Ch. App. 266; *Ladies' Dress Assocn. v. Pulbrook* (1900), 69 L. J. Q. B. 705; *Randt Gold Mining Co. v. Wainwright*, [1901] 1 Ch. 184.

2101. Up to what date payable—Disputed liability to call—Money paid to special account pending appeal—Interest payable till applied.—Certain contributories in a co. disputed their liability to be such, & appealed to the House of Lords. Meanwhile a call was made. The notice of the call contained an intimation that if it should not be paid interest at £5 per cent. *per annum* would be charged. At their request, they paid the call into the bank, not to the liquidators' general account, but to one entitled as a security account, to await the decision of the House of Lords. Afterwards that decision was unfavourable to them, & the money was applied for the purposes of the winding-up:—*Held*: the contributories who had paid their money to the security account were liable to pay interest upon it until the time when it was applied.—*Re OVEREND, GURNEY, & Co., BARROW'S CASE* (1868), 3 Ch. App. 784; 38 L. J. Ch. 15; 19 L. T. 271; 16 W. R. 1160, L. J. *Annotation*:—*Reid. Re Welsh Flannel & Tweed Co.* (1875), L. R. 20 Eq. 360.

MORTGAGE BANK OF VICTORIA, LTD. v. MCCONNELL (1902), 28 V. L. R. 19.—AUS.

b. — — —.]—By the arts. of assocn. of a co. it was provided that "any member whose shares have been forfeited shall notwithstanding be liable to pay to the co. all calls, instalments, interest & expenses owing upon such shares at the time of such forfeiture."

By Cos. Act, 1890, s. 16, moneys owing by a member to the co. constitute a specialty debt. Deft. was sued for calls on shares & interest on such calls. The calls were made more than six years before the commencement of the action, but the shares had been forfeited only three years before:

—*Held*: the effect of the art. of assocn. was either to continue the old liability, which under the Act was a specialty debt, or to create a new liability as from the date of forfeiture, & in either case Stat. Limitations would not operate, & deft. was liable.—*GILLESPIE & Co. v. REID*, [1905] V. L. R. 101.—AUS.

c. *Right to recover interest on calls.*—*NASMITH v. DICKEY* (1879), 44 U. C. R. 414.—CAN.

d. *Fine for non-payment of calls—How enforced.*—A rule of a co. provided that if a shareholder neglected to pay a call at the time specified for payment, he should be fined 6d. per week so long as it remained unpaid. The rules contained no provision for enforcing payment of the fine:—*Held*: this

2102. — Where shares forfeited for non-payment of call—Up to date of forfeiture.—*FAURE ELECTRIC ACCUMULATOR CO., LTD. v. PHILLIPART*, No. 2049, *ante*.

2103. At what rate—Rate fixed by notice of call.—*Re OVEREND, GURNEY, & Co., BARROW'S CASE*, No. 2101, *ante*.

2104. — Provision in articles—Only applies to calls by directors—Rate in liquidation five per cent.—A co.'s arts. of assocn. provided that calls should be made at the discretion of the directors, & should not exceed £2 per share, & that unpaid calls should bear interest at 10 per cent. A notice having been issued to the shareholders of the intention to wind up the co., a meeting was held at which a resolution was passed for a voluntary winding-up, & at a subsequent meeting, without any express notice, liquidators were appointed. The liquidators then made a call of £3 per share, without providing for interest on unpaid calls. An order having been made some time afterwards continuing the winding-up under supervision, the liquidators took out a summons to enforce payment of the unpaid calls with interest at 10 per cent.:—*Held*: the liquidators had power to make the call of £3 per share, the arts. referring to calls by directors only, & the unpaid calls were chargeable with interest at 5 per cent. only, under Civil Procedure Act, 1833 (c. 42), s. 28.—*Re WELSH FLANNEL & TWEED CO.* (1875), L. R. 20 Eq. 360; 44 L. J. Ch. 391; 32 L. T. 361; 23 W. R. 558.

2105. Where shares forfeited for non-payment of call—Construction of articles.—*Re BLAKELY ORDNANCE CO., STOCKEN'S CASE*, No. 2100, *ante*.

2106. — Call payable after forfeiture.—*FAURE ELECTRIC ACCUMULATOR CO., LTD. v. PHILLIPART*, No. 2049, *ante*.

See, also, No. 7926, *post*.

(b) Other Cases.

2107. Damages—For default in payment—Company unable to borrow—Position of company not caused by shareholder's default.—*BAHAMAS (INAGUA) SISAL PLANTATION, LTD. v. GRIFFIN* (1897), 14 T. L. R. 139.

Right of set-off.—*See* Nos. 2132–2134, 2815, *post*.

SUB-SECT. 5.—RECOVERY OF CALLS.

A. By Action.

(a) In General.

2108. When action lies—Call payable by instalments.—A joint-stock co., having power to make calls upon its members, may divide a call into two instalments, provided the whole call do not exceed the amount for which the co. is authorised to make a single call within the time in the course of which the instalments are payable. But, *semble*, no

was a liquidated sum as per interest, & not a penalty, & the amount of fines might be set off in a suit for recovery of a dividend payable by the co.—*COTCHETT v. HARDY* (1868), 5 W. W. & A'B. 59.—AUS.

e. *From what date payable.*—In an action for unpaid calls on stock interest on the unpaid amount was allowed from the time when the last call on stock became due.—*PROVINCIAL INSURANCE CO. v. CAMERON* (1881), 31 C. P. 523.—CAN.

PART III. SECT. 21, SUB-SECT. 5.—A. (a).

i. *When action lies—Effect of forfeiture.*—By the arts. of assocn. of a co. it was provided that any member

Sect. 21.—Calls on shares: Sub-sect. 5, A. (a) & (b).] action of debt for calls can be brought against a defaulter until the whole call is due.—**ARCHITECTS, CIVIL ENGINEERS, ETC. INSURANCE CO. v. WILSON** (1850), 16 L. T. O. S. 124.

— **Right of action not merged in or destroyed by balance order.]—See No. 6303, post.**

2109. In what name action brought—Company governed by deed of association—& private Act.]—By the deed of settlement of a joint-stock co., dated Oct. 25, 1836, the subscribers covenanted with certain members of the co., named in the deed, in the usual way, & it was provided, amongst other things, that the directors should have the power of making calls, & that the calls should be duly paid by the proprietors. An Act of Parliament was subsequently passed, 3 & 4 Vict., c. xxvi., to enable the co. "to sue & be sued in the name of any one of these directors, or their secretary, & to raise money for carrying on their works." This Act provided "that all actions, suits, etc. to be commenced, instituted, prosecuted, etc. by or against the co., upon any contract, covenant, or agreement then made, or thereafter to be made, to or with the co., or to or with any person or persons in trust for the co., should & lawfully might be commenced, instituted, etc., by or against the secretary for the time being, or by & against any one of the elected directors for the time being, as nominal pltf. or deft., etc. whether deft. in any suit, etc., to be brought by the co., should be a proprietor in the co. or not":—**Held**: an action of debt for calls against a member of the co. was properly brought on the deed in the name of the secretary.—**SKINNER v. LAMBERT** (1842), 4 Man. & G. 477; 2 Dowl. N. S. 132; 5 Scott, N. R. 197; 11 L. J. C. P. 237; 134 E. R. 196.

Annotation:—Apld. *Smith v. Goldsworthy* (1843), 4 Q. B. 430.

Compare No. 7979, post.

2110. How tried—Whether by special jury—Difficult questions of fact.]—In an action for calls, there being a special plea that the calls were to raise capital for an illegal amalgamation, deft.

not appearing, the judge certified for a special jury, as the plea might have raised difficult questions of fact, fit for a special jury to try.—**LONDON BANK OF SCOTLAND v. MARSHALL** (1865), 4 F. & F. 1046, N. P.

2111. — — — Plea of never indebted.]—In an action for calls, plea, never indebted, a certificate for special jury was refused.—**HUMBER IRON CO. v. JONES** (1865), 4 F. & F. 1047, N. P.

2112. Procedure under R. S. C., Ord. 14—Leave to defend—Disputed liability of underwriter—On agreement between underwriter & promoter.]—An action by a gold mining co. against a shareholder to recover sum due from him in respect of shares & calls. The claim was for £700 for allotment of 4s. per share, on 1,000 shares in the co. allotted to deft. as member at his request, & for two calls of 5s. each on 1,000 shares of which deft. was alleged to be holder. The defence was that by an agreement between deft. & W., a promoter of the co., deft. was to underwrite 1,000 shares at 4s. a share, that is to be liable for such amount in the event of the public not taking shares to the amount of £50,000, but with a proviso that this agreement should not be binding unless shares to the amount of £50,000 should be so underwritten. Only 5,000 shares were applied for by the public, & it was sought to make deft. liable on his agreement. The case for the co. was that the co. could not be affected by the agreement with "a promoter," the co. having been afterwards registered & incorporated. On that ground the co. sought to obtain summary jurisdiction against deft., but the judge at chambers had given him leave to defend unconditionally against which the co. appealed:—**Held**: there was a serious question to be tried in the cause as to the agreement & the liability of the co. upon it, & the order would be upheld & the appeal dismissed.—**IRONCLAD (AUSTRALIA) GOLD MINING CO. v. GARDNER** (1887), 4 T. L. R. 18.

— — — **On ground of misrepresentation in prospectus.]—See Nos. 572, 573, ante.**

whose shares have been forfeited shall notwithstanding be liable to pay to the co. all calls, instalments, interest & expenses owing upon such shares at the time of such forfeiture. By Cos. Act, 1890, s. 16, money owing by a member to the co. constitutes a specialty debt. Deft. was sued for calls on shares & interest on such calls. The calls were made more than six years before the commencement of the action, but the shares had been forfeited only three years before:—**Held**: the effect of the art. of assocn. was either to continue the old liability, which under the act was a specialty debt, or to create a new liability as from the date of forfeiture, & in either case the Stat. Limitations would not operate, & deft. was liable.—**GILLESPIE & CO. v. REID**, [1905] V. L. R. 101.—**AUS.**

g. — — — Provision for forfeiture as alternative.]—By the Marmora Foundry Act, 1831, the stock subscribed for "shall be due & payable to the said co." in the manner mentioned in the Act; & in case of non-payment such shares shall be forfeited & sold:—**Held**: the co. were not restricted to the remedy by forfeiture; but might sue a shareholder for calls.—**MARMORA FOUNDRY CO. v. JACKSON** (1852), 9 U. C. R. 509.—**CAN.**

h. — — — Forfeited shares unsold.]—The limitation of fourteen days provided by Co.'s Act, 1908, s. 352, within which proceedings for the recovery of unpaid calls must be taken, does not apply where shares have been forfeited & put up for auction under

sects. 353-356, & a co. may proceed under sect. 357 (2) for the recovery of unpaid calls on the forfeited shares where no sale results.—**KAPANGA GOLD-MINING CO., LTD. v. BRIDSON** (1910), 30 N. Z. L. R. 9.—**N.Z.**

k. — — — Acceptance of promissory note by company.]—The fact that a co. has taken a promissory note for the amount payable upon a subscription for shares does not prevent action against the subscriber under Joint-Stock Cos. Act, s. 48, if the note is overdue & unpaid, & the facts indicate the intention of the co. not to issue the shares so as to give the subscriber control of them before payment of the note.—**CANADA FURNITURE CO. v. BANNING**, [1918] 1 W. W. R. 31; 39 D. L. R. 313.—**CAN.**

l. In what name action brought.]—A mining co. sued for calls in the name of the G. S. Gold M. Co. by which name it was known to deft., & it was not proved that any other co. existed with a similar style. The certificate of registration produced gave the name as the G. S. Quartz M. Co.:—**Held**: the variance was fatal.—**IREDALE v. GUIDING STAR GOLD MINING CO.** (1867), 4 W. W. & A'B. 198.—**AUS.**

m. — — — Treasurer of company.]—The contract of co-partnership of a joint-stock co. provided, as the mode in which the partners might sue & be sued, that "the proprietors shall use & do diligence for implement of this present agreement in name of the treasurer, & in all other cases in the name of the person or persons in whose favour the

deed or instrument is conceived on which action or diligence is to be instituted." Several partners of the co. undertook obligations on their personal credit for behalf of the co., which obligations were ratified & approved of by the shareholders. A resolution having been adopted by the co. to make a call upon the shareholders for the purpose of relieving their partners from these obligations:—**Held**: the treasurer, with consent of the committee of management, was entitled to insist in an action against a shareholder who had refused payment of the call.—**STURROCK v. THOM'S EXECUTORS** (1851), 13 Dunl. (Ct. of Sess.) 762; 23 Sc. Jur. 335.—**SCOT.**

n. What must be proved.]—Re INTERNATIONAL ELECTRIC CO., McMAHAN'S CASE (1914), 31 O. L. R. 348.—**CAN.**

o. Enforcement of order of court.]—Under a Rule of Ct. in respect to the winding up of insolvent cos., it was prescribed that an order for the payment of calls should have the same effect as a judgment for the payment of money, & should be entered as a judgment by the prothonotary.—**Re CUNNINGHAM**, 20 C. L. T. 47.—**CAN.**

p. Proof of proprietorship.]—The effect of 6 Geo. IV. c. clxxxi. s. 17, which directs that in an action for calls it shall only be necessary to prove that deft., at the time of making the call, was a proprietor of a share or shares of the Arigna Iron & Coal Co., etc., & makes the production by the secretary, clerk, or other officer of the co., of

2113. — Only on payment into court of full amount.]—CONSOLIDATED FINANCE CORPN., LTD. v. ROWNTREE (1911), 46 L. Jo. 458.

See, generally, PRACTICE & PROCEDURE.

2114. What must be proved—Making of call—Construction of articles.]—CORNWALL GREAT CONSOLIDATED LEAD & COPPER MINING CO., LTD. v. BENNETT, No. 2050, ante.

2115. Proof of call—Minute confirming unsigned minute of resolution—Insufficient.]—CORNWALL GREAT CONSOLIDATED LEAD & COPPER MINING CO., LTD. v. BENNETT, No. 2050, ante.

2116. Discontinuance of action—Company in liquidation—Summons for balance order—Not stayed until costs paid.]—Where a co. commenced an action against a shareholder for calls, but afterwards went into voluntary liquidation, & the liquidator discontinued the action, & then took out a summons against the shareholder for a balance order, the shareholder is not entitled to a stay of proceedings on the summons till his taxed costs of the discontinued action have been paid, but is entitled to set off these costs against any sum which the liquidator may recover against him under the summons.—*Re UNITED SERVICE ASSOCN. (1901), 1 Ch. 97; 70 L. J. Ch. 15; 84 L. T. 145; 49 W. R. 216; 8 Mans. 97.*

(b) *Defences.*

2117. What defences can be raised—Agreement for shareholder to transfer shares to trustee for company—Accepted by company—Calls made after transfer.]—Action by a joint-stock co., incorporated under 1844 Act, against a shareholder, for a call. Pleas, (1) on equitable grounds: that before the call deft., being then a director, agreed with the other directors that he should retire from the co., & transfer his shares to the secretary as trustee for the co., & should be released & indemnified by the co. from all liability to the co.'s debts; that deft. carried out his part of the agreement; & that the transfer "was duly entered, registered, & accepted by the co."; (2) that, after the call, pl'tfs. sold their business to another co., on the terms that the co. should take upon themselves all the liabilities of pl'tfs., including those in respect of which the call was made, & that the claim in the declaration mentioned was, by the sale on the terms aforesaid, & with the consent

of deft. & pl'tfs., fully satisfied & discharged. On demurrer:—*Held*: (1) the first plea was good; upon the pleadings, the transfer & acceptance must be taken to have been made according to the provisions of the statute, & sects. 27 & 29 did not apply to contracts, by the directors, of this description; (2) the second plea was bad.—*PLATE GLASS UNIVERSAL INSURANCE CO. v. SUNLEY (1857), 8 E. & B. 47; 26 L. J. Q. B. 316; 29 L. T. O. S. 277; 4 Jur. N. S. 8; 120 E. R. 18; sub nom. PLATE GLASS UNIVERSAL INSURANCE CO. v. LUMLEY, 5 W. R. 727.*

Annotation:—As to (1) Refd. Haddon v. Ayers (1858), 1 E. & E. 118.

2118. — Sale of business of company—Call made before sale.]—PLATE GLASS UNIVERSAL INSURANCE CO. v. SUNLEY, No. 2117, ante.

2119. — Agreement to take shares part of arrangement—Remainder fraudulent & ultra vires the company.]—ODESSA TRAMWAYS CO. v. MENDEL, No. 1533, ante.

— *Account stated.]—See No. 2383, post.*

— *Contract to take shares induced by misrepresentation.]—See Sect. 17, sub-sect. 1, G. (d), ante.*

See, also, No. 2129, post.

— *In prospectus.]—See Sect. 8, sub-sect. 3, C. (a), ante.*

2120. — Contract to take shares induced by fraud—Fraud of directors as a board—Pleading.]—In action by a co. for calls, plea: that deft. was induced to become a holder of shares by means of the fraud of pl'tfs.:—*Held*: fraud of the directors as a board & as a body was fraud within the plea & would avoid the contract.—*GLAMORGANSHIRE IRON & COAL CO. v. IRVINE (1866), 4 F. & F. 947; 15 L. T. 52, N. P.*

Annotations:—Apld. Bwlch-y-Plwm Lead Mining Co. v. Baynes (1867), L. R. 2 Exch. 324. Refd. First National Reinsurance v. Greenfield, [1921] 2 K. B. 260.

2121. — Fraud of company—Pleading.]—BWLCH-Y-PLWM LEAD MINING CO. v. BAYNES, No. 1596, ante.

— *Non-disclosure in prospectus.]—See Nos. 439, 462, 491-492, 524-525, ante.*

— *Departure from prospectus.]—See No. 1187, ante.*

2122. — That shares transferred—Delay in registration—Delay in fact justified.]—Deft. sold certain shares in pl'tf. co., & deposited the transfer,

the register book, sufficient evidence, is to make the official book, in which the list of the names of the proprietors is entered, evidence of proprietorship; & it may be shown, *aliunde* that deft. was proprietor at the time the call was made.—*MORGAN v. O'BEIRNE (1829), 2 Hud. & B. 281.—IR.*

q. Limitation of action.]—A suit against a shareholder to enforce liability in respect of his shares, if brought within three years from the date at which his name is inscribed in the register as the holder of such shares, is not barred by limitation.—*CHHOTÁLÁL CHHAGANLÁL v. DALSUKH-RÁM HARGOYINDÁS (1892), 1 L. R. 17 Bom. 472.—IND.*

r. —.]—Cos. Act, s. 61, creates a new liability on the shareholders in respect of unpaid calls; & such calls can be recovered though barred by limitation before the order for winding up is made.—*VAIDISWARA AYYAR v. SIVA SUBRAMANIA MUDALIAR (1907), 1 L. R. 31 Mad. 66.—IND.*

s. Objections—Time for raising.]—Where the secretary & managing director of a co. called as witnesses for s., a shareholder, swore that certain calls had been made on shareholders & the secretary produced the register in which calls were registered & no further

questions were put:—*Held*: it was too late to raise for the first time on appeal the objections that no proof had been given that the directors had been authorised to make calls, that any calls had in fact been made or that notice of such calls had been given to s.—*JOHANNESBURG MOTOR MART, LTD. v. SCHONKEN, [1919] O. P. D. 90.—S. AF.*

PART III. SECT. 21, SUB-SECT. 5.—
A. (b).

t. What defences can be raised—Contract to take shares induced by fraud.]—In an action brought by an incorporated co. for calls, a plea in bar that deft. became a holder of the shares by subscription, & was induced to become such subscriber & holder by the fraud of the co., & that he has received no benefit from, & has repudiated the shares:—*Held*: good.—*PROVINCIAL INSURANCE CO. v. BROWN, PROVINCIAL INSURANCE CO. v. DENROCHE (1860), 9 C. P. 286.—CAN.*

a. —.]—A plea that deft. was induced to take the shares by the fraud of pl'tfs., & repudiated them as soon as he discovered the fraud, & derived no benefit from them, was clearly bad.—*BARNED'S BANKING CO. v. REYNOLDS (1877), 40 U. C. R. 435;*

reversd. 3 A. R. 371.—CAN.

b. —.]—Shareholders in a joint-stock co. purchased additional shares the price of which was advanced by the co. In an action, at the instance of the co. for the money advanced to pay for these shares, an allegation that defenders had been induced to purchase the shares by the false & fraudulent representations made by the manager & contained in the report of the directors to the effect that the co. was solvent:—*Held*: a relevant defence to entitle defenders to an issue.—*NATIONAL EXCHANGE CO. OF GLASGOW v. DREW & DICK (1855), 18 Dunl. (Ct. of Sess.) 6; 2 Macq. 103; 27 Sc. Jur. 356.—SCOT.*

c. —.]—Release by company—Composition deed.]—The directors of a limited co., by a composition deed executed whilst the co. was a going concern, & under powers conferred by the arts. of assocn., purported to release a shareholder from payment of the balance then unpaid on his shares, but the shareholder's name remained on the register:—*Held*: the release was no answer to an action by the liquidator of the co. for calls made by the directors before liquidation & subsequent to the date of the deed. A co. has no power to release a shareholder

Sect. 21.—Calls on shares: Sub-sect. 5, A. (b), B. & C.; sub-sect. 6, A.]

the receipt of which was duly acknowledged, with the co. for registration. The directors, in the exercise of a discretion given by the arts. of assocn., decided not to register the shares until they had satisfied themselves as to the responsibility of the transferee, & while the necessary investigations were being made the co. went into voluntary liquidation, the shares still standing in deft.'s name. As a defence to an action by the liquidator of the co. for calls upon these shares, deft. pleaded that she had transferred them before the winding up, & that the co. had been guilty of unnecessary delay in not registering the transfer:—*Held*: as the evidence obtained by the directors as to the responsibility of the transferee would have justified them in refusing to register the transfer, the plea of unreasonable delay was no defence to the action.—*UNION DEBENTURE CO. v. FLETCHER* (1895), 59 J. P. 708; 11 T. L. R. 472, C. A.

—*See, generally*, Sub-sect. 4, B. (b), *ante*.

— **That shareholder entitled to rectification of register.]—See Sect. 13, sub-sect. 5, *ante*.**

— **That capital not fully subscribed.]—See Nos. 2123, 2124, *post*.**

— **That call invalid.]—See No. 2127, *post*.**

— **Loss of right to raise defence—Misrepresentation in prospectus.]—See Sect. 8, sub-sect. 3, E., *ante*.**

— **Non-disclosure in prospectus.]—See Sect. 8, sub-sect. 2, C., *ante*.**

— **Departure from prospectus.]—See Sect. 8, sub-sect. 4, C., *ante*.**

2123. — By estoppel—Signature of deed of settlement—Proviso in deed covering defence raised.]—By the deed of settlement of a joint-stock co., made between the several parties whose names were or should be inserted in a schedule thereto, & who had executed or should from time to time execute the deed, except plffs., of the one part, & plffs. of the other, reciting that the several persons parties thereto had agreed to raise a capital of £50,000 by a contribution in shares of £500 each, for the purposes therein mentioned, subject to the covenants thereafter contained, & that every of the persons parties thereto had contributed towards the capital of £50,000 the sum of £125 in respect of every share subscribed for or allotted to him, the parties mutually covenanted with each other that the several persons parties thereto, & the several other persons who should become shareholders as thereafter mentioned, should, while holding shares in the capital of the co. be & continue, until dissolved under the provision thereafter contained, a partnership or co., by the name of, etc., for the purposes & upon the terms & conditions thereafter expressed. Among these were the following: That the capital of the

co. should consist of the aforesaid sum of £50,000. agreed to be raised in shares of £500 each, with power to the directors, with the concurrence of a general meeting, to augment or diminish the capital by the means therein mentioned; that the directors should at a meeting of their board, called at a certain time before the next & every subsequent general meeting, declare what, if any, dividend should be made among the shareholders at such general meeting next following; that, notwithstanding instalments on the shares of the capital of £50,000, of £125 per share, should have been paid or provided for, the remaining £375 per share should be payable by the holder to the directors, in such sums, not exceeding £125 per share at one payment, at such times, etc., as the directors at an extraordinary board, etc., should appoint; & that notwithstanding any person who had theretofore applied for any share in the capital of the co., or had or might become a subscriber thereto, had refused or neglected, or should refuse or neglect, to pay his subscription or any part thereof, or should refuse or neglect to execute the deed, & notwithstanding the entire number of shares should not be subscribed for on or before the execution thereof, yet the deed, & the provisions therein contained, should be valid & effectual:—*Held*: although the entire capital of £50,000 had not been subscribed for, the parties who had executed the deed were liable to the payment of the calls made by the directors on the £375 per share remaining unpaid.—*HUTT v. GILES* (1844), 12 M. & W. 492; 13 L. J. Ex. 337; 2 L. T. O. S. 330; 152 E. R. 1291.

2124. — Facts raised as defence recited in deed.]—It is not competent to a shareholder in a completely registered joint-stock co., who has executed the deed of settlement, with a recital therein that the whole number of shares have not been subscribed for, to defend himself against a claim for calls, on the ground that the directors have proceeded to carry on business with less than the stipulated amount of capital subscribed.—LONDON & CONTINENTAL ASSURANCE SOCIETY v. REDGRAVE (1858), 4 C. B. N. S. 524; 31 L. T. O. S. 203; 4 Jur. N. S. 616; 140 E. R. 1196.

Annotation:—*Apprvd. Ornamental Pyrographic Woodwork Co. v. Brown* (1863), 2 New Rep. 81.

2125. — Receipt of dividends.]—Re ATHENÆUM LIFE ASSURANCE SOCIETY, RICHMOND'S CASE, PAINTER'S CASE, No. 829, *ante*.

2126. — Hull Flax & Cotton Mill Co. v. Wellesley, No. 830, *ante*.

— **Acquiescence in allotment.]—See Sect. 17, sub-sect. 3, F., *ante*.**

See, generally, ESTOPPEL.

2127. — By delay—Nine months—Objection that meeting resolving on call irregularly constituted.]—By deed of settlement it was provided

from payment of either past or future calls.—*COLONIAL FINANCE, MORTGAGE, INVESTMENT & GUARANTEE CO. v. GOLDSMITH* (1909), 8 C. L. R. 241; 25 N. S. W. W. N. 79.—*AUS.*

d. — Forfeiture by non-payment of calls.]—To a declaration for calls under 12 Vict. c. 166, s. 10, deft. pleaded, that by non-payment of said calls the shares became forfeited in pursuance of the statute, & that deft. acquiesced in such forfeiture, of which plffs. had notice:—*Held*: bad, for deft. could not thus forfeit the shares.—ONTARIO INSURANCE CO. v. IRELAND (1856), 5 C. P. 135.—*CAN.*

e. — Departure from articles of association—Purpose of call *ultra vires*.]—Where arts. of assocn. provide that

in an action for a call it shall be sufficient to prove that the name of deft. is on the register, & that due notice has been given, & that it shall not be necessary to prove the appointment of the directors who made the call, nor that a quorum was present, nor that the meeting was duly convened or constituted, nor any other matter whatsoever, it is not open to a shareholder in such an action to raise the defence that the board of directors who made the calls was not constituted according to the arts., or the defence that the calls were made for purposes which were *ultra vires* of the co.—*NEW ZEALAND NATIVE LAND SETTLEMENT CO. v. RHODES'S TRUSTEES, SAME v. MCBETH* (1889), 7 N. Z. L. R. 19.—*N.Z.*

f. Loss of right to raise defence — Infancy—Absence of express repudiation of title.]—To an action by a railway co. for calls, deft. pleaded that he had bought the shares in question, & that an agreement was entered into between plffs. & the deft. whereby, in consideration that he would undertake & agree to pay all calls that should thereafter be made in respect of said shares, plffs. undertook to place his name on the register of shareholders; & that before & at the time he bought the said shares, & before & at the time of the making of the said agreement, & before & at the time of placing his name on the register of the co., & before & at the time of making of the calls, he was & still is an infant under the age of twenty-one years; & that

that it should be lawful for the directors of a co. to make calls with the concurrence of a general meeting; at least fourteen days' clear notice to be given of any general meeting; & that in case of any adjournment for more than ten days, notice of such adjournment should be given by sending to each of the shareholders a circular, & also by advertising the same in three daily newspapers. B., a shareholder in the co., attended a general meeting on Apr. 23, & moved its adjournment till May 9, 1856. Circulars were sent to each of the shareholders giving notice of the adjourned meeting, but it was not advertised in the newspapers. B. attended the adjourned meeting, at which a call of 15s. per share was carried. Several shareholders paid this call. B. refused to pay the call, & in Feb. 1857, transferred his shares to F., but the directors refused to accept the transfer, or to put F. upon the register, while the call due from B. remained unpaid:—*Semle*: B., who had taken no steps to dispute the call from May, 1856, till Feb. 1857, could not now take advantage of any irregularity in the constitution of the adjourned meeting, from its not having been advertised, to avoid payment of the call.—*Re* BRITISH SUGAR REFINING CO. (1857), 3 K. & J. 408; 69 E. R. 1168; *sub nom.* *Re* BRITISH SUGAR REFINING CO., *Ex p.* FARIS, 26 L. J. Ch. 369; 5 W. R. 379.

Annotations:—*Mentd.* *Re* North British Australasian Co., *Ex p.* Swan (1859), 7 C. B. N. S. 400; *Re* Diamond Rock Boring Co., *Ex p.* Shaw (1877), 2 Q. B. D. 463.

Compare cases in Sect. 8, sub-sect. 3, E.; Sect. 8, sub-sect. 4, D., *ante*.

2128. Pleading — Transfer of shares.] — PLATE GLASS UNIVERSAL INSURANCE CO. *v.* SUNLEY, No. 2117, *ante*.

2129. Practice—Allegation of fraud & repudiation — Company entitled to particulars.] — To an action for calls commenced by a joint-stock co., & continued by the official manager under the Winding-up Acts, deft. pleaded that he was induced to become the holder of the shares by the fraud of the co., & that on notice of the fraud he had repudiated & disclaimed the shares. Upon affidavits of the official manager & secretary of the co. that they had no knowledge of any fraud, or of any act or circumstance to justify the plea or the allegation of repudiation:—*Held*: deft. must give particulars in writing of the acts of fraud relied upon, & of the acts constituting the repudiation & disclaimer.—*MCCREIGHT v. STEVENS* (1862), 1 H. & C. 454; 31 L. J. Ex. 455; 6 L. T. 603; 10 W. R. 798; 158 E. R. 963.

B. By Proof in Bankruptcy of Shareholder.

See, now, 1908 Act, s. 127.

See BANKRUPTCY & INSOLVENCY, Vol. IV., p. 302 *et seq.*

C. By Exercise of Lien.

See Sect. 22, sub-sect. 5, *post*.

e has not at any time derived, & does not seek or claim to derive, any profit or benefit or advantage whatsoever from the said shares, or any of them, by reason of his being such registered shareholder:—*Held*: the plea was bad in general demurrer, by reason of the absence of any averment of an express repudiation by deft. of any title or interest in the shares.—*MIDLAND GREAT WESTERN RY. CO. v. QUIN* (1851), 17 L. T. O. S. 248.—*IR.*

ART III. SECT. 21, SUB-SECT. 6.—A.

g. By way of set-off — Against J.—VOL. IX.

claim for services rendered.] — Re OTTAWA CEMENT BLOCK CO., *MACOUN'S CASE* (1907), 14 O. L. R. 389; 9 O. W. R. 305, 409.—*CAN.*

h. Tender of promissory notes.] — It was contended that a railway co. had no authority to take promissory notes for assessments on stock, the Act of Incorporation pointing out a particular mode of recovery:—*Held*: it could.—*ST. STEPHEN BRANCH RY. CO. v. BLACK* (1870), 2 Han. 139.—*CAN.*

k. Payment to judgment creditor of company.] — Sci. fu. on a judgment against a railway co., alleging that

SUB-SECT. 6.—SATISFACTION OF CALLS.

A. In General.

2130. Agreement to pay in goods—Ultra vires.] —*Re* RICHMOND HILL HOTEL CO., *PELLATT'S CASE*, No. 1514, *ante*.

2131. Agreement to accept bonds—Bonds subsequently becoming valueless.] — Upon an adjourned summons to place the holder of shares on the list of contributories of a co. formed for running the blockade of the Confederate States, it appeared that the managing director had agreed to accept Confederate or cotton bonds in payment of the amount due for the shares. The bonds, at the time they were accepted, were saleable at the price at which they were received in payment, but became afterwards worthless:—*Held*: the Confederate bonds having been accepted as payment & the shareholder credited with the amount, & the shares entered as fully paid up, he could not now be placed on the list of contributories.—*Re* MERCANTILE TRADING CO., *SCHRODER'S CASE* (1870), L. R. 11 Eq. 131; 40 L. J. Ch. 130; 23 L. T. 456; 19 W. R. 93.

Annotation:—*Mentd.* *Re* Limehouse Co., *Coates' Case* (1873), L. R. 17 Eq. 169.

Second call including first call—Payment by shareholder less than first call—Rights of mortgagees of first call.] —*See* No. 4601a, *post*.

2132. By way of set-off—Debt not presently payable—Debenture paid off before due.] — The directors of a joint-stock co. redeemed at a discount a debenture of the co. held by H., a director, two years before it was payable, & allowed H. to set off the redemption money against a call then due on his shares. Two months afterwards the co. was ordered to be wound up by the ct.:—*Held*: the set-off could not be allowed, & H. remained liable to pay the call.—*Re* MASONS' HALL TAVERN CO., *HABERSHON'S CASE* (1868), L. R. 5 Eq. 286.

Annotation:—*Refd.* *Re* Wincham Shipbuilding, Boiler, & Salt Co., *Poole, Jackson, & Whyte's Cases* (1878), 26 W. R. 588.

2133. — — —.] — A co. owed a debt to E. Before any portion of it had become payable, it was assigned by E. to K., a shareholder. Under the arts. of assocn. the directors had power to accept money from shareholders on their shares in anticipation of calls. K. gave notice to the co. of E.'s assignment, & requested the directors to credit him with payment of his shares in full by writing off from E.'s debt so much as would be equal to the amount remaining unpaid on his shares. No call had been made on these shares. On receipt of K.'s request, the board, by resolution, agreed to the request, but no writing off ever was made in the co.'s books. At the date of the request the co. was, to the knowledge of K., in difficulties, & within a month of the resolution a winding-up order was made. No registered contract was ever filed:—*Held*: the resolution merely amounted to an agreement to write off at a future time when the cross debts should become actually payable, & K.'s shares were therefore not paid

defts. held thirty shares therein, on which \$1,800 remained unpaid. Plea, for a defence which arose after this action, alleging payment of \$1,800, the balance due on deft.'s stock, to one G., a judgment creditor of the co., under a judgment recovered by him against defts. as shareholders. Replication, that G. was a creditor only in respect of a claim which he held as trustee for deft. N., & recovered his judgment, & received the money paid to him, as such trustee, of which defts. had notice:—*Held*: a good replication, for the payment to N., a shareholder, was of no avail as against pltf., an

Sect. 21.—Calls on shares: Sub-sect. 6, A. & B.; sub-sect. 7.]

up in full at the date of the winding up & he was liable for calls.—*Re LAND DEVELOPMENT ASSOCN., KENT'S CASE* (1888), 39 Ch. D. 259; 57 L. J. Ch. 977; 59 L. T. 449; 36 W. R. 818; 4 T. L. R. 691; 1 Meg. 69, C. A.

Annotations:—*Distd. Re Jones, Lloyd* (1889), 41 Ch. D. 159. *Re Washington Diamond Mining Co.*, [1893] 3 Ch. 95.

2134. — Debt presently payable.]—An agreement by a shareholder in a co. with the co. to set off against future calls on his shares a present liability of the co. to pay cash to him, is payment of the calls in cash within the meaning of 1867 Act, s. 25.—*Re JONES, LLOYD & Co., LTD.* (1889), 41 Ch. D. 159; 58 L. J. Ch. 582; 61 L. T. 219; 37 W. R. 615; 5 T. L. R. 268; *sub nom. Re JONES, LLOYD & Co., JONES' CASE*, 1 Meg. 161.

2135. — Against solicitor's bill of costs.]—*Re EXCHANGE BANKING Co., LTD., RAMWELL'S CASE*, No. 2815, *post*.

Whether amounting to fraudulent preference—Directors' fees.]—*See* No. 6728, *post*.

In winding up.]—*See* Sect. 36, sub-sect. 11, C. (a), *post*.

2136. Tender of joint sum by two several shareholders—Sufficient to pay calls on either holding—Insufficient to pay calls on both.]—*GOULTON v. LONDON ARCHITECTURAL BRICK & TILE Co.*, No. 2763, *post*.

Tender of overdue interest coupons.]—*See* No. 2396, *post*.

B. Payment in Advance.

2137. Under power in articles—Exercised bona fide.]—The directors of a co. limited by shares may receive payment from a shareholder of any amounts remaining unpaid on his shares, & may pay out of capital interest on sums so paid up in advance of calls, either under 1862 Act, Table A, if applicable, or under provisions to the same effect in the co.'s arts. of assocn., provided they do so in good faith & in the honest exercise of the discretion confided to directors.

The insertion of Table A, art. 7, seems to me to remove all doubt. To argue that it is *ultra vires* to do that which the Legislature has expressly sanctioned is absurd (*LORD HALSBURY, C.*).—*LOCK v. QUEENSLAND INVESTMENT & LAND MORTGAGE Co.*, [1896] A. C. 461; 65 L. J. Ch. 798; 75 L. T. 3; 45 W. R. 65; 40 Sol. Jo. 598, H. L.

2138. Whether satisfaction pro tanto—Payment before winding up begun—Payment off of overdraft by directors.]—Directors of a co. are trustees of their power for the shareholders, but not for the creditors.

Three directors of a co., being liable as contributories for the amount unpaid on their shares, & also as guarantors in respect of a guarantee to a bank, a creditor of the co., & no calls having been made, it was resolved at a directors' meeting at which those three directors were present, that "in order to reduce the balance due to the bank it is recommended that the directors do pay up the amount of their shares." At the date of this resolution the co. was insolvent. The three directors paid to, & took a receipt from, a person

calling himself the "pro-secretary" of the co., the secretary having refused to receive them, sums equal in amount to the amount due on their shares, which sums the "pro-secretary" paid to the co.'s general account with the bank. Upon an application by the liquidator that the three directors might be settled on the list of contributories in respect of the amount unpaid on their shares:—*Held*: the payments made by the directors in respect of the calls were made *bona fide* & not in breach of their duty towards the other shareholders, & must therefore be allowed them.—*Re WINCHAM SHIPBUILDING, BOILER & SALT Co.* POOLE, JACKSON, & WHYTE'S CASE (1878), 9 Ch. D. 322; 48 L. J. Ch. 48; 38 L. T. 659; 26 W. R. 823, C. A.

Annotations:—*Consd. Re Exchange Banking Co., Ramwell's Case* (1881), 50 L. J. Ch. 827; *Re Wood's Shipbuilding & Protection Co.* (1890), 62 L. T. 760. *Reid v. Liverpool & London Guarantee & Accident Insco.* Gallagher's Case (1882), 46 L. T. 54; *Re Pyle Works* (1890), 44 Ch. D. 534; *Re Washington Diamond Mining Co.*, [1893] 3 Ch. 95. *Mentd. Re Blackpool Motor Car Co.*, a *Hamilton v. Blackpool Motor Car Co.*, [1901] 1 Ch. 77. *See, also*, No. 6427, *post*.

2139. — Creditors paid by shareholder.]—*Re EXCHANGE BANKING Co., LTD., RAMWELL'S CASE*, No. 2815, *post*.

2140. — Payment after winding-up petition— & Loan to company.]—After the presentation of a petition to wind up, but before the winding-up order was made, P., a shareholder, paid £25 to the directors in anticipation of calls. On the application of the liquidator for a balance order against P., in respect of £240, calls on thirty shares held by him:—*Held*: the £25 would only be treated as a loan to the co., & could not be taken as a prepayment *pro tanto* of so much of the call made by the liquidator.—*Re EXCHANGE BANKING Co., LTD., PENNINGTON'S CASE* (1881), 45 L. T. 433.

Whether fraudulent preference—Call on directors' shares—Applied in payment of fees.]—*See* No. 6738, *post*.

2141. Effect of payment in advance—No power to return to shareholder.]—A sum of money paid to a co. in advance of calls cannot be returned to a shareholder as if it were an ordinary loan of which he could require payment, or of which the co. could compel him to accept repayment in the event of his being unwilling to receive it.—*LONDON & NORTHERN S.S. Co., LTD. v. FARMER* (1914), 111 L. T. 204; 58 Sol. Jo. 594.

Bequest of shares—Whether advances pass.]—*See* WILLS.

SUB-SECT. 7.—FORFEITURE OF SHARES FOR NON-PAYMENT OF CALLS.

2142. Power to forfeit—Construction.]—*SPACKMAN v. EVANS*, No. 2779, *post*.

2143. — Effect of mortgage on uncalled capital.]—*Held*: the power of the directors to forfeit shares for non-payment of calls was not taken away by the execution of the charge on the uncalled capital in favour of the trustees for the debenture holders.—*Re AGENCY LAND & FINANCE Co. OF AUSTRALIA, LTD., BOSANQUET v. AGENCY LAND & FINANCE Co. OF AUSTRALIA, LTD.* (1903), 20 T. L. R. 41.

outside judgment creditor.—*NASMITH v. DICKEY* (1877), 42 U. C. R. 350.—CAN.

PART III. SECT. 21, SUB-SECT. 6.—B.

1. Whether satisfaction pro tanto.]—Payments made in advance by shareholders in respect of uncalled capital must be treated as advanced in

satisfaction *pro tanto* of future calls.—*SOUTH CANTERBURY BUILDING SOCIETY (LIQUIDATORS) v. STUMBLES* (1894), 12 N. Z. L. R. 58.—N.Z.

m. Whether interest chargeable.]—In the case of a co., whose nominal capital is fixed, interest on money paid in advance of calls can be constituted a lawful debt, & made chargeable upon

the assets of the co. as a debtor; & a shareholder who voluntarily advances money to a co., is by law enabled to contract for interest upon his advance, as long as it is not called up, such contract binding the co. whenever it is honestly entered into.—*DALE v. MARTIN* (1883), 11 L. R. Ir. 371.—IR.

2144. Exercise of power—Only by directors validly appointed.]—(1) There must be properly appointed directors to make a call or to declare a forfeiture of shares.

A declaration of forfeiture for non-payment of a call of shares in a co. registered in Victoria under 27 Vict. No. 228, was made on June 18, 1869, by a resolution of the board of directors, consisting of a quorum of three, H., B., & A., who had been elected, with two others, at a quarterly general meeting of the co. held on Apr. 14, 1869; which meeting had been convened by advertisement, published on Apr. 8, 10 & 13, for the election of a full board of directors. It appeared that H. & A. had been previously elected directors on Jan. 14, 1867, had not retired from office as provided by the rules of the co. but had continued to act as directors up to Apr. 14, 1869:—*Held*: the said meeting of Apr. 14, 1869, having been held without due notice thereof, according to the rules of the co. passed under 27 Vict. No. 228, & of the business to be transacted thereat, the election of a full board of directors thereby was invalid, & consequently the subsequent declaration of forfeiture of June 18, 1869, was also invalid. Even if H. & A. had before that election legally held office, they could not thereafter act under their former title, for the election of a full board, though valid, necessarily involved the retirement of those, if any, who up to that time had legally held the office of director.

(2) Mere laches does not disentitle the holder of shares to equitable relief against an invalid declaration of forfeiture.—*GARDEN GULLY UNITED QUARTZ MINING CO. v. MCLISTER* (1875), 1 App. Cas. 39; 33 L. T. 408; 24 W. R. 744, P. C.

Annotation:—As to (1) *Consd. Re Alma Spinning Co., Bottomley's Case* (1880), 16 Ch. D. 681.

2145. — Conditions of articles must be strictly complied with.]—Where the directors of a co. to which the regulations contained in 1862 Act, Table A, are applicable, put in force against a shareholder the penalties imposed by Table A for non-payment of calls by forfeiting his shares, every one of the conditions precedent prescribed by Table A must be strictly & literally complied with.

By Table A, art. 6, interest "from the day

appointed for payment" to the time of actual payment is payable on calls in arrear; by art. 17 a notice may be served by the directors requiring payment of such calls, together with interest; &, on non-compliance, the directors may, by art. 19E, pass a resolution forfeiting the shares in respect of which such notice has been given:—*Held*: a resolution of forfeiture, founded on non-compliance with a notice requiring payment of the calls with interest "from the date of the call" was invalid.

By Table A, art. 4, every shareholder is liable to pay calls made by the directors "at the times & places appointed by the directors":—*Semble*: the time for payment of the call cannot be fixed by a verbal direction to the secretary, but must be fixed by a formal resolution of the directors.—*JOHNSON v. LYTTLE'S IRON AGENCY* (1877), 5 Ch. D. 687; 46 L. J. Ch. 786; 36 L. T. 528; 25 W. R. 548, C. A.

Annotations:—*Consd. Jackson v. Northampton Street Tram. Co.* (1886), 55 L. T. 91. *Reid. Hickman v. Kent or Romney Marsh Sheep-Breeders' Assocn.*, [1915] 1 Ch. 881.

2146. — Quorum of directors.]—*Re ALMA SPINNING CO., BOTTOMLEY'S CASE*, No. 2048, *ante*.

2147. — While moratorium in force—Invalid.]—A call upon shares which is payable on a date falling within the moratorium proclaimed under Postponement of Payments Act, 1914 (c. 11), is a debt within the moratorium, & consequently a resolution of the directors of the co. purporting to forfeit the shares for non-payment of the call during the currency of the moratorium is invalid. Such a resolution is also an attempt without the leave of the ct. to take possession of property within the meaning of Courts (Emergency Powers) Act, 1914 (c. 78), s. 1 (1) (b).—*BURGESS v. O. H. N. GASES, LTD.* (1914), 31 T. L. R. 59; 59 Sol. Jo. 90.

2148. Loss of right to forfeit—Judgment recovered for calls.]—By the provisions in the deed of a joint-stock co., power was given to the directors to bring actions to recover the amount of any call that might remain unpaid or to declare the shares forfeited. The directors commenced an action & recovered judgment for the amount of two calls. The judgments were not satisfied, & the directors afterwards declared the shares

PART III. SECT. 21, SUB-SECT. 7.

2144 i. Exercise of power—Only by directors validly appointed.]—The directors who had not paid the calls on their shares at the expiration of fourteen days from the time when they were made payable ceased to be shareholders, & ceased to be directors; & the subsequent payment of their calls did not reinstate them as directors. At the meetings of directors at which calls were made there was not a sufficient quorum of directors who had paid previous calls within fourteen days of the time when they were made payable, but 400 shares held by a shareholder were forfeited for non-payment of those calls, & sold. On action by the shareholder to recover the shares, or in the alternative for damages:—*Held*: the calls were badly made & pltf.'s shares could not, in the absence of any provision in the arts. validating the acts of the *de facto* as distinguished from *de jure* directors, be legally forfeited.—*HADDOW v. DUKE CO. NO LIABILITY* (1892), 18 V. L. R. 155.—AUS.

*n. — Rule authorising forfeiture invalid.]—*Pltf., a shareholder in a co., registered under Act No. 228, assented to a rule under which shares might be forfeited by directors for non-payment of calls & was a witness to affixing the co.'s seal to it. Shares of other shareholders were afterwards to his know-

ledge forfeited under the rule. Subsequently his own shares were forfeited under the rule for non-payment of a call of which owing to an accident he had not received notice though notice had been given as required by the rule. In a suit against the co. to set aside the forfeiture & recover the shares:—*Held*: Act No. 228 did not authorise the making of any rule for forfeiting shares & pltf. was not estopped from impeaching the validity of the rule in question.—*NOLAN v. ANNABELLA GOLD MINING CO.* (1869), 6 W. W. & A'B. 38.—AUS.

*o. — Before sale of shares.]—*It was provided by the arts. of assocn. that after forfeiture, the manager should cause all forfeited shares to be sold by auction & the proceeds be applied first in payment or arrears of calls & expenses, & the surplus, if any, paid to the shareholders:—*Semble*: a forfeiture, if regular, would, before sale, be complete so as to disentitle the shareholder to redemption, but that until sale he would be entitled to have the shares sold, & to have the benefit of the intermediate dividends & price procured over the unpaid calls.—*WOOD v. FREEHOLD UNITED QUARTZ MINING CO.* (1870), 1 V. R. 168.—AUS.

*p. — Notice to shareholder.]—*The arts. of assocn. of a mining co. provided that the directors might

declare forfeited any share upon which any call was in arrear, provided that notice of the intention to forfeit was given by advertisement & the call remained unpaid at the then next or any other meeting of directors. Calls being in arrear, notice was advertised by the cos. of the intention to forfeit "unless all calls be paid on or before Thursday, June 31." Thursday was in fact July 1:—*Held*: the notice was insufficient as fixing an impossible day, & forfeiture set aside.—*WOOD v. FREEHOLD UNITED QUARTZ MINING CO.* (1870), 1 V. R. 168.—AUS.

*q. — —.]—*Where a co. had power, on non-payment of a call, to debit the shareholder's account there-with & with interest thereon at 15 per cent, or to proceed against him to recover it, or to forfeit the shares, & the shareholder was served with notice that the directors would, at their option, proceed to forfeit & sell the shares for the amount due & 15 per cent interest:—*Held*: such notice was bad.—*CUSHING v. LADY BARKLY GOLD MINING CO.* (1883), 9 V. L. R. 108.—AUS.

*r. — —.]—*One clause of arts. of assocn. of a co. provided that on a member failing punctually to pay a call the directors might serve a notice on him requiring payment of the same & interest, & another clause provided

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forfeited:—*Held*: the directors could not do both—recover a judgment for the call & also declare the shares forfeited; & having recovered judgment, their subsequently declaring the shares forfeited was a nullity, & inoperative.—*GILES v. HUTT* (1848), 3 Exch. 18; 5 Ry. & Can. Cas. 505; 18 L. J. Ex. 53; 12 L. T. O. S. 197; 154 E. R. 737.
Annotation:—*Distd. G. N. Ry. v. Kennedy* (1849), 4 Exch. 417.

2149. Whether forfeiture restrained—Action for rescission pending—On payment of calls into court.]—A shareholder of a co. having commenced an action against the co. for rescission of his share contract, on the ground of misrepresentation, paid into ct. the sum demanded by the co. for unpaid calls, & moved to restrain the co. from declaring the shares forfeited:—*Held*: the motion would be dismissed; the proper course was for pltf. to have paid the money to the co. without prejudice to any question.—*RIPLEY v. PAPER BOTTLE CO.* (1887), 57 L. J. Ch. 327.

Annotations:—*N.F. Lamb v. Sambas Rubber & Gutta Percha Co.*, [1908] 1 Ch. 845. *Consd. Jones v. Pacaya Rubber & Produce Co.*, [1911] 1 K. B. 455.

2150. ——— With interest.]—Where in an action to rescind a contract to take shares the co. have given notice to forfeit the shares for non-payment of calls, the ct. will, on pltf. giving the usual undertaking in damages & paying into ct. the amount of the call with interest, restrain the co. from forfeiting the shares until the trial of the action.—*LAMB v. SAMBAS RUBBER & GUTTA PERCHA CO., LTD.*, [1908] 1 Ch. 845; 77 L. J. Ch. 386; 98 L. T. 633; 15 Mans. 189.

Annotation:—*Consd. Jones v. Pacaya Rubber & Produce Co.*, [1911] 1 K. B. 455.

2151. ——— ———.]—If, while an action is pending against a co. for the rescission of a contract to take shares, the co. give notice to pltf. to forfeit the shares in consequence of non-payment of calls, the ct. will, on pltf. paying into ct. the amount of the call with interest, restrain the co. until the trial of the action from forfeiting the shares.—*JONES v. PACAYA RUBBER & PRODUCE*

that such notice should state a day & place for payment. A notice was given that "unless the amount due by you on July 29, for call, together with interest, be paid to the secretary at the office of the co. on or before August 20, the said shares will be liable to be forfeited":—*Held*: the notice was good.—*GRAY v. STEVENSON (L.) & SONS, LTD.* (1899), 25 V. L. R. 476.—*AUS.*

s. ———.]—The bye-laws of a co. provided that the directors should have power summarily to forfeit shares & the money paid thereon upon which any call shall have remained unpaid for six months after it shall be due & payable. Pltf. subscribed for shares in the co., paying 10 per cent at the time, & agreeing to pay 15 per cent in 30 days, & 25 per cent in 60 days. He made no payment, except the 10 per cent, & some years afterwards, without notice to him, the directors assumed to forfeit the shares & to sell them to other shareholders who knew the circumstances:—*Held*: even assuming the bye-law to be valid, the forfeiture without special call or notice to pltf. was illegal, & he was entitled to the shares.—*FOX v. SELKIRK LAND & INVESTMENT CO.* (1912), 22 W. L. R. 680.—*CAN.*

t. ——— Shares must be specified.]—Where directors met to deal with shares in arrear of call, & decided that all shares in arrear should be sold by auction:—*Held*: a forfeiture could not be inferred therefrom. There should

have been a distinct vote of forfeiture of the shares by names & numbers.—*CUSHING v. LADY BARKLY GOLD MINING CO.* (1883), 9 V. L. R. 108.—*AUS.*

a. ——— Failure to stipulate time for payment.]—Under R. S. O. 1897, c. 191, s. 35, stock may be forfeited, where the amount payable on a call for stock is not paid within the time limited by the special Act incorporating the co., or by letters-patent, or by a bye-law of the co. Where, therefore, no time was limited in the statute, or letters-patent, or in the bye-law making the call, such call was held to be illegal, & an attempted forfeiture of the stock ineffectual.—*ARMSTRONG v. MERCHANTS' MANTLE MANUFACTURING CO.* (1900), 21 C. L. T. 123; 32 O. R. 387.—*CAN.*

b. Loss of right to restrain forfeiture—Laches.]—A shareholder in a mining co. whose shares had been forfeited, lying by for six years, making no inquiries & filing his bill after the co. proved a success:—*Held*: he would be barred.—*CUSHING v. LADY BARKLY GOLD MINING CO.* (1883), 9 V. L. R. 108.—*AUS.*

c. Non-payment of call & subsequent redemption.]—A shareholder in a mining co. failed to pay his call within fourteen days of the date on which the same became due. Subsequently he redeemed the shares by payment of the call:—*Held*: there was a gap between the forfeiture &

Co., LTD., [1911] 1 K. B. 455; 80 L. J. K. B. 155; 104 L. T. 446; 18 Mans. 139, C. A.

Annotation:—*Mentd. Re Pacaya Rubber & Produce Co.*, [1913] 1 Ch. 218.

2152. ——— & undertaking in damages.]—*CHARRON, LTD. v. INDIAN MOTOR TAXI-CAB CO.* (1910), cited in, [1911] 1 K. B. at p. 456, C. A.

Annotation:—*Consd. Jones v. Pacaya Rubber & Produce Co.*, [1911] 1 K. B. 455.

Actions for rescission.]—*See, generally*, Sect. 8, sub-sect. 3, C. (b); Sect. 17, sub-sect. 1, G., *ante*.

2153. Loss of right to restrain forfeiture—Husband of shareholder party as director to irregularities complained of.]—In an action by applts., being husband & wife, for a declaration that 240 shares in resp. co., standing in the name of the wife but of which she had executed a transfer to the husband on the back of a certificate, had not been validly forfeited by the co., & that the husband was owner thereof & entitled to be registered as such, it appeared that the husband was a director of the co., a party to the resolution of the board making calls on the shares, & to the subsequent resolution declaring them to be delinquent & forfeited, & that notice dated May 22, 1895, of the call of that date & of the liability to forfeiture if unpaid was mailed by the secretary to the wife's address in V., being the address given by her husband in all proceedings connected with the co. from 1891 onwards, no address being registered or given on the certificate:—*Held*: pltf. had by their conduct disentitled themselves to the relief prayed for, & any objections to the absence of due formalities in the service on the husband of acts to which he was a party, & to the illegality of the allotment, calls, & forfeiture of the shares due to technical irregularities in the original appointment of the husband & others as directors must be disallowed.—*JONES v. NORTH VANCOUVER LAND & IMPROVEMENT CO.*, [1910] A. C. 317; 79 L. J. P. C. 89; 102 L. T. 377; 17 Mans. 349, P. C.

— *By laches.]—See* No. 2144, *ante*.

Reissue of forfeited shares.]—*See* Sect. 27, sub-sect. 8, *post*.

As enforcement of lien.]—*See* Sect. 22, sub-sect. 6, *post*.

redemption during which he ceased to be a shareholder.—*BOSTOCK v. EDGAR* (1899), 24 V. L. R. 677.—*AUS.*

d. Failure to effect sale of forfeited shares—Recovery of unpaid calls.]—The limitation of fourteen days provided by Companies Act, 1908, s. 352, within which proceedings for the recovery of unpaid calls must be taken, does not apply where shares have been forfeited & put up for auction under sects. 353–356, & a co. may proceed under sect. 357 (2) for the recovery of unpaid calls on the forfeited shares where no sale results.—*KAPANGA GOLD-MINING CO., LTD. v. BRIDSON* (1910), 30 N. Z. L. R. 9.—*N.Z.*

e. Effect of forfeiture—Liability of member.]—L. was a shareholder in a co. limited by shares, incorporated under the Cos. Acts. In 1896 a call was made which was not paid. In Oct. 1900, a second call was made, payable by instalments. In Dec. 1900, the shares were forfeited for non-payment of the first call. In 1901 the capital of the co. was reduced & the shares in question cancelled. The arts. of assocn. provided that any member whose shares were forfeited should be liable to pay all calls. In 1908 an action was brought for the recovery of the amount of the two calls, with interest thereon:—*Held*: the liability of L. in her character as a member was extinguished by the forfeiture.—*LAND MORTGAGE BANK OF VICTORIA v. REID*, [1909] V. L. R. 284.—*AUS.*

SUB-SECT. 8.—ACTIONS TO RESTRAIN.

2154. Parties—Transferee of shares since calls made.]—In a suit by the owner of shares in an incorporated public co. to restrain an action for calls, a person to whom he has sold the shares since the calls, is a necessary party.—*MANGLES v. GRAND COLLIER DOCK CO.* (1840), 10 Sim. 519; 2 Ry. & Can. Cas. 359; 9 L. J. Ch. 177; 4 Jur. 333; 59 E. R. 716.

2155. Whether court will interfere—Call not required.]—The ct. will not interfere to prevent a call not required.—*GREGORY v. PATCHETT* (1864), 33 Beav. 595; 11 L. T. 357; 10 Jur. N. S. 1118; 13 W. R. 34; 55 E. R. 499.

Annotations:—*Mentd. Re National Bank of Wales*, [1899] 2 Ch. 629; *Bond v. Barrow Hæmatite Steel Co.*, [1902] 1 Ch. 353; *Ammonia Soda Co. v. Chamberlain*, [1918] 1 Ch. 266.

2156. — Evidence of improper motive.]—On an application by D., on behalf of himself & all other shareholders in a co., for an order to restrain the enforcement of a call recently made by the directors until after a special general meeting of the shareholders had been held to decide whether the present board of directors should not be displaced & a fresh board appointed:—*Held*: such an order would be an interference by the ct. with the internal management of the co., & ought therefore not to be made except where there was evidence of an improper motive in making the call.—*ANGLO-UNIVERSAL BANK v. BARAGNON* (1881), 45 L. T. 362, C. A.

2157. — Action brought by shareholder to test liability.]—The ct. will not restrain a co. from making calls on its shares & enforcing them, even in a case where the shareholder has launched an action to try the question as to his liability, for in such action he can, by resisting payment, get the question of liability settled, & so obtain a remedy without having recourse to an injunction.—*TATHAM v. PALACE RESTAURANTS, LTD.* (1909), 53 Sol. Jo. 743.

SUB-SECT. 9.—CALLS ONLY LIABLE TO BE MADE IN WINDING UP.

See 1907 Act, s. 58.

2158. What creates—Whether issue of shares at discount.]—*OOREGUM GOLD MINING CO. OF INDIA v. ROPER, WALLROTH v. ROPER*, No. 1821, *ante*.

2159. Under provision in articles—Position of shareholder.]—Where by the constitution of a limited co. a portion of its uncalled capital is not capable of being called up, except in the event of & for the purpose of the co. being wound up, the contract of a shareholder with his fellow-shareholders as regards such reserve capital is that the business of the co. shall be carried on with a certain amount of capital, of which he is to con-

tribute a fixed proportion, & on the faith of the credit attaching to his liability to contribute a further proportion in the event of a winding up.—*Re BRISTOL JOINT STOCK BANK* (1890), 44 Ch. D. 703; 59 L. J. Ch. 722; 62 L. T. 745; 38 W. R. 574; 2 Meg. 150.

2160. — Articles not incapable of alteration.]—Pltf. took shares in a limited co. in reliance on a prospectus which stated that a certain amount of the co.'s capital would be reserved capital, which, "under Cos. Act, 1879 (c. 76), it is not competent to the directors to call up." One of the arts. of assocn. provided that a certain sum in respect of each of the ordinary shares in the initial capital of the co. would be reserve capital, incapable of being called up, except in the event of a winding up, & that a special resolution was to be passed to that effect under the 1879 Act. Such resolution was not validly passed. Resolutions being subsequently passed making part of the capital so reserved payable as calls & varying the arts., pltf. moved for an injunction to prevent the co. acting on such resolutions, as being *ultra vires*:—*Held*: the co. had full power to alter the arts.—*MALLESON v. NATIONAL INSURANCE & GUARANTEE CORPN.*, [1894] 1 Ch. 200; 63 L. J. Ch. 286; 70 L. T. 157; 42 W. R. 249; 10 T. L. R. 101; 38 Sol. Jo. 80; 1 Mans. 249; 8 R. 91.

Annotations:—*Re Hyderabad Deccan Co.* (1896), 75 L. T. 23; *Andrews v. Gas Meter Co.*, [1897] 1 Ch. 361. *Mentd. Bartlett v. Mayfair Property Co.* (1897), 77 L. T. 652.

Mortgage of.]—See Sect. 34, sub-sect. 1, D. post.

SECT. 22.—LIEN ON SHARES.

SUB-SECT. 1.—IN GENERAL.

2161. Existence of lien—Not provided by constitution of company—Whether arising from relationship of shareholders inter se.]—(1) W., at the time of his bkpcy., had standing in his name shares in the capital of a bank, as to some of which he was a trustee under a formal declaration of trust, & as to the rest, beneficial owner. He was also indebted to the bank for money lent. In the deed constituting the co. there was nothing to favour their right to a lien upon W.'s shares in their capital:—*Held*: regard being had to the nature of the shares, the co. were not entitled to any lien upon W.'s shares resulting from the partnership relation which subsisted between him & the shareholders.

(2) W., by letter addressed to the directors of the co., of whom he was one, agreed to pledge with the co. 100 of his shares in the capital as a security for advances made to him. At the time of this agreement he had 225 shares standing in his name of 160 of which he was trustee for pltf. :—*Held*:

was formed:—*Held*: evidence of such agreement was inadmissible, since it was contradictory of the written agreement entered into by pltf. when subscribing for their shares, viz., to take stock & pay the calls when duly made.—*CHRISTOPHER v. NOXON* (1883), 4 O. R. 672.—CAN.

PART III. SECT. 22, SUB-SECT. 1.

k. Existence of lien — Created by bye-law—Provision in certificate of ownership insufficient for its applicability.]—A provision in a certificate of ownership of paid-up shares issued by a co. incorporated by special Act, that "the arts. of the co. are part & parcel of this contract," is not sufficient to make applicable to a purchaser in good

PART III. SECT. 21, SUB-SECT. 8.

1. Whether court will interfere—Call contrary to articles of association.]—Where the majority of directors of a limited co. passed a resolution making a maximum call, which would produce a sum in excess of the requirements of the co. within the minimum period prescribed by the arts., upon a shareholder who held all the unpaid shares, & the effect of non-payment of the call would have been to exclude him from the general meeting of the co. to be held five days after the expiry of the notice of call, at which meeting important matters affecting both the interests of the co. & the shareholders were to be determined, the ct. on the application of the shareholder made an

order interdicting the directors from acting on the call resolution, & from making any call until after the general meeting.—*MEARS v. AFRICAN PLATINUM MINES, LTD.*, [1922] W. L. D. 57.—S. AF.

g. — Call not invalid.]—*UNIVERSAL CORPN., LTD. v. HUGHES*, [1909] S. C. 1434; 46 Sc. L. R. 839; 2 S. L. T. 37.—SCOT.

h. Admissibility of parol agreement—Terms contrary to previous written agreement.]—Where shareholders of the G. Co. sought to restrain a call on stock on the ground that it was being made in contravention of the terms of a certain unwritten agreement, alleged to have been entered into between all the promoters when the co.

Sect. 22.—Lien on shares: Sub-sect. 1.]

independently of the doctrine of constructive notice, this contract did not give the co. priority over pltf's.—*MURRAY v. PINKETT* (1846), 12 Cl. & Fin. 764; 8 E. R. 1612, H. L.; *affg.* S. C. *sub nom.* *PINKETT v. WRIGHT* (1842), 2 Hare, 120.

Annotations:—As to (1) Refd. *Deering & McQuestion v. Hibernian Joint-Stock Banking Co.* (1868), 16 W. R. 578. *As to (2) Consd.* *Pennell v. Deffell* (1853), 4 De G. M. & G. 372. *Appld.* *Clack v. Holland* (1854), 19 Beav. 262; *Aberaman Ironworks v. Wickens* (1868), L. R. 5 Eq. 485. *Re Birchall, Wilson v. Birchall* (1881), 44 L. T. 243; *Ashwin v. Burton* (1862), 32 L. J. Ch. 196; *Brown v. Adams* (1869), 21 L. T. 71; *Soc. Générale de Paris v. Tram. Union Co.* (1884), 14 Q. B. D. 424. *Generally, Mentd.* *Re Leslie, Leslie v. French* (1883), 23 Ch. D. 552; *Re Bell, Ex p. Hodgson* (1891), 65 L. T. 245.

2162. — Provided by constitution of company — Shares issued to be sent abroad & treated as negotiable securities—Company cannot claim lien.]—By one clause of a deed of settlement of a colonial banking co. the directors had power to issue shares on such terms as they thought expedient. By another clause, the co. was to have a lien for debts due to the co. from the shareholders, upon any shares of the debtors. The directors issued shares, with powers of attorney, for the expressed purpose of enabling the persons to whom they were issued to remit them to England & to deal with them as negotiable securities or as money payments:—*Held*: no lien attached to the shares so issued.—*HUNTER v. STEWART* (1861), 4 De G. F. & J. 168; 31 L. J. Ch. 346; 5 L. T. 471; 8 Jur. N. S. 317; 10 W. R. 176; 45 E. R. 1148, L. C.

Annotations:—Mentd. *Simpson v. Fogo* (1863), 32 L. J. Ch. 249; *Re Agra & Masterman's Bank, Ex p. Asiatic Banking Corp'n.* (1867), 36 L. J. Ch. 222; *Wilson v. Church* (1879), 13 Ch. D. 1; *Caird v. Moss* (1886), 33 Ch. D. 22; *Re Hilton, Ex p. March* (1892), 67 L. T. 594; *Ord v. Ord*, [1923] 2 K. B. 432.

2163. — Provision in constitution of company — For forfeiture on non-payment of money due—No lien created.]—A testator held shares in a banking co. by whose deed of settlement it was provided that if any shareholder did not on demand pay all moneys due from him to the co., the directors might declare his shares forfeited, & that nevertheless he should still be liable to pay the debt, & it was also provided that a shareholder must have paid all moneys due from him to the co. before he could transfer his shares. The testator borrowed money from the co., & deposited the deeds of certain real estate with them as security. By his will he gave the above estate to his son A., & his residuary property to his other sons. A. claimed that the testator's shares in the bank should contribute ratably to payment of the debt:—*Held*: the provisions of the deed of settlement did not create a charge or lien on the shares for a debt due from the holder, & no case for contribution arose.—*Re DUNLOP, DUNLOP v. DUNLOP* (1882), 21 Ch. D. 583; 48 L. T. 89; 31 W. R. 211, C. A.

Annotation:—Refd. *Hopkinson v. Martimer, Harley*, [1917] 1 Ch. 646.

faith of the shares, a bye-law of the co. purporting to give to the co. a lien on all shares held by any shareholder for "any & all amounts that may be owing by the shareholder or his assigns to the co.," & the purchaser is, upon compliance with the necessary formalities, entitled to be registered as transferee.—*Re MCKAIN & CANADIAN BIRKBECK INVESTMENT & SAVINGS Co.* (1904), 7 O. L. R. 241; 24 C. L. T. 128; 3 O. W. R. 335.—CAN.

1. — Whether valid.]—A company incorporated under Manitoba Joint-Stock Companies Act, 1902, has,

by virtue of sect. 41 of the Act, power to make a bye-law providing that a lien shall exist upon the shares of any stockholder for any debt or liability to the co.; & if such bye-law has been passed, the co. may maintain such lien as against an execution creditor of a stockholder whose shares have been seized by the sheriff under execution.—*MONTGOMERY v. MITCHELL* (1908), 18 Man. L. R. 37.—CAN.

m. — — — — —.]—A co. incorporated under the Manitoba Joint-Stock Companies Act, 1902, c. 30, may under sects. 31 & 44, validly enact

2164. — In respect of what debts—Bills not yet due—Given in renewal of dishonoured acceptances.]—The arts. of assocn. of a joint-stock bank provided that the bank should have a paramount lien on the shares of any shareholder for all moneys due to them from him, & that they might decline to register any transfer whilst the transferring shareholder was indebted to them. A shareholder being unable to meet certain bills of exchange accepted by him & held by the bank, the bank took from him renewed bills for the same amount. Before the renewed bills arrived at maturity the shareholder transferred his shares, but the bank declined to register the transfer:—*Held*: the renewed bills, though they suspended the remedy, did not discharge the antecedent debt, & consequently the bank had a lien on the shares & were not bound to register the transfer.—*Re LONDON, BIRMINGHAM & SOUTH STAFFORDSHIRE BANKING Co., LTD.* (1865), 34 Beav. 332; 5 New Rep. 351; 34 L. J. Ch. 418; 12 L. T. 45; 11 Jur. N. S. 316; 13 W. R. 446; 55 E. R. 663.

2165. — — — — —.]—A co. by its arts. had a lien upon the shares of any member for any moneys due to the co. from him, & might sell any of the shares registered in the books of the co. in the name of such debtor, & apply the proceeds in discharging such debt, & might refuse to register any transfer of shares whilst the member making the transfer was indebted to the co.:—*Held*: "due" meant "presently payable," & consequently, the co. was not entitled to refuse to register a transfer of shares, for the reason that it held bills of the member making the transfer which had not arrived at maturity.—*Re STOCKTON MALLEABLE IRON Co.* (1875), 2 Ch. D. 101; *sub nom.* *Re STOCKTON MALLEABLE IRON Co., Ex p. CHAPMAN*, 45 L. J. Ch. 168.

Annotation:—Consd. *Ex p. Stringer* (1882), 9 Q. B. D. 436.

2166. — — — — — Director's fees overpaid.]—A director vacated his office automatically by bargaining for a secret commission on the sale of certain property to the co. The fact was unknown to the co., & the director continued to act & to receive his fees as director. He was subsequently re-elected to office in the ordinary course on his supposed retirement by rotation:—*Held*: although the director, during the period between his vacating his office & his re-election, had rendered services to the co. which had been accepted by them, yet, inasmuch as it was impossible for the ct. to believe that the co. would ever have requested him to render these services had they been aware of the true state of the facts, the ct. could not imply a request for these services on the part of the co. from the mere fact of their ignorant acceptance of them, & accordingly the services rendered did not amount to a legal consideration for the fees paid for them, & the co. were therefore entitled to recover these fees as money had & received, & had a lien on shares for those moneys.—*Re BODEGA Co., LTD.*, [1904] 1 Ch. 276; 73 L. J. Ch.

bye-laws providing that the co. shall have a lien upon his shares for all debts due or owing to it by any shareholder, whether or not the debt is presently due & payable, & for prohibiting the registration of a transfer of such shares except subject to such lien.—*Box v. BIRD'S HILL LAND Co.* (1913), 24 W. L. R. 706; 3 W. W. R. 602.—CAN.

n. A right at common law.]—A limited co. incorporated under the Cos. Acts, has at common law a right of retention over the shares of a partner in security of debts due by him to the co.—

198; 89 L. T. 694; 52 W. R. 249; 48 Sol. Jo. 84; 11 Mans. 95.

Annotation:—*Mentd. Admiralty Comrs. v. National Provincial & Union Bank of England* (1922), 38 T. L. R. 492.

— **Shares held by trustee.**—*See Nos.* 2182, 2183, *post*.

— **On what shares—Alteration of articles.**—*See Sub-sect. 2, post*.

— **Shares held by trustee.**—*See Nos.* 2182, 2183, *post*.

Rights of co. & assignees on bkpcy. of shareholders indebted to co., *see Nos.* 2349, 2350, *post*.

2167. Nature of lien—Equitable charge.—The arts. of assocn. of a co. provided that the co. should have a first & paramount lien upon the shares of each member for his debts to the co., & that, for the purpose of enforcing the lien, the directors might, on default in payment of a debt, sell the shares, & execute a transfer of the shares sold to the purchaser:—*Held*: this lien constituted a "charge" upon the shares, within Conveyancing & Law of Property Act, 1881 (c. 41), s. 2 (6), for a debt due from the shareholder to the co., & consequently, sect. 15 applied, & entitled the shareholder to require the co., on payment of the sum due, to assign the debt & their lien on the shares to his nominees.—*EVERITT v. AUTOMATIC WEIGHING MACHINE CO.*, [1892] 3 Ch. 506; 62 L. J. Ch. 241; 67 L. T. 349; 36 Sol. Jo. 732; 3 R. 34.

Annotation:—*Folld. Hopkinson v. Mortimer, Harley*, [1917] 1 Ch. 646.

2168. ——— In nature of mortgage.—Art. 22 of the arts. of assocn. of a limited co., as altered by a special resolution, provided that the co. should have a first & paramount lien upon all the shares registered in the name of each member for the debts, liabilities & engagements of such member. Art. 23 provided that the board might sell the shares for the purpose of enforcing the lien, & might also by a resolution to that effect, forfeit the shares subject to such lien. The holder of fully paid shares brought an action against the co. & its directors asking for a declaration, in effect, that his fully paid shares were not subject to the power of forfeiture for debts on the ground that it was *ultra vires* & illegal. There had been no threat to forfeit pltf.'s shares:—*Held*: (1) pltf. was not premature in coming to the ct., as his rights had already been invaded & his property damaged; (2) under this power the forfeiture for debts due from a member generally, as distinct from those due from him as a contributory, would amount to an illegal reduction of capital; (3) the lien being an equitable charge in the nature of a mtge., the power to forfeit pltf.'s shares, on his failure to redeem on a seven days' notice, was a clog on the equity of redemption & as such invalid & *ultra vires* & pltf. was therefore entitled to the declaration claimed.—*HOPKINSON v. MORTIMER, HARLEY & CO., LTD.*, [1917] 1 Ch. 646; 86 L. J. Ch. 467; 116 L. T. 676; 61 Sol. Jo. 384.

2169. ——— "Security" within provision in articles—Empowering direction to lend "on security."—Clause 15 of the arts. of assocn. of a limited banking co. provided that the co. should

have a paramount lien on all the shares held by any shareholder for all his debts to the co., & empowered the directors in case of non-payment of any such debt, or in the event of the bkpcy. of the shareholder, to sell his shares, & apply the proceeds in discharge of his debt. Clause 98 empowered the directors to lend the funds of the co., or give credit, with or without security, & provided that no advances without security should be made or credit given to any director:—*Held*: the lien given by clause 15 was a security within clause 98, & a loan might be made to a director without any other security than the lien, if the board considered his shares to be of sufficient value.—*Re NATIONAL BANK OF WALES, LTD.*, [1899] 2 Ch. 629; 15 T. L. R. 517; *sub nom. Re NATIONAL BANK OF WALES, CORY'S CASE*, 68 L. J. Ch. 634; 81 L. T. 363; 48 W. R. 99; 43 Sol. Jo. 705, C. A.; *affd.* on other grounds *sub nom. DOVEY v. CORY*, [1901] A. C. 477, H. L.

Annotations:—*Mentd. Merchants' Fire Office v. Armstrong* (1901), 17 T. L. R. 709; *Bond v. Barrow Haematite Steel Co.*, [1902] 1 Ch. 353; *Re Crichton's Oil Co.*, [1902] 2 Ch. 86; *Lucas v. Fitzgerald* (1903), 20 T. L. R. 16; *Re Welsbach Incandescent Gas Light Co.*, [1904] 1 Ch. 87; *Exploring Land & Minerals Co. v. Kolckmann* (1905), 94 L. T. 234; *Prefontaine v. Grenier*, [1907] A. C. 101; *Ammonia Soda Co. v. Chamberlain*, [1918] 1 Ch. 266.

2170. Extent—Dividends.—By the deed of settlement of a joint-stock bank, it was provided "that the directors should have a lien on the shares & stock of every shareholder for all debts due to the co., & that such lien should at all times be the paramount lien on the shares & stock of such shareholder; & the directors were empowered to cancel & declare forfeited shares, or to sell & dispose of them, or otherwise deal with the same to obtain payment of the debts":—*Held*: the co. had a lien against a shareholder who had overdrawn his account, not only on the shares, but also on the dividends arising from them.—*HAGUE v. DANDESON* (1848), 2 Exch. 741; 17 L. J. Ex. 269; 11 L. T. O. S. 271.

2171. ——— Payment to shareholders on sale of assets.—By the arts. of assocn. of a bank, the bank would have a lien on the shares of a shareholder for all moneys due to the bank by the shareholder. The bank was wound up, & the assets were sold, one of the terms being that certain shareholders in the bank should be paid £2 a share:—*Held*: the bank had, on the money so to be paid to a shareholder, a lien for moneys due to the bank by the shareholder.—*Re GENERAL EXCHANGE BANK, Re LEWIS* (1871), 6 Ch. App. 818; *sub nom. Re GENERAL EXCHANGE BANK, LONDON, HAMBURG & CONTINENTAL EXCHANGE BANK'S CLAIM*, 40 L. J. Ch. 429; 24 L. T. 787; 19 W. R. 791, L. JJ.

Annotations:—*Reid. Everitt v. Automatic Weighing Machine Co.*, [1892] 3 Ch. 506; *Re National Bank of Wales*, [1899] 2 Ch. 629; *Hopkinson v. Mortimer, Harley*, [1917] 1 Ch. 646.

2172. Discharge—Shareholder entitled to transfer to nominee.—*EVERITT v. AUTOMATIC WEIGHING MACHINE CO.*, No. 2167, *ante*.

2173. ——— When part of holding transferred.—*GRAY v. STONE & FUNNELL*, No. 2188, *post*.

See, generally, LIEN; MORTGAGE.

SHARP (BELL'S TRUSTEE) v. COATERIDGE TINPLATE CO., LTD. (1886), 14 R. (Ct. of Sess.) 246; 24 Sc. L. R. 209.—*SCOT.*

o. Confined to shares of individual indebted to company.—Shares in a co. owned by A. & B. jointly were registered in the name of the firm. The firm having been dissolved A. subsequently became indebted to the co. A transfer signed by A. & B. to a third

party was then tendered to the co. for registration, but the co. refused to register it, as they claimed under art. 37 of their arts. of assocn. a lien on the shares for the debt owing by A. to the co. The art. was as follows:—"The co. shall have a first & paramount lien upon all the registered shares & registered stock of each member for his debts, liabilities, & engagements, solely or jointly with

any other person, to or with the co., whether the period for the payment, fulfilment, or discharge thereof shall have actually arrived or not":—*Held*: the art. did not give the co. the lien they claimed, & the lien was confined to the shares of the individual who was indebted to the co.—*Re SOUTHLAND FROZEN MEAT CO., LTD.* (1905), 24 N. Z. L. R. 734.—*N.Z.*

Sect. 22.—Lien on shares: Sub-sects. 2, 3, 4 & 5.]

SUB-SECT. 2.—ALTERATION OF ARTICLES CONFERRING LIEN.

2174. Lien extended to fully paid shares—Valid.]

—A co. by one of its arts. provided that it should have a lien for all debts & liabilities of any member to the co. "upon all shares, not being fully paid, held by such member." The co., by way of purchase-money for the property acquired by it, allotted fully paid shares to Z., a nominee of the vendor to the co. Z. also applied for & had allotted to him shares not paid up. He was the only holder of fully paid up shares. At his death he was indebted to the co. in arrears of calls on the unpaid shares, but his assets were insufficient to pay the arrears. Thereupon the co., by special resolution under 1862 Act, s. 50, altered the above art. by omitting therefrom the words "not being fully paid," thus creating a lien on Z.'s fully paid shares:—*Held*: the co. had power to alter its arts. by extending its lien to fully paid shares.—*ALLEN v. GOLD REEFS OF WEST AFRICA, LTD.*, [1900] 1 Ch. 656; 69 L. J. Ch. 266; 82 L. T. 210; 48 W. R. 452; 16 T. L. R. 213; 44 Sol. Jo. 261; 7 Mans. 417, C. A.

Annotations:—*Reid. Punt v. Symons*, [1903] 2 Ch. 506; *Baily v. British Equitable Assco.*, [1904] 1 Ch. 374; *British Murac Syndicate v. Alperton Rubber Co.*, [1915] 2 Ch. 186; *Phillips v. Manufacturers' Securities* (1917), 86 L. J. Ch. 305; *Brown v. British Abrasive Wheel Co.*, [1919] 1 Ch. 290; *Mc Ellstrim v. Ballymacolligott Co-op. Agricultural & Dairy Soc.*, [1919] A. C. 548; *Dafen Tinplate Co. v. Idanelly Steel Co.*, [1920] 2 Ch. 124; *Sidebottom v. Kershaw Leese*, [1920] 1 Ch. 154. *Mentd. Re Artisans' Land & Mortgage Corpn.*, [1904] 1 Ch. 796; *Ayre v. Skelsey's Adamant Cement Co.* (1904), 20 T. L. R. 587; *Re Welsbach Incandescent Gas Light Co.*, [1904] 1 Ch. 87.

2175. — With power of forfeiture—Invalid.]

—*HOPKINSON v. MORTIMER, HARLEY & CO., LTD.*, No. 2168, *ante*.

Effect of alteration—Revaluation of security in bankruptcy of shareholder.]—See BANKRUPTCY & INSOLVENCY, Vol. IV., p. 343, No. 3223.

SUB-SECT. 3.—PRIORITIES.

2176. As between company & assignees of bankrupt shareholder.]—WATSON v. EALES, No. 2071, *ante*.

2177. Mortgage of shares—Notice of lien printed on share certificate—Statement by company to mortgagee that no claim existing—Priority of company not prejudiced.]—HORSFALL v. HALIFAX & HUDDERSFIELD UNION BANKING CO., No. 1801, *ante*.

2178. — Notice to company—Subsequent guarantee by shareholder to company—Company has priority.]—A proviso in arts. of assocn. that a co. shall have a paramount lien upon the shares of every member for all his liabilities to the co.:—*Held*: to operate so as to give the co. priority in

respect of a guarantee given by a shareholder to them, if the guarantee was for good consideration, over a mtgee. of shares of whose charge the co. had notice before the guarantee was given by the shareholder.—*MILES v. NEW ZEALAND ALFORD ESTATE CO.* (1886), 32 Ch. D. 266; 55 L. J. Ch. 801; 54 L. T. 582; 34 W. R. 669, C. A.

Annotations:—*Mentd. Crears v. Hunter* (1887), 19 Q. B. D. 341; *Kingsford v. Oxenden* (1890), 55 J. P. 182; *Milsom v. Stafford* (1899), 80 L. T. 590; *Fullerton v. Provincial Bank of Ireland*, [1903] A. C. 309; *Law v. Law*, [1905] 1 Ch. 140; *Reeve v. Jennings*, [1910] 2 K. B. 522; *Glegg v. Bromley*, [1912] 3 K. B. 474; *Jayawickreme v. Amarasuriya*, [1918] A. C. 860.

2179. — Company has no priority in respect of sums due after notice.]—The arts. of assocn. of a co. registered under 1862 Act, provided that the co. should have "a first & permanent lien & charge, available at law & in equity, upon every share for all debts due from the holder thereof." A shareholder deposited his share certificates with a bank as security for the balance due & to become due on his current account, & the bank gave the co. notice of the deposit. The certificates stated that the shares were held subject to the arts. of assocn.:—*Held*: (1) the co. could not in respect of money which became due from the shareholder to the co. after notice of the deposit with the bank claim priority over advances by the bank made after such notice; (2) the notice to the co. of the deposit with the bank was not a notice of a trust within 1862 Act, s. 30, & the bank by giving notice of the deposit did not seek to affect the co. with notice of a trust, but only to affect the co. in their capacity as traders with notice of the interest of the bank.—*BRADFORD BANKING CO. v. BRIGGS* (Dec. 7, 1886), 12 App. Cas. 29; 56 L. J. Ch. 364; 56 L. T. 62; 35 W. R. 521; 3 T. L. R. 170, H. L.; *reusg.* (1885), 31 Ch. D. 19, C. A.

Annotations:—*As to* (1) *Folld. Miles v. New Zealand Alford Estate Co.* (Feb. 11, 1886), 32 Ch. D. 266. *Consd. Mackereth v. Wigan Coal & Iron Co.*, [1916] 2 Ch. 293. *Reid. Newfoundland Government v. Newfoundland Ry.* (1888), 13 App. Cas. 199; *Bank of Africa v. Salisbury Gold Mining Co.*, [1892] A. C. 281; *West v. Williams*, [1899] 1 Ch. 132; *Rainford v. Keith & Blackman Co.*, [1905] 2 Ch. 147; *Deeley v. Lloyds Bank*, [1912] A. C. 756; *Hickman v. Kent or Romney Marsh Sheep-Breeders' Asscn.*, [1915] 1 Ch. 881. *Mentd. Generally, Boaler v. Brodhurst* (1892), 8 T. L. R. 398.

SUB-SECT. 4.—SHARES HELD ON BEHALF OF OTHERS.

2180. Shares held by partner in firm—Articles conferring lien for joint or several liability—Lien extends to firm debts—Partner trustee for firm.]—By the arts. of assocn. of a joint-stock bank it was provided that the shares of every shareholder should be always subject to a lien thereon in favour of the bank for all moneys from time to time due from him to the bank in respect of any call, or as a debt or liability to the bank from him alone, or jointly with any other person. At the

PART III. SECT. 22, SUB-SECT. 3.

p. As between company & assignees of shareholder.]—The claimant A. made a proposal through R. to be a subscriber for fifty shares in a bank then being constituted. His proposal was accepted. Subsequently R. instructed the bank's agents that the shares were to be divided as to ten to A. & ten each to four persons named of whom R. was one. These instructions were carried out, R. obtaining a certificate for ten shares. Two years later R. wrote to A.: "I hereby renounce & give up to you the ten shares, etc., which I have held for your behoof."

A year later R. assigned his ten shares to L.'s trustees to whom he was indebted, but under the declaration that on payment of the sums due to the trust the shares should be reconveyed to R. This assignment was duly intimated to the bank; & L.'s trustees were ignorant of A.'s connection with the shares. R. was at the time indebted to the bank. In a process of multiplepointing:—*Held*: the bank were entitled to retain the shares of stock standing in R.'s name in satisfaction of the debts due to them by the stockholder; & as between A. & L.'s trustees, the intimated assignment in security was preferable to the right

of the party founding on the prior latent obligation.—*BURNS v. LAWRIE'S TRUSTEES* (1840), 2 Dunl. (Ct. of Sess.) 1348; 5 Fac. Coll. 1450.—*SCOT.*

PART III. SECT. 22, SUB-SECT. 4.

q. Shares held by trustee—Provision in articles for lien on debts due by holder of shares—Meaning of "holder."]—The arts. of assocn. of a co. bore that the co. should have a lien on shares for debts due to it by "the holder" of the shares. A shareholder in security for debts due by him to two banks, transferred to nominees of the banks certain shares of which he was the registered holder, & they were registered in the

commencement of the bkpcy. of two partners, some shares in the bank stood in the name of A., one of the two. The shares were in fact partnership property, though the bank did not know that any one but A. was interested in them. The partners owed the bank a large debt for moneys advanced to them. The whole of this debt had been contracted since the shares, which were originally the property of A. alone, had become partnership property:—*Held*: the bank's security was on the joint estate, & they could only prove against that estate for the balance of their debt after deducting the value of the shares.—*Re COLLIE, Ex p. MANCHESTER & COUNTY BANK* (1876), 3 Ch. D. 481; 45 L. J. Bcy. 149; 35 L. T. 23; 24 W. R. 1035, C. A.

Annotation:—*Appld. Re Cooksey, Ex p. Portal* (1900), 83 L. T. 435.

2181. ——— **Partner trustee for third party.**—Trustees of a settlement purchased with trust money shares in a banking co., the arts. of assocn. of which provided that the co. should have a paramount lien & charge upon all the shares of any shareholder for all moneys owing to the co. from him alone or jointly with any other person, & that when a share was held by more persons than one, the co. should have a lien & charge thereon in respect of all moneys so owing to them from all or any of the holders thereof, alone or jointly with any other persons. One of the trustees was a partner in a firm which subsequently went into liquidation, being then indebted to the co.:—*Held*: the shares were acquired, & the trustees were registered as shareholders, subject to the conditions & provisions of the arts., & the bank was therefore entitled in respect of the debt of the firm to a lien on the shares paramount to any claim by the *cestuis que trust* under the settlement.—*NEW LONDON & BRAZILIAN BANK v. BROCKLEBANK* (1882), 21 Ch. D. 302; 51 L. J. Ch. 711; 47 L. T. 3; 30 W. R. 737, C. A.

Annotations:—*Consd. Miles v. New Zealand Alford Estate Co.* (1885), 54 L. J. Ch. 1035; *Borland's Trustee v. Steel*, [1901] 1 Ch. 279.

2182. Shares held by trustee—No lien for debt due by beneficiary.—Upon the hearing of a bkpcy. petition presented by a limited co. it appeared that the debtor had obtained judgment against one of the registered shareholders of the co., declaring that he was a trustee of some of his shares for the debtor. The arts. of assocn. of the co. provided that the co. should "have a first & paramount lien on all shares for all moneys due to the co. from the registered holder thereof, or other persons for the time being entitled thereto as against the co.":—*Held*: as the co. were not bound to recognise trusts of their shares, the debtor was not a person "entitled to the shares as against the co.," & consequently, they had no lien upon the shares for the debt due to them from him, & were not "secured creditors" of the debtor within the meaning of Bkpcy. Act, 1883 (c. 52).—*Re PERKINS, Ex p. MEXICAN SANTA BARBARA*

MINING Co. (1890), 24 Q. B. D. 613; 59 L. J. Q. B. 226; 38 W. R. 710; 6 T. L. R. 203; 2 Meg. 197; 7 Morr. 32, C. A.

Annotation:—*Reid. Mackereth v. Wigan Coal & Iron Co.*, [1916] 2 Ch. 293.

2183. ——— **Lien exercised in respect of debt of trustee—After notice of trust—Company liable to account to beneficiaries.**—Trustees of a will held partly paid shares of a co. on the trusts of the will. The co. had notice of the trust. One of the trustees becoming indebted to the co., the co. claimed a lien on the shares & retained two dividends, & sold some of the shares & applied the proceeds in reduction of the debt. Art. 9 of the arts. of assocn. provided that no person should be recognised by the co. as holding any share upon any trust, & art. 12 provided that the co. should have a first & paramount lien & charge on all partly paid shares:—*Held*: the co. was wrong in asserting a lien against the beneficiaries, & it must account for the proceeds of sale of the shares & for the dividends which had been applied towards the satisfaction of the debt.—*MACKERETH v. WIGAN COAL & IRON CO., LTD.*, [1916] 2 Ch. 293; 85 L. J. Ch. 601; 115 L. T. 107; 32 T. L. R. 521.

—— **Name of cestui que trust substituted by company—To acquire lien.**—*See No. 1495, ante.*

—— **Partner in firm.**—*See No. 2181, ante.*

Trustees as members, generally, *see Sect. 12, sub-sect. 5, ante.*

SUB-SECT. 5.—LOSS OF LIEN.

2184. By conduct of company—Transfers registered—Transferees treated as registered proprietors.—A joint-stock co., defts. in an action upon certain debenture bonds, sought to set off the amount of calls due from pltf., the obligee of the bonds, upon shares in their co., under the following circumstances:—The amounts of the debentures were therein expressed to be made payable to pltf., his exors., administrators, or assigns. Pltf. transferred the debentures to C. & S., on whose behalf the action was really brought. Defts. registered the transfers & issued certificates of registration to the transferees, stating that they had been entered as "registered proprietors" of the debentures in question. Neither C. nor S. had any notice, when the debentures were transferred, that defts. had or would claim any right of set-off against the debentures. Previously to the falling due of the debentures, pltf. became indebted to defts. in various sums for calls due upon shares held by him in defts.' co. from the date of its coming into existence. Subsequently to the accruing due of part of such calls defts.' secretary wrote a letter to the transferees acknowledging them to be the owners of the debentures, & requesting time for payment, & defts. accepted two of the debentures in payment of calls due from the transferees as shareholders in defts.' co. Defts. also paid interest

names of the banks' nominees; & he also purchased certain other shares & registered them in the names of the same nominees. After the shareholder's death his estates were sequestrated. The banks having recovered payment of the debts due to them from other securities were prepared to transfer the shares in question to the trustee in the sequestration whereupon the co. claimed a lien over the shares in respect of a debt due to it by deceased:—*Held*: "holder" in the arts. of assocn. meant "registered holder," & as deceased was not the registered holder of the shares the co. had no lien

over them for his debt.—*PAUL'S TRUSTEE v. JUSTICE (THOMAS) & SONS, LTD.*, [1912] S. C. 1303.—*SCOT.*

PART III. SECT. 22, SUB-SECT. 5.

r. By conduct of company—Taking & discounting promissory note.—Shares not fully paid up stood in the name of deft.'s wife, but pltf. recovered judgment against deft. his wife & the co., declaring that the said shares were the absolute property of deft. & available under execution in satisfaction of pltf.'s judgment. At that time a note given to the co. for the balance due on

the shares was held by the bank in which it had been discounted; but, before the time of the seizure of the shares by the sheriff, that note had fallen due & had been taken up by the co.:—*Held*: at the time of the recovery of the last-mentioned judgment, there was no debt due from deft. or his wife to the co. for which the co. could then have set up a lien, & it was not estopped by the judgment from setting up the lien as soon as it had taken up the note; & the right to the lien had not been waived or lost by the taking & discounting of a promissory note for the debt for which the lien was

Sect. 22.—Lien on shares: Sub-sects. 5 & 6. Sect. 23: Sub-sect. 1.]

to the transferees up to the time of the debentures falling due. The arts. of assocn. of debts' co. provided that the co. should have a lien upon the shares or debentures of any member indebted to the co., & should be entitled to sell the same & apply the proceeds in discharge of his debt. On a special case raising the question whether debts were entitled in equity to set off the calls due to them from pltf. as against the transferees:—*Held*: they were not so entitled, on the ground that the terms of the debentures & the arts. of assocn. appeared to contemplate the transfer of the debentures free from all claims against the original holder, & that debts, by their subsequent conduct, had recognised & dealt with the transferees as absolute owners of the debentures transferred to them.—*HIGGS v. ASSAM TEA CO.* (1869), L. R. 4 Exch. 387; 38 L. J. Ex. 233; 21 L. T. 336; 17 W. R. 1125.

Annotations:—*Folld. Re Northern Assam Tea Co., Ex p. Universal Life Assce.* (1870), L. R. 10 Eq. 458. *Consd. Re Hercules Insee., Brunton's Claim* (1874), L. R. 19 Eq. 302. *Apld. Re Romford Canal Co., Pocock's Claim, Trickett's Claim, Carew's Claim* (1883), 24 Ch. D. 85. *Reid. Re Imperial Land Co. of Marseilles, Ex p. Colborne & Strawbridge* (1870), 23 L. T. 515; *Re South Essex Estuary Co., Ex p. Chorley* (1870), L. R. 11 Eq. 157; *Sankey Brook Coal Co. v. Marsh* (1871), L. R. 6 Exch. 185; *Crouch v. Credit Foncier of England* (1873), L. R. 8 Q. B. 374. *Mentd. Pollas v. Neptune Marine Insee.* (1899), 42 L. T. 35.

2185. ———.]—The arts. of assocn. of a co. provided that the co. should have a primary lien on the debentures of any member of the co. who might be either absolutely or contingently indebted to the co. for any amount or on any account, & that the directors might, after any such debt became absolutely payable, sell & transfer any debentures of the member so indebted or liable. The holder of certain debentures, who was also a shareholder, transferred his debentures in Aug., 1865, & the transferees were registered as the proprietors of the debentures, & received certificates to that effect from the co. In 1866 & 1867 calls were made on the shares held by the transferor, which were unpaid. In Dec. 1867, the co. fell into difficulties, & applied to the transferees of the debentures to renew them for a period of three years:—*Held*: the co. had precluded themselves by their conduct from setting up their lien for unpaid calls as against the transferees.—*Re NORTHERN ASSAM TEA CO., Ex p. UNIVERSAL LIFE ASSURANCE CO.* (1870), L. R. 10 Eq. 458; 39 L. J. Ch. 829; 23 L. T. 639; 18 W. R. 1082.

Annotations:—*Reid. Sankey Brook Coal Co. v. Marsh*

claimed.—*MONTGOMERY v. MITCHELL* (1908), 18 Man. L. R. 37.—CAN.

s. — *Omission to comply with provisions of statute.*—D., who was the holder of paid-up shares in the capital stock of debt. co., made a general assignment for the benefit of his creditors, at a time when he was indebted to debt. co. By the bye-laws of debt. co., they were entitled to a charge on D.'s shares as security for this indebtedness. Debt. co. lodged with the assignees proof of their claim against the estate of D., at the full amount of his indebtedness, but made no reference to their security. Pltfs. bought the shares, with other assets, from the assignees, & brought this action to compel debts. to register pltfs. in debts' books as holders of the shares free from the claim of debts. Debts. had received from the assignees a dividend upon their claim. Pltfs. contended that debts. by proving their claim for the full amount without

placing a value on their security, by voting at meetings in respect of the claim so proved, & by accepting a dividend in respect thereof, had irrevocably elected to rank on the estate & to give up their security:—*Held*: having regard to Assignments Act, ss. 29 & 31, the English bkpcy. rule is not in force in Manitoba; & debts. could not be considered to have elected to abandon their security by their failure to value it.—*Box v. BIRD'S HILL LAND CO.* (1912), 22 W. L. R. 871.—CAN.

t. *As between transferor & transferee—Lien provided by bye-law—Knowledge of transferee.*—A co. incorporated under Manitoba Joint-Stock Cos. Act, R. S. M. 1902, c. 30, enacted bye-laws providing that the co. should have a lien upon his shares for all debts due or owing to it by any shareholder. A purchaser of such shares, without notice of such bye-laws or of any lien upon the shares, if he has in good faith paid the purchase money &

(1871), L. R. 6 Exch. 185; *Re Hercules Insee., Brunton's Case* (1874), 31 L. T. 747.

2186. ——— *Dividend declared after transfer but before registration—Lien on dividend not lost.*—*Re M'MURDO, PENFOLD v. M'MURDO* (1892), 8 T. L. R. 507.

— *Shares issued for particular purpose—Incompatible with lien.*—See No. 2162, ante.

2187. *By new arrangement between indebted shareholder & company—Inconsistent with lien—Intention to waive.*—A lien conferred on a co. by its arts. of assocn. on all shares registered in the name of a member for his debts to the co., such member's right to transfer the shares while he remains indebted being thereby made dependent on the approval of the directors, is valid. Such lien may be discharged by a new arrangement between the indebted member & the co., the terms of which are incompatible with its retention, or which show an intention to waive it.—*BANK OF AFRICA v. SALISBURY GOLD MINING CO.*, [1892] A. C. 281; 61 L. J. P. C. 34; 66 L. T. 237; 41 W. R. 47; 8 T. L. R. 322, P. C.

Annotations:—*Mentd. Re Morris*, [1908] 1 K. B. 473; *Yourell v. Hibernian Bank*, [1918] A. C. 372.

2188. *As between transferor & transferee—Part of holding only transferred—Shares not transferred liable.*—B., being indebted to pltf., deposited with him certain shares in a co. He afterwards transferred all the shares except forty to pltf. & was released by him from the debt. B. was indebted to the co. who had a lien on the shares:—*Held*: the co.'s claim must be thrown on the forty shares which exceeded in value the amount due to the co.—*GRAY v. STONE & FUNNELL* (1893), 69 L. T. 282; 9 T. L. R. 583; 3 R. 692.

SUB-SECT. 6.—ENFORCEMENT OF LIEN.

2189. *By forfeiture of partly-paid shares—Company must credit holder with full market value.*—By one of the clauses in a deed of settlement on the formation of a joint-stock banking co. it was provided "that all debts due to the co. by or on the part of any proprietor in respect of cash advances or otherwise, should at all times & in all cases by the first & paramount lien on all the shares & stock of such proprietor; & the directors were empowered to cancel, extinguish & declare forfeited, or to sell & dispose of such shares, either wholly or in part, as the case might require, by way of or towards satisfaction or liquidation of such debts; & that every such person should henceforth cease to be a proprietor of the co., or to retain any interest therein in respect of the shares

procured a transfer from the shareholder, would probably not be bound by the bye-laws, & might, perhaps, insist on the transfer being recorded in the books of the co. & the issue to him of a certificate free from any lien. But, if the purchaser acquires knowledge of the bye-laws & the lien claimed before the execution of the transfer & while he has still in his hands part of the purchase money, to an amount exceeding the debt for which the lien is claimed, he cannot then insist upon the registration of the transfer to him free from such lien.—*Box v. BIRD'S HILL LAND CO.* (1913), 24 W. L. R. 706; 3 W. W. R. 602.—CAN.

PART III. SECT. 22, SUB-SECT. 6.

a. *By declining to transfer trustee in bankruptcy to register.*—The arts. of assocn. of a limited co. bore that the co. should have a first & permanent lien on the shares of members for any debts due by them, & might refuse to

so cancelled, extinguished & declared to be forfeited, or so to be sold or disposed of as aforesaid." A holder of 1,000 shares being indebted to the bank for cash advances, a notice, dated May 30, 1837, was given to the shareholder, that unless he redeemed the 1,000 shares by payment of the balance of his account with the bank on or before June 13, the directors would on that day proceed, under the clause of the deed of assocn., to cancel & extinguish, & declare his shares forfeited, & to place the value of the shares on that day to the credit of his account with the bank. The balance not being paid, the directors by a resolution declared the shares to be cancelled & forfeited, & it appearing to them that the value of the shares on that day was £10,000, it was resolved that credit should be given to the proprietor for that amount in his account.

A bill was filed to set aside the cancellation. From the evidence it appeared that the market price of shares, on June 13, slightly exceeded the price allowed by the directors, but the evidence proved that, if the 1,000 shares had been carried into the market, the price would have been reduced greatly below the amount allowed by the directors:—*Held*: the directors placing themselves by the cancellation in the situation both of vendors & purchasers, were bound to allow the highest market price, which could be obtained for the shares, without speculating on what might be the effect of throwing the 1,000 shares into the market, & the cancellation was declared to be void & was set aside.—*STUBBS v. LISTER* (1841), 1 Y. & C. Ch. Cas. 81; 62 E. R. 799.

Annotation:—*Consd.* *Hopkinson v. Mortimer, Harley*, [1917] 1 Ch. 646.

2190. By forfeiture of fully-paid shares—Ultra vires—Clog on equity of redemption.—*HOPKINSON v. MORTIMER, HARLEY & CO., LTD.*, No. 2168, *ante*.

2191. Mortgagee also entitled to lien—Security not sufficient to satisfy both—Shareholder bankrupt—Form of order.—*Re MERRIDEW, Ex p. WARNER* (1843), 1 L. T. O. S. 151.

Omission to prove in bankruptcy of shareholder—Right to withdraw & lodge fresh proof.—*See* *BANKRUPTCY & INSOLVENCY*, Vol. IV., p. 343, No. 3223.

SECT. 23.—TRANSFER OF SHARES.

SUB-SECT. 1.—THE RIGHT TO TRANSFER.

2192. Shareholder.—*MOFFATT v. FARQUHAR*, No. 2402, *post*.

2193. —.]—*Re CAWLEY & Co.*, No. 2401, *post*.

register a transfer by such members. The trustee of a bkpt. shareholder, who owed the co. money, applied to be put upon the register of shareholders, in respect of the bkpt.'s shares, & founded on one of the arts. of assocn. which provided that any one becoming interested in a share in consequence of the bkpy. of a shareholder might be registered:—*Held*: the co. had a lien over the shares in respect of the debt due to them, both at common law & under the arts., & were entitled to decline the application.—*SHARP (BELL'S TRUSTEE) v. COATBRIDGE TIN PLATE CO., LTD.* (1886), 14 R. (Ct. of Sess.) 246.—*SCOT*.

PART III. SECT. 23, SUB-SECT. 1.

b. Power of director to refuse—How exercised.—A power given by regulations in absolute & general terms to directors of cos. to refuse to register

a transfer of shares must be exercised with due regard to interests of shareholders of co. & those of transferee & possibly also with due regard to interests of transferor & creditors of co. Where directors in exercise of such power have refused to register transfer, ct., on application by transferee to rectify register of co. will not set aside decision of directors if they have acted honestly & within their powers.—*Re MONT DE PIÉTÉ LOAN & DEPOSIT CO., LTD., Ex p. ALEXANDER & AUR*, [1907] V. L. R. 660.—*AUS*.

c. — Transferor conducting rival business.—Arts. of assocn. of a co. provided that directors may decline to register transfer of shares except by operation of law:—*Held*: directors had power to refuse to register transfer of shares on ground that transferor was conducting rival business to co. & was stated to be actually desirous of pur-

2194. — Though unregistered.—*MORRIS v. CANNAN*, No. 2341, *post*.

2195. Director—Disapproving policy of majority of board—No intention of facilitating ultra vires policy.—J. was a director & shareholder in a co. which had become embarrassed, & he was desirous of having it wound up. The majority of the directors, however, negatived a motion for having it wound up & entered into an arrangement with S. for the purpose of bringing its affairs into a more prosperous state. By this arrangement S. was to have a number of shares transferred to him or his nominees, & was to have powers & privileges which it was a breach of duty to give him. J. did not, in his capacity of director, concur in or assent to this arrangement, but he transferred all his shares to a nominee of S., & agreed with S. to pay a certain sum in addition upon being released from all liability in respect of a certain demand against the co. The consent of the directors to transfers was not requisite. The Ct. was satisfied, on the evidence, that J. made the transfer not to facilitate the arrangements between the other directors & S., but to escape from the co., & there was nothing to show that the transferee was a trustee for the co.:—*Held*: the transfer was valid, & not liable to be impeached in equity.—*Re LONDON & COUNTY ASSURANCE CO., JESSOPP'S CASE* (1858), 2 De G. & J. 638; 27 L. J. Ch. 757; 32 L. T. O. S. 53; 5 Jur. N. S. 1; 6 W. R. 716; 44 E. R. 1137, L. JJ.

Annotations:—*Reid. Re Mexican & South American Mining Co., Lund's Case* (1859), 27 Beav. 465; *Re Discoverers Finance Corp.*, [1908] 1 Ch. 141.

2196. — Not a trustee for shareholders.—*Re NATIONAL PROVINCIAL MARINE INSURANCE CO., GILBERT'S CASE*, No. 2037, *ante*.

2197. — Subject to holding a qualification.—*Re NATIONAL PROVINCIAL MARINE INSURANCE CO., GILBERT'S CASE*, No. 2037, *ante*.

2198. —.]—*Re CAWLEY & Co.*, No. 2401, *post*.

2199. Business of company transferred to another.—*Re ACCIDENTAL DEATH INSURANCE CO., LANKESTER'S CASE* (1870), 6 Ch. App. 905, n., L. J.

Annotation:—*Consd.* *Re Accidental Death Insee., Chappell's Case* (1871), 6 Ch. App. 902.

2200. — No formal dissolution.—*Re ACCIDENTAL DEATH INSURANCE CO., CHAPPELL'S CASE*, No. 2406, *post*.

2201. — —.]—*Re ACCIDENTAL DEATH INSURANCE CO., ALLIN'S CASE*, No. 2380, *post*.

—.]—*See also*, Sect. 37, sub-sect. 13, *post*.

2202. Voluntary winding up impending—Meeting called to pass resolution.—*Re CITY OF GLASGOW BANK, MITCHELL'S CASE*, No. 2391, *post*.

chasing co.'s business.—*Re MONT DE PIÉTÉ LOAN & DEPOSIT CO., LTD., Ex p. ALEXANDER & AUR*, [1907] V. L. R. 660.—*AUS*.

d. —.]—The power of regulation provided by Cos. Act, 1906, did not extend to restriction. A bye-law giving the directors an absolute power of veto upon transfers of stock of a co., would be *ultra vires*, & a bye-law requiring their approval of transfers should be construed as meaning that they should be satisfied in respect of such matters as were within their province as to the form of transfer, title, unpaid calls, fees, & similar matters.—*CANADA NATIONAL FIRE INSURANCE CO. v. HUTCHINGS, GREAT WEST PERMANENT LOAN CO. v. HUTCHINGS* (1918), 87 L. J. P. C. 106; [1918] A. C. 451.—*CAN*.

e. Restriction in articles of association—Voluntary transfer.—A provision

Sect. 23.—Transfer of shares: Sub-sects. 1 & 2, A. & B.]

2203. — Knowledge of transferor.]—The arts. of a co. enabled the board of directors to appoint committees of their own number & to delegate to any such committee all or any of the powers of the board. Transfers of shares were to be effected only by instruments executed both by the transferor & transferee, & were not to be made without the approval of the board, which had an absolute discretion as to accepting a transfer. On Nov. 2, 1874, the board appointed B. a committee with all the powers of the board. On Dec. 24, 1874, a board meeting was held, at which only B. & the secretary were present. At this meeting transfers, which had on the previous day been executed by X. & Y. to various persons of 1519 shares standing in the joint names of X. & Y., were approved & the transferees placed on the register. B. deposed that all formalities had been waived & there was no evidence whether the transfers had been executed by the transferees. On the same day a general meeting of shareholders was held, at which resolutions were passed for a voluntary winding-up of the co., & the transfer of its business to a new co., each shareholder in the old co. taking the same number of shares in the new, & this was confirmed by a meeting of Jan. 15, 1875. At neither of these meetings did the transferors vote in respect of the shares transferred, but several of the transferees did, & the transferees were registered as shareholders in the new co. It did not appear that the old co. was insolvent, but it was considered desirable to reconstitute it. In Mar. 1877, a petition was presented by some of the transferees for the compulsory winding-up of the old co., upon which an order was made on Mar. 17. The transferees were placed on the list of contributories. In 1881 some creditors, pursuant to leave given, applied in the name of the official liquidator to put X. & Y. on a supplemental list

of contributories of the old co. for the 1,519 shares, & if not then on a B. list as past members. The application was refused:—*Held*: (1) the fact that the transferors knew that the co. was on the eve of being wound up voluntarily did not take away their power of transferring their shares, & the transfers of the 1,519 shares were not invalid on that ground; (2) a committee of the board of directors need not consist of more than one person, & B. had authority to approve the transfers; (3) it was not to be inferred in the absence of express evidence that the transfers had not been executed by the transferees; (4) if they had not been so executed they were not a nullity but only irregular, & after they had been acted upon & treated as valid for so long a period they could not be impeached; therefore, X. & Y. could not be placed on the list of contributories as present members.—*Re TAURINE Co.* (1883), 25 Ch. D. 118; 53 L. J. Ch. 271; 32 W. R. 129; *sub nom. Re TAURINE Co., LTD., BECKWITH & ROBINSON'S CASE*, 49 L. T. 514, C. A.

Annotations:—*Generally*, *Mentd. Re Russell Hunting Record Co.*, [1910] 2 Ch. 78; *Re Havana Exploration Co., Nathan's Claim*, [1916] 1 Ch. 8.

After winding up begun—Voluntarily winding up—With consent of liquidator.]—See Nos. 2538, 2539, 2541, *post*.

Compulsory winding up—With consent of court.]—See No. 2543, *post*.

SUB-SECT. 2.—THE CONTRACT FOR SALE OF SHARES.

A. In General.

Formation.]—See, generally, CONTRACT, Vol. XII., pp. 51 *et seq*.

Consideration—Necessity for.]—See, generally, CONTRACT, Vol. XII., pp. 173 *et seq*.

What constitutes.]—See, generally, CONTRACT, Vol. XII., pp. 176 *et seq*.

in arts. of assocn. of a joint-stock co., that the co., in certain events, may decline to register a transfer of shares, applies only to a voluntary transfer, not to a transfer *in invitum*.—*Re COMPANIES STATUTE 1864, Re MCCULLOCH (W.) & Co., LTD., Ex p. TREVASCUS* (1879), 5 V. L. R. 195.—AUS.

f. Restriction imposed by special resolution.]—A public co. with a view to changing itself into a private co. by special resolution, duly passed, imposed certain restrictions on the disposal of shares by shareholders:—*Held*: such restrictions were not void as being opposed to absolute ownership.—*LEISER v. POPHAM BROTHERS, LTD.* (1912), 17 B. C. R. 187.—CAN.

g. Transfer restricted by agreements.]—The letters-patent under the Ontario Cos. Act, creating & constituting certain persons of whom W. was one, a corp., contained no provision authorising the directors or the assocn. to restrict the right of a shareholder to transfer his shares; but the assocn. asserted that such a restriction was imposed by an agreement entered into by the incorporators before the issue of the letters-patent, by which it was agreed that none of the shares should be transferred without the consent of all the shareholders, & by a similar agreement entered into between the shareholders & the co. & by such shareholder with the others, after the issue of the letters-patent; & the assocn. refused to register a transfer of a share from W. to A.:—*Held*: assuming that the making of the agreements had been established, they afforded no valid ground for the refusal

of the assocn. to register the transfer to A.—*Re BELLEVILLE DRIVING & ATHLETIC ASSOCN.* (1913), 31 O. L. R. 79; 5 O. W. N. 520; 6 O. W. N. 51.—CAN.

h. Bond fide transfer — Directors' consent unnecessary.]—COMMERCIAL LOAN & TRUST CO., LTD. v. MACAW, [1922] 3 W. W. R. 1129; [1923] 1 D. L. R. 744; 32 Man. L. R. 413.—CAN.

k. Out-&-out transfer — To escape liability.]—COMMERCIAL LOAN & TRUST CO., LTD. v. MACAW [1922] 3 W. W. R. 1129; [1923] 1 D. L. R. 744; 32 Man. L. R. 413.—CAN.

l. Shares not fully paid — Acceptance of transfer by directors.]—COMMERCIAL LOAN & TRUST CO., LTD. v. MACAW, [1922] 3 W. W. R. 1129; [1923] 1 D. L. R. 744; 32 Man. L. R. 413.—CAN.

m. Necessity for consent of public utility commissioners.]—Sale of Shares Act, 1916 (c. 8), s. 4, which prohibits the sale, or the offering for sale, of any shares, etc., except certain excepted securities, of any co. or assocn., etc., incorporated or unincorporated, unless the permission of the Board of Public Utility Comrs. be first obtained, is not limited to completed sales, but applies to agreements to sell shares in a proposed co. not yet incorporated.—*R. v. MALCOLM & OLSON*, [1918] 2 W. W. R. 1081; 42 D. L. R. 90; 13 Alta. L. R. 511.—CAN.

PART III. SECT. 23, SUB-SECT. 2.—A.

n. Acceptance by transferee — Whether necessary.]—Certain stock in

the British America Assurance Co. was transferred & the transfer entered in the stock ledger, so that the shares stood in the name of the transferee, but before any acceptance had been signed the shares were seized under an execution against the transferor. The transferee then signed a formal acceptance in the books of the co. & brought an action against the sheriff's vendee to recover the dividends which had been paid to him:—*Held*: the transfer was complete without acceptance & the seizure illegal.—*WOODRUFF v. HARRIS* (1854), 11 U. C. R. 490.—CAN.

o. — Right of rescission.]—The fact that the purchaser endeavoured to have himself registered as holder of the shares was not an acceptance by him of the contract of sale which deprived him of his right of action to have it rescinded. Nor was his action barred by loss of the defective certificate by no fault of his nor of the seller.—*CASTLEMAN v. WAGHORN, GWYNN & Co.* (1908), 13 B. C. R. 351; *reversd.* 41 S. C. R. 88.—CAN.

p. Duty of vendor — Evidence of title.]—When shares in the stock of a co. are sold for cash & transfer endorsed purporting to be signed by the holder named therein, who is not the seller, the latter must be taken to affirm that a title which will enable the purchaser to become the legal holder is vested in him by virtue of such certificate & transfer.—*CASTLEMAN v. WAGHORN, GWYNN & Co.* (1908), 13 B. C. R. 351; *reversd.* 41 S. C. R. 88.—CAN.

q. Payment of commission — Director as selling agent.]—Where the

Legality—Market rigging.]—See CONTRACT, Vol. XII., p. 239, Nos. 1959, 1960.

—Bargain in differences—Wagering contract.]—See GAMING & WAGERING.

—Purchase for purpose of instituting proceedings against company.]—See ACTION, Vol. I., p. 76, Nos. 612, 613.

2204. Restraint of—Power of company.]—POOLE v. MIDDLETON, No. 2257, post.

See, generally, Sub-sects. 9, 16, post.

B. Necessity for Writing.

2205. Whether real or personal property—Provision in special Act.]—By a railway Act, it was declared that the shares in the undertaking, or the joint stock & fund of the co., should to all intents & purposes be deemed personal estate & be transmissible as such, & should not be of the nature of real property:—*Held*: the shares of individual proprietors were not an interest in land, & therefore might be sold by a verbal contract. *Semle*: this would have been so even if the Act had contained no such clause.—BRADLEY v. HOLDSWORTH (1838), 3 M. & W. 422; 1 Horn. & H. 156; 7 L. J. Ex. 153; 150 E. R. 1210.

2206. Whether interest in or concerning land—Statute of Frauds, s. 4.]—HUMBLE v. MITCHELL, No. 1434, ante.

2207. ———.]—DUNCUFT v. ALBRECHT, No. 2256, post.

—Shares in cost-book mining company.]—See Part VIII., sect. 1, post.

See, further, Sect. 14, ante.

2208. Whether goods wares or merchandise—Statute of Frauds, s. 17.]—HUMBLE v. MITCHELL, No. 1434, ante.

2209. ———.]—DUNCUFT v. ALBRECHT, No. 2256, post.

2210. ———.]—By a rule of the Hull Stock Exchange brokers are individually responsible to each other for the fulfilment of their contracts. Pltf. was a broker of that exchange, & sold, on behalf of deft., to R., also a broker, certain railway shares then in course of registration. Def. refused afterwards to complete the

contract; but no conveyance of the shares, as required by 1845 Act, ss. 14, 15, was ever tendered him to execute. R. subsequently purchased shares in the railway at a higher price, in the place of those contracted for, & pltf. paid him the difference, after notice from deft. not to make the payment:—*Held*: (1) the payment by pltf. before a transfer was tendered to deft., was a payment in his own error, & which he was not entitled to recover against deft., in an action for money paid to his use; (2) a letter, written by deft. to pltf., requesting all further communications to be made to his attorney, did not dispense with a tender of the transfer.

(3) A contract for the sale of shares is not a contract for the sale of goods, wares or merchandise, within Stat. Frauds, s. 17.—BOWLBY v. BELL (1846), 3 C. B. 284; 4 Ry. & Can. Cas. 692; 16 L. J. C. P. 18; 7 L. T. O. S. 300; 10 Jur. 669; 136 E. R. 114.

Annotation:—As to (1) *Refd.* Bayley v. Wilkins (1849), 7 C. B. 886.

2211. ——— Spanish Active Stock.]—In an action for not delivering foreign stock, the declaration alleged that pltf. bargained with the deft. to buy, & then bought from him, & deft. then agreed to sell, & then sold to pltf., certain foreign stock, to wit, 28,000 Spanish Active Stock, etc.:—*Held*: the words “bought” & “sold” must be construed with reference to the subject-matter of the contract, & as meaning an agreement to buy & sell; & a contract for the sale of stock, Exchequer Bills, & securities of that description, in which the property passes by delivery, differs from a contract for the sale of a specific chattel inasmuch as a contract for the sale of stock, Exchequer Bills, etc., would be satisfied by the delivery of any stock or bills of the description bargained for, & consequently the contract for sale cannot mean an actual sale, but only a contract to deliver.

Such a contract is not within Stat. Frauds, s. 17.—HESELTINE v. SIGGERS (1848), 1 Exch. 856; 18 L. J. Ex. 166; 154 E. R. 365.

Annotation:—*Mentd.* Goodwin v. Roberts (1875), L. R. 10 Exch. 337.

Compare No. 1443, ante, No. 2280, post.

incorporation of a co. provided for payment of commission on sale of shares a resolution is not necessary to authorise payment to a director of such commissions provided the amount paid is not in excess of the amount allowed by the incorporation & the payments are made to him as a selling agent & on terms the same as are allowed to other agents.—MCINTOSH v. PREMIER LANGMUIR MINES, LTD. (1921), 66 D. L. R. 278; 50 O. L. R. 456.—CAN.

r. Soliciting subscriptions.]—The soliciting subscriptions to a certain trust agreement was held, in the circumstances not to be a selling or offering for sale shares in a syndicate or co., within the meaning of Sale of Shares Act, s. 4; the contemplated syndicate not being, in the ct.'s opinion, formed until all the subscribers who actually subscribed, had done so. Up to that time what was done was merely to solicit subscriptions to a fund which, when created to a sufficient sum, would then become, as distinguished from specific sums under the individual control of the respective subscribers, a fund controllable by the body of subscribers; & only upon the fund passing into the control of the body of subscribers was there a syndicate, interests or shares in which became capable of being sold.—BRITANNIA COLLIERIES v. HAUSER, [1922] 67 D. L. R. 665;

2 W. W. R. 885.—CAN.

s. Value of shares ascertained by arbitration—Arbitration abortive.]—By agreement between the parties which was for the sale of the shares of a lumber co., appl. had a contractual right to insist on a deduction equal to the value of the deficiency of assets delivered, such value being determined by arbitration. An arbitration was held; but it became abortive:—*Held*: when the agreed method of fixing the value became impossible, it was the duty of the ct. to decide that which the parties had originally intended should be decided by a domestic tribunal.—CAMERON v. CUDDY (1913), 25 W. L. R. 236; *reversd.* 13 D. L. R. 757.—CAN.

t. Right of bankrupt company.]—Re CANADIAN CEREAL & FLOUR MILLS Co. (1921), 67 D. L. R. 234; 51 O. L. R. 316.—CAN.

a. Liability of broker—As intermediate transferee.]—A sharebroker purchased shares in a bank for a client, who requested that the shares should be transferred to three other persons named by her. The sharebroker applied to the bank to have the shares so transferred, but the bank refused, on the ground that, as one transfer for all the shares had been executed by the holder, it would be necessary to trans-

fer the shares into the name of one person, who could apply to have the new scrip issued in the three different lots, so that the holder could transfer to the owners of the shares. At the bank's suggestion & request, the shareholder allowed the shares to be transferred into his name for the purposes of retransfer only:—*Held*: the broker had agreed to become a member of the co., & after registration, his name was rightly put on the list of contributories.—*Re* MERCANTILE BANK (IN LIQUIDATION), *Ex p.* BAGLEY (1894), 20 V. L. R. 489.—AUS.

b. ——— Purchase of shares on Stock Exchange.]—Pltf. employed his broker to sell certain shares. Defts., who were also brokers, acting for an undisclosed principal, bought these shares on the Melbourne Stock Exchange by a verbal contract in accordance with the usage & rules of the Exchange. After the sale pltf. paid certain calls due on the shares, & brought an action against defts. to recover the amount so paid:—*Held*: although defts. had bought the shares acting as brokers & as agents for an undisclosed principal, they were personally liable to indemnify pltf. for his liability on the shares.—WILCOX v. CLARKE & Co. (1896), 21 V. L. R. 694.—AUS.

Sect. 23.—Transfer of shares: Sub-sect. 2, C. (a).]**C. Rights of Parties inter se.****(a) In General.**

2212. General rule.]—Semble: in the absence of express provisions in the deed of settlement to the contrary, the transferee would be held to stand in the place of the original owner for all purposes.—*Re MONMOUTHSHIRE & GLAMORGANSHIRE BANKING CO., CAPE'S EXECUTOR'S CASE* (1852), 2 De G. M. & G. 562; 22 L. J. Ch. 601; 20 L. T. O. S. 253; 17 Jur. 355; 1 W. R. 85; 42 E. R. 991 L. C. & L. JJ.

Annotations:—Consd. *Re Pennant & Craigwen Consolidated Lead Mining Co., Mayhew's Case* (1854), 5 De G. M. & G. 837. **Refd.** *Taylor v. Ifill* (1863), 8 L. T. 148.

2213. Sale on Stock Exchange—Transfer direct from vendor to purchaser—Privity.]—(1) If A. sells shares in a co. to a member of the Stock Exchange & B. buys shares in the same co. at a different price from another member of the Stock Exchange, & on the name-day B.'s name is given to A. as the purchaser of A.'s shares, & A. executes a transfer of his shares to B. & B. accepts the transfer, & pays to A. the price for which B. originally bought the shares, the transaction constitutes a contract between A. & B. for the sale & purchase of the shares, which a Ct. of Equity will compel B. specifically to perform.

(2) Where the arts. of assocn. of a co. require transfer of shares to be executed by both parties, the Ct. has no power under 1862 Act, ss. 35, 98, to rectify the register by removing the name of a transferor unless the transfer has been executed by the transferee.

Shares in a joint-stock co. were sold in the usual course of business on the Stock Exchange a few hours before the failure of the co. The transfer was executed by the vendor but not by the purchaser & was never registered. Upon an application by the vendor to have the purchaser's name substituted for his own on the list of contributories in the winding-up of the co.:—**Held:** the ct. had no jurisdiction under the circumstances to rectify the register.

(3) When in the winding-up of a co. application is made to the Ct. to substitute one person for another on the list of contributories, & both parties are equally solvent, so that it is a matter of indifference to the creditors & contributories which of them is made a contributory, it is the duty of the liquidator to appear by one counsel only, & to take no part in the argument:—**Semble:** in such cases the unsuccessful party will be ordered to pay the costs of the liquidator.—*Re OVEREND, GURNEY & Co., MUSGRAVE & HART'S CASE* (1867), L. R. 5 Eq. 193; 37 L. J. Ch. 161; 17 L. T. 313; 16 W. R. 247.

Annotations:—As to (2) **Refd.** *Paine v. Hutchinson* (1868), 3 Ch. App. 388; *Re Heaton Steel & Iron Co., Simpson's Case* (1869), L. R. 9 Eq. 91; *Re Diamond Rock Boring Co., Ex p. Shaw* (1877), 2 Q. B. D. 463; *Re Shaw, Ex p. Piers* (1877), 46 L. J. Q. B. 394. **As to (3)** **Refd.** *Re Hydraulic Tube-Drawing & Steel Ordnance Co.* (1868), 18 L. T. 205; *Re Hercules Insee., Lowe's Case* (1870), L. R. 9 Eq. 589.

2214. Rights of vendor—As to completion—Registration of purchaser.]—Re NORTH OF ENG-

LAND JOINT STOCK BANKING CO., STRAFFON'S EXECUTORS' CASE, No. 2377, post.

2215. ——— Request to actual transferee.]—A shareholder in a limited liability co must satisfy the ct. that the *bona fide* transferee of the shares had been required to register the transfer, according to 1862 Act. Where, therefore, it was satisfactorily established that other parties than those to whom the shareholder had supposed he had transferred his shares, were, in fact, the parties to whom he had transferred them, & that of this he was informed before suit his bill against the presumed transferee was dismissed with costs.—*WARD v. DOWLING* (1868), 19 L. T. 277.

2216. ———.] —Pltf. transferred shares of his in a registered co. to B. on an agreement between them that if B. was accepted as shareholder by the co. the shares should be taken by him at their market value in reduction of a debt due to him from pltf. The consideration was stated in the transfer to be only the sum of 5s. & the transfer was brought to the co. for registration without any notice of the agreement between the pltf. & B. The co. refused to register on the ground that pltf. was indebted to them, but on its being established after an interval of eighteen months that pltf. was not so indebted, the co. registered the transfer. In an action against the co. for wrongfully refusing to register, pltf. sought to recover as damages the loss in the market value of the shares between the time when the transfer was brought to the co. to be registered & the time when it was in fact registered:—**Held:** pltf. was entitled to recover only nominal damages, as the contract between the pltf. & B. was a special one, of which the co. had had no notice & the ordinary contract on the sale of registered shares was only that the seller should give to the purchaser a valid transfer & do all required to enable the purchaser to be registered as member in respect of such shares, the duty of the purchaser, which has not been altered by sect. 26 of 1867 Act, being to get himself registered as such member.—*SKINNER v. CITY OF LONDON MARINE INSURANCE CORPN.* (1885), 14 Q. B. D. 882; 54 L. J. Q. B. 437; 53 L. T. 191; 33 W. R. 628; 1 T. L. R. 426, C. A.

2217. ——— Registration in name of purchaser or nominee.]—Under a contract for the sale of shares, apart from Stock Exchange usages, the seller cannot require the buyer to take a transfer into his own name; but he has a right to be indemnified by the buyer against future calls, which is not affected by his transfer of the shares to the buyer's nominee.—*MAXTED v. PAINE* (1871), L. R. 6 Exch. 132; 24 L. T. 149; 19 W. R. 527; *sub nom.* *MAXTED v. PAINE*, 40 L. J. Ex. 57, Ex. Ch.; *affg.* *S. C. sub nom.* *MAXTED v. PAINE* (1869), L. R. 4 Exch. 203.

Annotations:—Consd. *Nickalls v. Merry* (1875), L. R. 7 H. L. 530. **Refd.** *Duncan v. Hill* (1871), L. R. 6 Exch. 255; *Dent v. Nickalls* (1873), 22 W. R. 218; *Kellock v. Enthoven* (1874), L. R. 9 Q. B. 241; *Ellis v. Pond & Bloomsbury Syndicate*, [1898] 1 Q. B. 426. **Mentd.** *Allen v. Graves* (1870), L. R. 5 Q. B. 478; *London Founders' Assocn. & Palmer v. Clarke* (1887), 3 T. L. R. 709.

2218. ——— As to preparation of transfer.]—On the purchase of shares in a co. the obligation to

PART III. SECT. 23, SUB-SECT. 2.—
C. (a).

c. Right of vendor — As to completion.]—M., a promoter of a new limited co., agreed to relieve G. of certain £1 shares he had agreed to apply for & take in the co. & to repay

to G. £1 per share on being called upon to do so. When the co. was formed the shares were allotted to G. & certificates for fully paid up shares were issued to him. In an action brought by G. against M., to be relieved of the shares & for payment of £1 per share, it appeared that the shares had not been paid in cash &

that no contract for payment otherwise than in cash had been filed with the Registrar of Joint-Stock Cos. before the issue of the shares in terms of Cos. Act, 1867, s. 25:—**Held:** the agreement was to be construed as imposing an obligation on M. to relieve G. of shares fully paid up & with no further

prepare the instrument of transfer is, as a general rule, on the purchaser.—*BIRKETT v. COWPER-COLES* (1919), 35 T. L. R. 298.

—Indemnity in respect of calls.]—See Sect. 21, sub-sect. 4, B. (b), *ante*.

—Under Companies Clauses Consolidation Act.]—See Nos. 8010–8014, *post*.

2219. Rights of purchaser—As to completion—Complete legal interest.]—*Re NORTH OF ENGLAND JOINT STOCK BANKING CO., STRAFFON'S EXECUTORS' CASE*, No. 2377, *post*.

2220. — Acts necessary to allow registration.]—*SKINNER v. CITY OF LONDON MARINE INSURANCE CORPN.*, No. 2216, *ante*.

2221. — Scrip certificates.]—A contract to deliver shares in a joint-stock co. does not require the actual delivery of scrip certificates, which are the mere *indicia* of property; but the party contracting to deliver the shares sufficiently performs his engagement when he places the other in the position of being the legal owner of them.—*HUNT v. GUNN* (1862), 13 C. B. N. S. 226; 1 New Rep. 28; 7 L. T. 277; 143 E. R. 90.

2222. — Duty of vendor not to hinder registration.]—A person who executes a transfer of shares thereby comes under an implied obligation not to hinder the transferee from obtaining registration, & this applies to a case where the transfer is originally made in blank by the transferor & subsequently filled in by a *bonâ fide* holder for value, in whose favour it is binding by estoppel against the transferor.

The measure of damages for the breach of such obligation is the difference between the value of the shares at the time when in the ordinary course they would but for the delay caused by the transferor have been registered in the name of the transferee, & their value at the time when the transferee's right to registration is established; in estimating which all the material circumstances affecting the selling value of the shares must be taken into account.

W. executed a blank transfer of shares, & placed it, together with the share certificate, in the hands of H. for the purpose of raising money under circumstances which the ct. held to estop W. from denying that he had given to H. the necessary authority. H. applied to pltf., who made a small advance out of his own money, which was afterwards repaid, & also at H.'s request borrowed £700, for H.'s use, from a bank, on the deposit of the blank transfer & share certificate & on pltf.'s personal security, H. undertaking to indemnify pltf. & to repay to him the £700 within fifteen days. The loan not having been repaid, the bank, with a view to realise the security, filled up the blank transfer with pltf.'s name as transferee, & sent it to the co. for registration. W. thereupon gave notice that he disputed the validity of the transfer, thus preventing pltf. from dealing with the shares, which had since fallen in value. Pltf. brought this action claiming damages against W. Since the commencement of the action pltf. had repaid the £700 to the bank:—*Held*: W., in preventing the registration of pltf.'s name as transferee, had committed a breach of his implied obligation arising out of the transfer, & pltf. was in a position to claim damages

for that breach.—*HOOPER v. HERTS*, [1906] 1 Ch. 549; 75 L. J. Ch. 253; 94 L. T. 324; 54 W. R. 350; 50 Sol. Jo. 271; 13 Mans. 85, C. A.

2223. — Issue of new shares before registration of transfer—Application for shares by vendor.]—Pltf., through his brokers, purchased ten shares in a co. on the Stock Exchange from deft. A transfer was duly executed & left for registration. Before it was registered an issue of new shares in respect of original ones was made, with fourteen days for shareholders to accept or refuse. Deft., whose name was still on the register for the ten shares sold to pltf., applied for ten new shares in respect of them, & they were allotted to him. Pltf. did not become aware of the issue of the new shares till after the expiration of the fourteen days, & he then applied to deft. to hand over to him the ten new shares, which deft. refused to do:—*Held*: deft. was a trustee for the ten new shares for pltf.—*STEWART v. LUPTON* (1874), 22 W. R. 855.

2224. — Dividend declared after sale & before execution of transfer—In respect of period anterior to sale.]—Shares of a co. were sold by auction on Aug. 1, & a deposit was paid. By the conditions of sale, the purchase was to be completed on Aug. 29, which accordingly was done & the transfers signed. The conditions of sale were silent as to dividends, & in the meanwhile, on Aug. 24, a dividend was declared in respect of a period antecedent to the sale by auction:—*Held*: the dividend belonged to the purchaser.—*BLACK v. HOMERSHAM* (1878), 4 Ex. D. 24; 48 L. J. Q. B. 79; 39 L. T. 671; 27 W. R. 171.

2225. — Reorganisation of company before registration of transfer—Application for shares by vendor.]—Pltf., who was a shareholder in a co., purchased further shares in the co. from deft. & the transfers were duly executed & handed to pltf. Shortly afterwards, & before the transfers were lodged with the co. for registration, resolutions were passed to wind up voluntarily & reconstruct the co. A new co. was accordingly formed, the shares in which were to be offered ratably to the shareholders in the old co., each share being credited with 18s. paid up & 2s. unpaid. The 2s. was to be paid by instalments. Pltf. then sent the transfers for registration to the liquidator of the old co., but he refused to register them except upon payment of 1s. a share, being the amount payable at that time on the shares in the new co. Pltf. delayed making the payment, & the transfers were not registered. Deft. applied for the shares in the new co., & paid to the liquidator the sum due on the shares, & received an allotment:—*Held*: deft. was a trustee of the shares in the new co. for pltf. & on the facts there was no equity to deprive pltf. of his rights as *cestui que trust*.—*ROONEY v. STANTON* (1900), 17 T. L. R. 28, C. A.

2226. — Repudiation of contract—Loss of right by delay.]—*SHEPHERD v. GILLESPIE*, No. 2087, *ante*.

2227. — — — — —.]—M. on Apr. 19, 1866, instructed his broker to buy for delivery on May 15 twenty shares in a co. The co. stopped payment on May 10. On May 14, C., who held shares in the co., contracted through his brokers to sell to a jobber twenty shares in the co. for delivery on May 25. The jobber passed the name of M. to C.'s

liability & the shares tendered by G. must be deemed subject to payment of the amount in cash & M. was not bound to accept them.—*GUNN v. MUIRHEAD* (1899), 1 F. (Ct. of Sess.) 1079; 38 Sc. L. R. 798; 7 S. L. T. 96.—*SCOT*.

d. Right of purchaser — Issue of

new shares.]—*SPENCE v. MITCHELL* (1914), 14 S. R. N. S. W. 121.—*AUS*.

e. Conditions of sale in articles of association—Date of purchase.]—By the arts. of assocn. of a co. having two directors only, it was provided that upon the death or retirement of one director the other should have the

right to purchase his shares at a valuation upon giving, within three months of the decease or retirement, notice in writing of his intention to do so, & there was provision that the valuation, if not agreed upon, should be made by two arbitrators or an umpire. It was also provided that

Sect. 23.—Transfer of shares: Sub-sect. 2, C. (a), (b) & (c).]

brokers as the purchaser, & a transfer to M. executed by C. was sent to M.'s brokers & accepted by them. The purchase-money was paid by M. to his broker on May 15. The certificates were afterwards sent to M., & he retained both them & the transfer, though he refused to execute the latter, & expressed a wish to his broker to repudiate the shares. He, however, gave no notice to C. of repudiation till long afterwards. C. was placed on the list of contributories of the co., & had to pay calls, & he filed a bill against M. for indemnity:—*Held*: if M. ever had any right to repudiate the shares he was too late in doing so. The repudiation, if it was to have any effect, ought to have been made almost immediately.—*CRABB v. MILLER* (1871), 24 L. T. 892; 19 W. R. 882, L. J.J.

2228. — Delay by brokers.]—A. having instructed his brokers, B. & Co., to purchase shares in the O. Bank, received from them a bought note stating the purchase of shares from C. a jobber, but, according to the usual practice on the Stock Exchange, not specifying the registered number of the purchased shares. Between the date of purchase & the settling day the bank stopped payment & proceedings were taken to wind it up. A.'s solrs. thereupon wrote to B. & Co. repudiating the contract for purchase contained in the bought note, on the ground that the contract was illegal & void, being in contravention of 30 & 31 Vict. c. 29, & giving notice that if they completed it it would be at their own risk. On the same day A. wrote a private letter to B. calling attention to the formal letter " & I wish you clearly to understand that whatever position you may have to assume with regard to them (the shares) I consider myself fully bound to support you." The name of A. as the purchaser of the shares was returned to C. by B. & Co. & on receiving a transfer & the share certificates the money was paid by them to the transferor's brokers. A. refused to execute the transfer, & returned it to B. & Co., in whose possession it remained, without, for some time, any intimation to the vendor that A. repudiated the transaction:—*Held*: as the liability of C. (the jobber) in respect of the shares had ceased on the acceptance of the transfer by B. & Co. it followed that A. though he had not executed the transfer, had in the circumstances, & by not definitely repudiating the authority given to B. & Co., as his agents, become equitable owner of the shares, & bound to indemnify the vendor against all loss & liability in respect of them.—*LORING v. DAVIS* (1886), 32 Ch. D. 625; 55 L. J. Ch. 725; 54 L. T. 899; 34 W. R. 701; 2 T. L. R. 645.

Annotations:—*Refd.* *Hardoon v. Bellilos*, [1901] A. C. 118; *Weigall v. Runciman* (1916), 115 L. T. 61.

On ground of misrepresentation or fraud.]—See Sub-sect. 2, C. (d), post.

Sale of prospective dividends.]—See No. 3957, post.

(b) Where Directors' Sanction Necessary.

2229. Duty of vendor to obtain.]—Pltf. agreed to purchase of deft. shares in a mining co. established under a deed of settlement, & sent a form of transfer to deft. for his execution. The deed required that, on transfer of shares, the intended proprietor should be approved of by the directors. Deft. executed & returned the transfer & sent also

a certificate, according to the provisions of the deed, verifying deft.'s title to the shares. Pltf. on receiving the transfer, paid for the shares; but, before such payment, the directors passed a resolution, unknown to pltf. till after the payment, stating that deft. had commenced an action against the co., & that no transfer of shares standing in his name should be allowed while such action was pending. The directors never objected to pltf. as a proprietor; & deft. denied their power to stay a transfer on the ground above stated. While the transfer was suspended, shares fell in the market, & pltf. brought *assumpsit* for money had & received, to recover back the purchase money:—*Held*: (1) the action lay; for deft., as vendor, was bound to obtain the assent of the directors, & do all that was necessary to vest the shares in pltf.; (2) the fact of their having fallen in value was no objection to pltf.'s rescinding the contract, since he had never had the shares at all, & therefore had received no part of the consideration for his purchase; (3) although deft. might be entitled to a return of the certificate & instrument of transfer, these were only collateral to the contract & subject-matter of the sale, & restoration of them was not a condition precedent to pltf.'s right of bringing this action. *Semble*: "money had & received" will lie to recover back the price of shares in a co. where the directors refuse to accept the transfer.—*WILKINSON v. LLOYD* (1845), 7 Q. B. 27; 115 E. R. 398; *sub nom.* *LEEMAN v. LLOYD*, *WILKINSON v. LLOYD*, 14 L. J. Q. B. 165; 9 Jur. 328; *sub nom.* *WILKINSON v. LLOYD*, *LEMAN v. LLOYD*, 4 L. T. O. S. 432; *affg.* (1843), 1 L. T. O. S. 413.

Annotations:—*As to* (1) *Distd.* *Remfry v. Butler* (1858), E. B. & E. 887; *Stray v. Russell* (1859), 1 E. & E. 888. *Consd.* *London Founders' Assocn. v. Clarke* (1888), 20 Q. B. D. 576. *Refd.* *Taylor v. Stray* (1857), 3 Jur. N. S. 964; *Skinner v. City of London Marine Insee. Corp'n.* (1885), 53 L. T. 191; *Benjamin v. Barnett* (1903), 8 Com. Cas. 244.

2230. — Refusal by purchaser to accept transfer—When action for money paid lies.]—Pltf. authorised certain brokers upon the Stock Exchange to purchase for him, to be paid for on the account day, twenty shares in the Royal British Bank. They accordingly bought such shares of defts. Before the account day arrived the Royal British Bank stopped payment, whereupon pltf. gave notice to his brokers that he would not take the shares. Deft. himself had contracted with other stockbrokers for the purchase of twenty shares, & these brokers procured transfers of the shares & the certificate, which on the account day deft. tendered to pltf.'s brokers, who paid for them & received them, & then tendered them to pltf., who, under pressure of an action, received & paid for them. By the rules of the Royal British Bank, proprietors of shares might, with the consent of the directors, transfer their shares, & the broker of one of the sellers of the shares requested such consent, which the directors refused to give.—*Held*: under these circumstances pltf. was not entitled to bring an action against deft. for the price of the shares.—*STRAY v. RUSSELL* (1860), 1 E. & E. 916; 29 L. J. Q. B. 115; 1 L. T. 443; 6 Jur. N. S. 168; 8 W. R. 240; 120 E. R. 1154, Ex. Ch.

Annotations:—*Consd.* *Coles v. Bristowe* (1868), L. R. 6 Eq. 149; *Sheppard v. Murphy* (1868), 16 W. R. 948. *Folld.* *London Founders Assocn. v. Clarke* (1888), 20 Q. B. D. 576. *Refd.* *Chapman v. Shepherd*, *Whitehead v. Izod* (1867), L. R. 2 C. P. 228; *Hooper v. Herts*, [1906] 1 Ch. 549.

payment for the shares should be made in half-yearly instalments from the date at which the purchase was to take effect. One director having died, the

survivor gave the exors. of the other notice of his intention to purchase:—*Held*: the purchase took effect from the date of notice, & was not post-

poned till the ascertainment of the price by valuation.—*HARPER v. HACKETT* (1913), 15 W. A. L. R. 66.—*AUS.*

2231. — Whether sanction compelled.]— Every contract for the sale of shares in a joint-stock co., the directors of which have the right of approving or rejecting a proposed transferee, must be regarded as conditional on their approval being given, & in default of that approval, the contract must be treated as rescinded.

A shareholder agreed to sell shares in a co. by the deed of settlement of which the right of transfer was subject to the approval of the board of directors; the purchaser paid the money, but, before any transfer of the shares was made, the ct. ordered the co. to be wound up. Subsequently the vendor & purchaser executed a deed transferring the shares to the purchaser. The official liquidator, acting on behalf of the directors, declined to approve of the purchase or recognise the transfer; the vendor was put on the list of contributories, & a call was made; & the purchaser brought an action to recover the purchase-money. Upon a bill by the vendor, against the purchaser, to compel specific performance:—*Held*: the ct. could not interfere with the discretion of the official liquidator, & as the co. did not choose to accept the purchaser as a shareholder, specific performance of the contract could not be decreed. The ct. will not as a general rule interfere in such a case with the discretion of the directors to accept or reject a proposed purchaser.—*BERMINGHAM v. SHERIDAN, Re WATERLOO Co. (No. 4) (1864), 33 Beav. 660; 3 New Rep. 699; 33 L. J. Ch. 571; 10 L. T. 256; 10 Jur. N. S. 415; 12 W. R. 658; 55 E. R. 525.*

Annotations:—*Distd. Evans v. Wood (1867), L. R. 5 Eq. 9; Paine v. Hutchinson (1868), 3 Ch. App. 388. Refd. London Founders' Asscn. & Palmer v. Clarke (1887), 3 T. L. R. 709.*

2232. —.]—A contract for the sale of shares in a registered co. was made through brokers upon & subject to the rules of the Stock Exchange. In accordance with the practice of the Stock Exchange the transferee of the shares paid the price of them to the vendor upon delivery to him of a duly executed transfer. An application for registration of the transfer being subsequently made to the directors of the co., who were empowered by the arts. of assocn. in their discretion to decline to register a person claiming by transfer of shares they refused to register the transferee as a member of the co. The transferee thereupon brought an action to recover back the price of the shares from the vendor as money had & received to his use:—*Held*: the contract for the sale of shares on the Stock Exchange did not import an undertaking by the vendor that the co. would register the transferee & the action was not maintainable.—*LONDON FOUNDERS ASSOCN. v. CLARKE (1888), 20 Q. B. D. 576; 57 L. J. Q. B. 291; 59 L. T. 93; 36 W. R. 489; 4 T. L. R. 377, C. A.*

Annotations:—*Consd. Benjamin v. Barnett (1903), 19 T. L. R. 564; Hooper v. Herts, [1906] 1 Ch. 549.*

Sanction of directors generally, see Sub-sect. 5, post.

(c) *Failure or Winding up of Company before Registration of Transfer.*

2233. Failure of company—After contract—No assent or dissent of directors.]—Where a shareholder in a co. had taken all the proper steps within her power to assign her share, but the directors omitted to assent to, or dissent from, the sale

for a period exceeding two months, & until the co. stopped payment:—*Held*: nevertheless, the name of such shareholder had been properly placed upon the list of contributories without qualification.—*CHARTRES'S CASE (1849), 1 De G. & Sm. 581; 63 E. R. 1204.*

2234. — — — No formal transfer of shares.]— (1) Where a person had entered into an agreement for the purchase of shares in a co., which had been approved of by the co., & a specific performance of which could have been enforced against him, he was held liable to be placed on the list of contributories, although no complete or formal transfer of the shares, according to the deed of settlement, was made before the co. stopped payment.

(2) Country Bankers Act, 1826 (c. 46), s. 13, directing executions on judgments against banking cos. to issue against actual members in priority to members at the time of the contract, does not of itself, & independently of express stipulation, render a member liable to be placed on the list of "contributories," in respect of liabilities incurred before he became a member.

(3) The time when, for the purpose of being placed on the list, a contributory became a member, is the time when he entered into a binding contract to take shares.—*Re NORTH OF ENGLAND JOINT STOCK BANKING CO., SANDERSON'S CASE (1849), 3 De G. & Sm. 66; 18 L. J. Ch. 248; 13 L. T. O. S. 343; 13 Jur. 740; 64 E. R. 383; on appeal, 1 Mac. & G. 306, L. C.; sub nom. HENDERSON v. SANDERSON (1852), 3 H. L. Cas. 699, H. L.*

Annotations:—*As to (1) Refd. Re North of England Joint Stock Banking Co., Dodgson's Case (1849), 3 De G. & Sm. 85; Re Life Asscn. of England, Ex p. Thompson (1865), 12 L. T. 590; Re Portsmouth Banking Co., Helby's, Stokes', & Horsey's Cases (1866), L. R. 2 Eq. 167. As to (3) Refd. Re Monmouthshire & Glamorganshire Joint Stock Banking Co., Ex p. Cape's Exor. (1852), 22 L. J. Ch. 601. Generally, Mentd. Re Direct Exeter, Plymouth & Devonport Ry., Ex p. Justice (1850), 16 L. T. O. S. 230; Re Jones, Ex p. Jones (1850), 3 De G. & Sm. 671; Re Direct Exeter, Plymouth & Devonport Ry., Ex p. Besley (1851), 3 Mac. & G. 287; Re Risca Coal & Iron Co., Ex p. Hookey (1862), 4 De G. F. & J. 456.*

2235. — — — Before registration.]—Deft., being possessed of shares in a joint-stock banking co., instructed his broker to sell them. Pltf. instructed his broker to purchase shares in the co. The two brokers agreed with each other to sell & buy respectively. Both brokers were members of the Stock Exchange; & according to the custom of the Stock Exchange, the names of the principals are not mentioned at the time of such contract, but are communicated on the day preceding the day on which the sale is made; & on the day last mentioned, the parties execute the contract. By the rules of the co., transfers could not be made without the consent of the directors; & seven days' notice of transfer must be given to them; but, in practice, the rules of the co. in this respect were not strictly enforced. In this case, no notice was given. On the day for which the sale was made, deft.'s broker obtained a blank form of transfer from the co., which deft. executed three days afterwards. On the following day, deft.'s broker delivered the transfer to pltf.'s broker. On that day the co. had stopped payment; & pltf.'s broker refused to accept the transfer, or to pay the purchase money. The co. never consented to the transfer, nor resumed business, & ultimately became bkpt.

Pltf. desired his broker not to pay for the shares;

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C. (c).

2235 i. Failure of company — After contract—Before registration.]—A purchaser of stock in co. registered as

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unlimited under Cos. Act, 1862, accepted transfer of the stock from the seller about 2 months before the stoppage of the co. & about the same time received a certificate from the co. that his name was entered on the

register of members as holder of stock, but in fact his name was entered on the register only after the stoppage. A petition for the rectification of the register by removing his name & substituting that of the seller was

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but the broker in obedience to the decision of the Committee of the Stock Exchange, before whom the question had been brought, paid the purchase-money to deft.'s broker, who had threatened to enforce payment by proceedings at law.

Pltf. having sued deft. for money had & received, on the ground of failure of consideration:—*Held*: the action did not lie.—*REMFREY v. BUTLER* (1858), E. B. & E. 887; 31 L. T. O. S. 356; 5 Jur. N. S. 1297, n.; 6 W. R. 682; 120 E. R. 740, Ex. Ch.

Annotation: *Reid. Stray v. Russell* (1859), 1 E. & E. 888.

Custom of the Stock Exchange, generally, see STOCK EXCHANGE.

2236. ————.]—*Re OVEREND, GURNEY & CO., MUSGRAVE & HART'S CASE*, No. 2213, *ante*.

Effect of winding up of company.]—See, generally, Sub-sect. 14, *post*.

(d) Contract Voidable for Misrepresentation or Fraud.

i. As Ground for Relief.

2237. Misrepresentation apart from fraud.]—A completed contract for the sale of the shares in & business of a co. will not, in the absence of fraud, be set aside on the ground of misrepresentation.

Pltf. contracted to buy all the shares in a trading co. on certain statements as to the trading profits & losses. Three months after taking over the business he commenced an action to set aside the contract, alleging misrepresentation by concealment, but not alleging fraud, & claiming rescission of the contract & an injunction:—*Held*: such a contract was not one which, in the absence of fraud, the ct. would set aside either in equity or at law; &, even if it were, pltf. had delayed in repudiating it, & had not proved either concealment or misrepresentation or that he had been induced by misrepresentation.—*SEDDON v. NORTH EASTERN SALT CO., LTD.*, [1905] 1 Ch. 326; 74 L. J. Ch. 199; 91 L. T. 793; 53 W. R. 232; 21 T. L. R. 118; 49 Sol. Jo. 119.

Annotations:—*Distd. Armstrong v. Jackson*, [1917] 2 K. B. 822. *Consd. First National Reinsurance v. Greenfield*, [1921] 2 K. B. 260. *Reid. Hindle v. Brown* (1907), 98 L. T. 44; *Angel v. Jay*, [1911] 1 K. B. 666; *Compagnie Chemin de Fer Paris-Orleans v. Looston Shipping Co.* (1919), 36 T. L. R. 68.

2238. Misrepresentation by director—Purchase from director—Other members of company not necessary parties.]—The directors of a joint-stock co. having, by their reports, represented the affairs of the co. to be in a very flourishing state, & such representations having been communicated to pltf. by a share-broker, whereby pltf. was induced to purchase shares in the co., & it being afterwards discovered that the representations of the state of the co.'s affairs were made by the directors, knowing them to be untrue, & that one of the

opposed by the liquidator & the seller. The petition was refused on the ground that the co. were not entitled to enter petitioner's name in the register after the stoppage, but he was not entitled to have it removed because the seller was entitled to have the petitioner's name substituted for his own.—*HOWE v. CITY OF GLASGOW BANK* (1879), 6 R. (Ct. of Sess.) 1194; 16 Sc. L. R. 692.—SCOT.

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1. Misrepresentation by director acting as special adviser.]—Defts. &

another director of a co., formed to acquire & sell a single tract of land, were appointed by the directors a committee to bring in a proposal for disposing of the lands & shares. This committee negotiated a sale at a price which made the shares worth about \$2,400 each; whereupon defts. proceeded to purchase the shares held by pltf. & others at \$1,370 per share, without disclosing the advantageous sale they had made, & pltf. sold & transferred his shares to defts. in ignorance of such sale:—*Held*: defts. were bound to inform the shareholders about the sale if they proposed to buy their shares from them, & they had

directors of the co. was the vendor of the shares which pltf. purchased:—*Held*: (1) on demurrer, pltf. might sustain a bill in equity against that director to set aside the purchase; (2) the other members of the co. were not necessary parties.—*STAINBANK v. FERNLEY* (1839), 9 Sim. 556; 8 L. J. Ch. 142; 3 Jur. 262; 59 E. R. 473.

Annotation:—*As to* (1) *Consd. Burnes v. Pennell* (1849), 2 H. L. Cas. 497.

2239. ——— Purchase from third party.]—Re NATIONAL PATENT STEAM FUEL CO., Ex p. WORTH, No. 1575, *ante*.

2240. ———.]—Re LIVERPOOL BOROUGH BANK, DURANTY'S CASE, No. 1572, *ante*.

2241. ——— Purchase of shares from company—Whether company liable for misrepresentations of directors.]—WESTERN BANK OF SCOTLAND v. ADDIE, ADDIE v. WESTERN BANK OF SCOTLAND, No. 1578, *ante*.

2242. ——— Transfer not induced by misrepresentation.]—A transferee of shares in a joint-stock bank, the directors of which have made fraudulent representations, is not therefore to be removed from the list of contributories, when he has not been induced to accept the transfer by the fraudulent representations.

An exor., for a nominal consideration, transferred shares in a joint-stock bank to one of the *cestuis que* trust under the will, in order to enable him to become a director:—*Held*: the transfer was good, & the transferee liable to be a contributory.—*Re NORTHUMBERLAND & DURHAM DISTRICT BANKING CO., Ex p. BIGGE* (1858), 28 L. J. Ch. 50; 32 L. T. O. S. 116; 5 Jur. N. S. 7; 7 W. R. 30.

See, also, Nos. 2246, 2247, *post*.

2243. Misrepresentation by law agent.—Purchase from third party.]—(1) By the deed of co-partnership of a joint-stock co., certain forms were to be observed by any transferee of shares, before he could become a member of the co. A. purchased shares, & executed some of the acts required to constitute him a member of the co.; but left one of these acts unexecuted:—*Held*: the execution of these acts was a duty cast on the purchaser for the benefit of the co., & his non-execution of one of them, did not enable him, as respected the co., to retire from his contract.

(2) A joint-stock co. had declared dividends, which, as it afterwards appeared, were not warranted by the real condition of the co. The law agent of the co. who was also a member of it, when applied to for information, mentioned these dividends as proofs of the flourishing state of the co. The person to whom he so mentioned them became afterwards a purchaser of the shares:—*Held*: he could not relieve himself from his contract on account of these representations; the law agent of the co. was not its agent to bind it in such matters; nor could he bind it as a partner, for a joint-stock co. is not, like an ordinary partnership, bound by the acts of any individual member of it.

(3) If the directors of a co. agree to publish

been guilty of such fraudulent concealment as to make their purchase from pltf. voidable.—*GADSDEN v. BENNETTO* (1913), 23 W. L. R. 633; 3 W. W. R. 1109; 9 D. L. R. 719.—CAN.

g. Fraud of third party inducing purchase.]—Shares had been assigned in the co.'s books by the managing director in his own name, as to twenty shares, & as attorney for another, as to thirty, to deft., who did not sign the usual formal acceptance for any of them, but a certificate under the corporate seal of the co. & the signature of the president, vice-president, &

false statements of the affairs of the co., under such circumstances as show a fraudulent intent to deceive, they are not civilly liable to those whom they have deceived & injured, but may be criminally prosecuted, & punished.

(4) If the directors have made false representations for the purpose of fictitiously enhancing the price of shares for their own benefit, & the shareholder has thereby been deceived & induced to purchase shares greatly beyond their value, the transfer of the shares, although executed, ought to be set aside. When directors order a dividend to any given amount, without expressly saying so, they impliedly declare to the world that the co. has made profits which justify such a dividend (LORD CAMPBELL).—BURNES v. PENNELL (1849), 2 H. L. Cas. 497; 14 L. T. O. S. 245; 9 E. R. 1181; *sub nom.* BURNES v. PENNELL, FORTH MARINE INSURANCE CASE, 13 Jur. 897, H. L.

Annotations:—As to (1) Rejd. Fuller v. Earle (1852), 21 L. J. Ex. 314; Bailey v. Universal Provident Assce., Re Copeland (1857), 26 L. J. C. P. 87. As to (2) Apprvd. National Exchange Co. v. Drew (1855), 25 L. T. O. S. 223. Consd. Re Ginger, Ex p. Tipperary Joint Stock Banking Co. (1856), 28 L. T. O. S. 42; Re Royal British Bank, Nicol's Case (1859), 3 De G. & J. 387. Rejd. Deposit Life Assce. v. Ayscough (1856), 6 E. & B. 761; Re Royal British Bank, Ex p. Brockwell (1857), 26 L. J. Ch. 855. As to (3) Rejd. Peek v. Gurney (1871), L. R. 13 Eq. 79. As to (4) Consd. Re Royal British Bank, Nicol's Case (1859), 3 De G. & J. 387. Rejd. Re Ginger, Ex p. Tipperary Joint Stock Banking Co. (1856), 28 L. T. O. S. 42.

2244. Misrepresentation by vendor—Purporting to act as broker—Sale of own shares.]—(1) Pltf. was a medical man wholly devoid of business experience. Deft. was a stock-broker & a member of the London Stock Exchange. He had acted as stockbroker to pltf. prior to Apr. 1910, carrying through various transactions for him. In Apr. 1910, pltf., acting under deft.'s advice, instructed deft. to buy 600 shares in a certain co. Deft. sent to pltf. a contract note in the ordinary form purporting to show that the shares had been purchased for pltf. at the price therein stated. The total amount debited against pltf. included a charge for the services of deft. as broker. Pltf. did not immediately take up the shares, & deft. purported to carry them over from account to account on pltf.'s behalf, charging a contango rate, which was stated to include deft.'s remuneration for his services as broker in effecting the continuations. After the professed purchase of the shares they gradually fell in value, & pltf. paid the differences. Ultimately, however, deft. advised him to take up the shares, & in pursuance of such advice pltf. in Dec. 1910, took a transfer of the shares & paid the price to deft., & continued to hold the shares as the only registered proprietor thereof. In 1915, pltf. heard rumours which aroused his suspicions, & his solrs. wrote to deft. asking for the name of the jobber from whom he bought the shares. Failing to get a satisfactory answer, pltf. commenced an action in which he claimed rescission of the contract & a return by deft. of all moneys received by him from pltf. upon pltf. retransferring the shares to deft. It was proved that deft. had never purchased any of the shares for pltf. The shares which were transferred to pltf. were part of an allotment made to deft. as promoter of the co. Deft. never disclosed to pltf. his real position in dealing with him, but always professed to act as his broker:—

Held: pltf. was entitled to have the whole transaction set aside.

(2) A broker who is employed to buy shares cannot sell his own shares unless he makes a full & accurate disclosure of the fact to his principal, & the principal, with a full knowledge of such facts, assents to the changed position of the broker.—ARMSTRONG v. JACKSON, [1917] 2 K. B. 822; 86 L. J. K. B. 1375; 117 L. T. 479; 33 T. L. R. 444; 61 Sol. Jo. 631.

Annotation:—As to (1) Rejd. Collins v. Hopkins, [1923] 2 K. B. 617.

See, further, AGENCY, Vol. I., pp. 467, 469, Nos. 1520, 1538.

ii. Parties to Action.

2245. Other shareholders—Action against director.]—STAINBANK v. FERNLEY, No. 2238, ante.

2246. The company—Action against directors & secretary.]—A bill averred that defts., the directors & secretary of a projected railway co., having, partly by allotments to fictitious persons & partly by purchase, obtained possession of all the shares of a given class in the co., through their broker induced pltf., a stock-jobber, to contract to sell them certain of such shares, to be delivered upon the "settling day" to be appointed by the committee of the Stock Exchange; & that they then, by false & fraudulent representations made by them in their official character to the committee of the Stock Exchange, procured the appointment of a settling day, upon the arrival of which, pltf., being by reason of the scheme, thus contrived by defts. unable to procure the shares he had contracted to deliver, except at a ruinous premium, was compelled to pay defts. a sum specified in the bill to release him from his contract; & the bill prayed for a declaration that such contract was fraudulent & void, or inoperative, & for repayment to pltf. of the amount he had paid in respect thereof. The co. having been joined as defts. to the bill, upon the ground that they had adopted the fraudulent representations made by their directors & secretary to the committee of the Stock Exchange:—*Held:* on demurrer by the co., although the co. might have benefited by the fraudulent representations—e.g., by obtaining a quotation & an increased price for their shares—& although, *semble*, they might be answerable for that increased price, or for any other direct advantage derived from such fraudulent representations, yet, it not being shown that the co. knew such representations were made by their directors with intent to defraud pltf., by compelling him to perform his contract, or even that they knew of the existence of such a contract, the co. were not responsible for the loss pltf. had thus incidentally sustained; & the co.'s demurrer was allowed.—BARRY v. CROSEY (1861), 2 John. & H. 1; 70 E. R. 945.

Annotations:—Consd. Peek v. Gurney (1873), L. R. 6 H. L. 377. Rejd. Andrews v. Mockford, [1896] 1 Q. B. 372. Mentd. Thacker v. Hardy (1878), 4 Q. B. D. 685; Salaman v. Warner (1891), 64 L. T. 598; Cavalier v. Pope, [1905] 2 K. B. 757.

iii. Loss of Right to Relief.

2247. Impossibility of restitutio in integrum—Forfeiture of shares after action brought—Vendor chairman of company.]—If a person seeks to set

secretary of the co. was sent to him, certifying that he was the registered owner of the twenty shares; & deft. had, in a bill filed against a third party for fraudulently inducing him to purchase the shares, for which he had paid \$500, admitted that he had purchased the fifty shares:—*Held:*

deft. was a shareholder as to these fifty shares.—ROSS v. MACHAR (1885), 8 O. R. 417.—CAN.

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h. Effect of renewal note.]—GOULD v. GILLIES (1908), 40 S. C. R. 437.—CAN.

k. Application subsequent to commencement of liquidation.]—WILSON v. CITY OF GLASGOW BANK (1878), 16 Sc. L. R. 167.—SCOT.

l. Fraudulent pledge of share certificates—Transfers executed in blank.]—Pltf. handed share certificates with

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aside a sale of various kinds of property, on the ground of fraud, the contract must be rescinded *in toto* or not at all; & if pltf. is unable to restore any one of the kinds of property included in the contract relief cannot be given. *Secus*, if the property be all of the same sort. *Semble*: where the property is of a perishable nature, pltf. is not bound to keep it in a state of preservation after bill filed.

Where the property consisted of shares in mining cos., & the shares were forfeited after bill filed at meetings of which deft. was chairman, & therefore cognisant of all dealings with them:—*Held*: the forfeiture of the shares was no bar to the relief sought by pltf.—*MATURIN v. TREDINICK* (1864), 4 New Rep. 15; 10 L. T. 331; 28 J. P. 744; 12 W. R. 740.

Annotation:—*Apld. Re Mount Morgan (West) Gold Mine, Ex p. West* (1887), 56 L. T. 622.

See, generally, MISREPRESENTATION & FRAUD.

2248. Death of vendor—Actio personalis moritur cum personâ.]—In an action for the administration of the estate of a testator, S. claimed to prove against the estate for damages sustained by him by reason of his being induced by the misrepresentations of the testator to buy certain shares belonging to him in a limited co. which proved worthless, & he assessed the damages at £250 the price paid by him to the testator for the shares:—*Held*: the claim was legally one for unliquidated damages, & not the less so because claimant sought to establish that the true measure of those damages was the full amount of the contract price for the shares, & the maxim of *actio personalis moritur cum personâ* applied, & claim disallowed.—*Re DUNCAN, TERRY v. SWEETING*, [1899] 1 Ch. 387; 68 L. J. Ch. 253; 80 L. T. 322; 47 W. R. 379; 15 T. L. R. 185; 43 Sol. Jo. 244.

Annotations:—*Mentd. Re Law, Law v. Law* (1904), 74 L. J. Ch. 169; *Quirk v. Thomas*, [1915] 1 K. B. 798.

See, generally, EXECUTORS & ADMINISTRATORS.

(e) Remedies for Breach of Contract.

i. In General.

2249. Condition precedent—Readiness of plaintiff to perform.]—In an action by the assignees of a bkpt. for the non-performance of a contract to sell shares, the question was whether pltf. & their assignor had always been ready & willing to buy:—*Held*: (1) the insolvency of the bkpt. & the insufficiency of his assets were evidence for the jury that he was not ready & willing; (2) the fact that pltf. waited more than two years before attempting to enforce the contract was evidence for the jury that they had abandoned it.—*LAWRENCE v. KNOWLES* (1839), 5 Bing. N. C. 399; 2 Arn. 43; 7 Scott, 381; 8 L. J. C. P. 210; 132 E. R. 1152.

Annotations:—*Generally, Mentd. De Medina v. Norman* (1842), 9 M. & W. 820; *Mackley v. Pattenden* (1861), 1 B. & S. 178; *Morgan v. Bain* (1874), 44 L. J. C. P. 47.

2250. — Request for delivery.]—(1) Deft. agreed to deliver an original share in a co., on demand, for value received:—*Held*: an actual

request to deliver was necessary to support an action for non-delivery.

(2) A demand of the price of the share is not a sufficient demand to deliver the share.—*GREEN v. MURRAY* (1842), 6 Jur. 728.

See, generally, CONTRACT, Vol. XII., pp. 426 et seq.

2251. Nature of remedy—Money had & received.]—*WILKINSON v. LLOYD*, No. 2229, *ante*.

2252. — Shares registered not shares purchased.]—Pltf. bought certain shares in a co. At the time when the transferor purported to transfer them to pltf. the whole of the shares comprised in the transfer had been allotted to & belonged to other persons, & the transferor was never registered as the owner of them. Pltf., who paid for the shares on the faith of the transfers, subsequently received share certificates from the co. In an action against the vendor to recover the amount paid for the shares:—*Held*: there had been a total failure of consideration, & pltf. was entitled to recover the money he had paid for the shares.—*PLATT v. ROWE (TRADING AS CHAPMAN & ROWE) & MITCHELL (C. M.) & CO.* (1909), 26 T. L. R. 49.

See, generally, CONTRACT, Vol. XII., pp. 228–233.

2253. — Whether action for price—Or damages.]—*HUTCHINSON v. LONDON & PROVINCIAL EXCHANGE, LTD.* (1910), 45 L. Jo. 239, D. C.

2254. — In action for rescission—Supplementary relief—Restraint of forfeiture.]—*CHARRON, LTD. v. INDIAN MOTOR TAXI-CAB CO.*, No. 2152, *ante*.

— **Specific performance.]**—*See Sub-sect. 2, C. (e) ii., post.*

— **Damages.]**—*See Sub-sect. 2, C. (e) iii., post.*

ii. Specific Performance.

See, generally, SPECIFIC PERFORMANCE.

2255. Grounds for granting or refusing—Against vendor—Rise in price.]—One is bound by bond to transfer £300 East India Stock before Sept. 30 then next. Though the stock was much risen, deft. decreed to transfer the £300 stock in specie, & to account for all dividends from the time that it ought to have been transferred.—*GARDENER v. PULLEN & PHILLIPS* (1700), 2 Vern. 394; 23 E. R. 853.

2256. — Supply of shares limited.]—The Ct. will decree a specific performance of an agreement for the sale of a certain number of shares in a railway co. A parol agreement for the sale of such shares, is binding; for they are neither an interest in or concerning lands, within Stat. Frauds, s. 4; nor goods, wares or merchandizes, within sect. 17.

It has been long since decided that you cannot have a bill for the specific performance of an agreement to transfer a certain quantity of stock. But, in my opinion, there is not any sort of analogy between a quantity of 3 per cents. or any other

indorsed blank transfers executed by them to a stockbroker as margin to cover a loan with which the stockbroker was to purchase certain other shares for pltf. The stockbroker deposited the share certificates with a bank as security for a loan. He did not purchase any shares for pltf. but sent them contract notes, purporting to have done so. He then absconded & was adjudicated bkpt. Pltf. on

discovering the fraud gave notice to the bank that they were owners of the shares. The bank after this notice filled up the transfers & were registered in the books of the co.:—*Held*: pltf. having delivered to the stockbroker the share certificates with the indorsed blank transfers were estopped from asserting their ownership against the bank, who had taken them *bonâ fide* for value without notice, express or

implied, of pltf.'s title.—*WATERHOUSE v. BANK OF IRELAND* (1891), 29 L. R. Ir. 384.—*IR.*

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m. Grounds for granting or refusing—Against vendor.]—The action was brought for specific performance of an agreement alleged to have been

stock of that description (which is always to be had by any person who chooses to apply for it in the market), & a certain number of railway shares of a particular description; which railway shares are limited in number & which, as has been observed, are not always to be had in the market (SHADWELL, V.-C.).—DUNCUFT v. ALBRECHT (1841), 12 Sim. 189; 59 E. R. 1104.

Annotations:—*Consd.* Cheale v. Kenward (1858), 3 De G. & J. 27. *Refd.* Watson v. Spratley (1854), 10 Exch. 222; Bennett v. Blain (1863), 15 C. B. N. S. 518. *Mentd.* Colonial Bank v. Whinney (1885), 30 Ch. D. 261.

2257. — Refusal by directors to sanction transfer.—Specific performance was decreed of a contract to sell shares in a joint-stock co. although the deed of settlement provided that no shareholder should be at liberty to transfer his shares except in such manner as the board should approve, & the board refused to give their consent to the proposed transfer.—POOLE v. MIDDLETON (1861), 29 Beav. 646; 4 L. T. 631; 7 Jur. N. S. 1262; 9 W. R. 758; 54 E. R. 778.

Annotation:—*Consd.* Moffatt v. Farquhar (1878), 7 Ch. D. 591.

2258. — Subsequent gift of shares to volunteer.—The doctrine that a volunteer cannot hold property, which has been conveyed by way of gift, as against the prior equity of a purchaser for value from the person by whom the conveyance was made, applies to a contract for the sale of shares of a co.—GRAHAM v. O'CONNOR (1895), 73 L. T. 712; 12 T. L. R. 93; *on appeal* (1896), 12 T. L. R. 297, C. A.

2259. — Shares still obtainable in open market.—*Re* SCHWABACHER, STERN v. SCHWABACHER, KORITSCHONER'S CLAIM, No. 2279, *post*.

See, also, No. 2256, *ante*.

2260. — Against purchaser.—J. agreed to purchase fifty shares in a railway co. at ten guineas a share, the same being a premium of £8 a share, the sum of £2 10s. having been paid for calls. G., *pltf.*, afterwards delivered to the broker fifteen of the shares, upon which such calls had been made, when he refused to accept them, & asked for a return of the purchase-money from the broker, which they declined on the ground that the calls had already been paid on the fifteen shares, but not on the remaining 35. By a deed of assignment, *pltf.* had transferred the 35 shares to J. but he not being registered *pltf.* was obliged to pay £361 in respect of calls, & *deft.* refused other shares as a substitute for the fifteen:—*Held*: the representative of J.—now deceased—was bound specifically to perform the contract by taking fifty shares, & paying the amount of calls which had been paid by *pltf.*—GRISEWOOD v. JUSTICE (1849), 13 L. T. O. S. 22.

2261. — Purchaser nominee of third party.—A transfer of shares from W. to K. was negotiated through the intervention of third parties. The deed of transfer recited a contract by K. to purchase 105 shares at £5 per share, & the receipt of the purchase-money was acknowledged, but not indorsed. W. executed the transfer with the understanding that K. was purchasing for himself, & that the money was to be paid within a year, the shares being in the meantime deposited as security. K. executed the transfer at the request of S., & upon the representation that the money had been paid, & that K. would be merely a holder in trust for S.; W. was not a

party to the representations made by S.; & except by executing the transfer K. had entered into no contract, & had given no authority for the purchase of the shares. The purchase-money was not paid. Upon a bill for specific performance by W.:—*Held*: K. was bound by the contract, & liable to pay for the shares so transferred to him.—WILSON v. KEATING (1859), 4 De G. & J. 588; 7 W. R. 635; 45 E. R. 228, L. C. & L. JJ.

2262. — Refusal by directors to sanction transfer.—BERMINGHAM v. SHERIDAN, *Re* WATERLOO CO. (No. 4), No. 2231, *ante*.

2263. — Winding-up order made after action brought.—*Pltfs.*, who were stock & share dealers, having contracted to buy certain shares in a co. standing in A.'s name, agreed to sell the same to *deft.*'s broker, but the name of *deft.* was not given at the time of such agreement for sale. On the settling day following the agreement for sale, *deft.*'s name was given to *pltfs.*, & the money for the shares also paid to them. The transfer was executed by A., but *deft.* refused to execute it, alleging that he never intended to take the shares into his own name, & that his broker had, without his authority, given his name to *pltfs.* in order that it might be inserted in the transfer. *Pltfs.* filed a bill against *deft.* for a specific performance of their contract with his broker; but before the cause came to a hearing an order was made to wind up the co. under the supervision of the ct.:—*Held*: notwithstanding such order, *pltfs.* were entitled to a decree against *defts.* for specific performance.—PAINE v. HUTCHINSON (1868), 3 Ch. App. 388; 37 L. J. Ch. 485; 18 L. T. 380; 16 W. R. 553, L. JJ.; *affg.* (1866), L. R. 3 Eq. 257.

Annotations:—*Consd.* Evans v. Wood (1867), L. R. 5 Eq. 9; Coles v. Bristowe (1868), L. R. 6 Eq. 149. *Refd.* Grissell v. Bristowe (1868), L. R. 3 C. P. 112; Sheppard v. Murphy (1868), 16 W. R. 948; Cruise v. Paine (1869), 4 Ch. App. 441; Merry v. Nickalls (1872), 7 Ch. App. 733; Neilson v. James (1882), 9 Q. B. D. 546.

2264. — Failure to prove identity of shares—Winding-up order before action brought.—*Pltf.*, on May 6, 1864, sold some shares in a co. to *deft.*, but they were not registered in his name, or that of a nominee for him. The co. was ordered to be wound up. *Pltf.* then filed a bill against *deft.* praying a decree for the specific performance of the agreement for the sale of the shares; the due registration of them in the name of *deft.* or his nominee; the rectification—if necessary—of the register of members of the co.; the execution by *deft.* of a proper indemnity to *pltf.* in respect of the shares; & that *deft.* might be ordered to pay the costs of the suit. *Pltf.* did not, at the hearing, succeed in proving the identity of the shares sold by him to *deft.* in respect of which he sought relief by his bill:—*Held*: the case was not one of specific performance at all, & under all the circumstances of it, the bill must be dismissed with costs.—MORRISH v. EDWARDS (1867), 16 L. T. 339.

2265. Jurisdiction to grant—By rectification of register.—*Re* TAHITI COTTON CO., *Ex p.* SARGENT, No. 2326, *post*.

See, generally, Sect. 13, sub-sect. 5, *ante*.

2266. Loss of right to relief—Laches.—Claim filed in Nov. 1853, for specific performance of a contract to purchase shares made in Feb. 1852, dismissed, without costs, on the ground of *pltf.*'s laches in taking no steps in the meanwhile to

made by *deft.*'s testator to transfer to *pltf.*, in consideration of *pltf.*'s services in aiding in the organisation of a co., 10 out of 25 shares deceased was to receive in part-payment for land which

the co. was to buy from him. The co. was incorporated in Aug. 1904, & the 25 shares were allotted to deceased in May, 1905, but the land was not fully paid for till 1908. The action

was brought in 1913, & in explanation of the delay *pltf.* stated that deceased had contended that the organisation was not complete till the property was paid for & the transaction of pur-

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compel completion of the contract.—*LLOYD v. WILKES* (1854), 2 Eq. Rep. 1081; 2 W. R. 501.

See, generally, EQUITY.

2267. — Sale by purchaser—Transfer to sub-purchaser executed by vendor—Action against purchaser.]—F. purchased at public auction railway shares not fully paid up, of which S. was the registered proprietor: he paid his purchase-money, but before he executed the transfer, sold them by public auction to C. S. executed a transfer to C. who declined to accept, or to put himself on the register of the co. Calls were made, which F. refused to pay. C. became insolvent. On a bill filed by S. against F. for specific performance, to which C. was not made a party, reference was made to the master as to pltf.'s title. The master reported that S. could not make a good title by reason of his having executed the transfer to C.

Bill dismissed with costs.—*SHAW v. FISHER* (1855), 5 De G. M. & G. 596; 26 L. T. O. S. 99; 1 Jur. N. S. 1055; 4 W. R. 35; 43 E. R. 1001, L. C.

Annotations:—Consd. Maxted v. Paine (1871), L. R. 6 Exch. 132. *Reid. Coles v. Bristowe* (1868), 4 Ch. App. 3; *Loring v. Davis* (1886), 32 Ch. D. 625. *Mentd. Hawkins v. Maltby* (1867), L. R. 4 Eq. 572.

iii. Damages.

2268. Whether appropriate remedy.]—*HUTCHINSON v. LONDON & PROVINCIAL EXCHANGE, LTD.*, No. 2253, *ante*.

2269. Measure of damages—General rule.]—I have, therefore, to consider what is the measure of damage in the case of a contract for the sale of shares. I do not think on the cases which have been cited to me that there is any real doubt as to the measure of damage in such a case. Generally speaking, it is the difference between the contract price of the shares & their market price at the time when they ought to have been delivered. Of course, there may be, & probably are, exceptions to the general rule, & one of these exceptions is, I think, this—that where a purchaser, forbears to exercise his rights at the vendor's request & for the vendor's convenience, the vendor may have to pay, not the difference between the contract price & the market price on the day when the shares ought to have been delivered, but the difference between the contract price & the market price at the time when the purchaser, by notice or otherwise, withdraws the forbearance which he has been exercising. Of course, there is another possibility—namely, that the contract has by mutual consent been varied so as to alter the date on which the shares ought to have been delivered; but that is not any real exception to the rule, for even in that case one has to consider when, according to the terms of the contract as so altered, the shares ought to be delivered, & that is the day which will fix the measure of damage (*PARKER, J.*).—*Re SCHWABACHER, STERN v. SCHWABACHER, KORITSCHONER'S CLAIM*, No. 2279, *post*.

2270. — Inquiry into value of shares.]—*HUTCHINSON v. LONDON & PROVINCIAL EXCHANGE, LTD.*, No. 2253, *ante*.

2271. — Contract repudiated by purchaser—Shares resold.]—*STEWART v. CAUTY*, No. 2276, *post*.

2272. — — —.]—Deft. purchased scrip

railway shares of pltf. at 25s. premium on Oct. 20; but the scrips were not issued until Oct. 24. On Oct. 21 the shares fell to 14s. premium. At six in the evening of that day, deft. gave notice to pltf., that he should not take the shares. On Oct. 22 the shares had fallen to 8s. premium, & continued to fall until Dec. 6, when pltf., after notice to deft., sold them at 17s. discount. In an action for not accepting or paying for the shares:—*Held*: the measure of damages was the difference in the price of the shares between Oct. 20 and Oct. 22.—*POTT v. FLATHER* (1847), 5 Ry. & Can. Cas. 85; 16 L. J. Q. B. 366; 11 Jur. 735.

2273. — — —.]—B. having entered into a contract with A. to purchase of him certain railway shares, which were about to be created, wrote a letter, saying that in consequence of some alleged misrepresentation, he should consider the sale null & void. A. denied the misrepresentation & insisted on the performance of the contract; & after the shares were created, on Aug. 24, sent notice to B. of their being ready to be assigned to him. B. on that day wrote that he should consider the sale null & void on the ground of misrepresentation. The shares were, on Oct. 20 following, formally tendered to B. the price having fallen in the meantime, & B. refused to accept them. In an action for non-performance of the contract:—*Held*: it was properly left to the jury to say whether the repudiation of the shares on Aug. 24 was sufficiently distinct & final; & they were right in giving as damages the difference between the contract price & the price which the shares fetched in the market on Oct. 20.—*BARNED v. HAMILTON* (1841), 2 Ry. & Can. Cas. 624; 10 L. J. C. P. 287.

2274. — Non-delivery by vendor.]—In an action for the non-delivery of shares on a given day, pursuant to contract, the proper measure of damages is the difference between the contract price & the market price on the day when the contract was broken.—*SHAW v. HOLLAND* (1846), 15 M. & W. 136; 4 Ry. & Can. Cas. 150; 15 L. J. Ex. 87; 6 L. T. O. S. 435; 10 Jur. 100; 153 E. R. 794.

2275. — Registration of transferee hindered by transferor.]—*HOOPER v. HERTS*, No. 2222, *ante*.
See, generally, DAMAGES, Vol. XVII., pp. 78 et seq.

D. Time for Completion.

2276. Whether reasonable—Admissibility of evidence—Rules of Stock Exchange.]—In an action for not accepting railway shares sold at L., issue being joined on the readiness & willingness of pltf. to transfer them to deft.:—*Held*: the rules of the Stock Exchange at L., as to the time of transferring shares, which were acted on by all the brokers there, & seen by deft., neither he nor pltf. being a broker, were admissible as evidence of the reasonableness of the time for the completion of the contract.

Where a contract is repudiated, & the article resold within a reasonable time from the repudiation, the measure of damages is the difference between the price of the article at the time of the contract & of the resale.—*STEWART v. CAUTY* (1841), 8 M. & W. 160; 2 Ry. & Can. Cas. 616; 10 L. J. Ex. 348; 5 Jur. 411; 151 E. R. 992.

2277. Delay—Certificate sent for sub-division—Unreasonable.]—Where a contract for the sale of shares did not fix the time for the delivery of

chase closed:—*Held*: the agreement to transfer the shares was proved & sufficient corroborative evidence of

it given, & it was one capable of enforcement specifically.—*MCGREGOR v. CURRY* (1914), 81 O. L. R. 261; 20

D. L. R. 706; 6 O. W. N. 202; 25 D. L. R. 771.—CAN.

them:—*Held*: the time for delivery could not depend upon circumstances which were unknown to the buyer, & delay in tendering the shares arising from the seller having sent his certificate to England for sub-division, as this circumstance was unknown to the buyer, was unreasonable & justified the buyer in refusing to accept the shares. Such delay was *mora*, assuming the law of *mora* to be applicable.—*DE WAAL v. ADLER* (1886), 12 App. Cas. 141; 56 L. J. P. C. 25; 3 T. L. R. 188, P. C.

2278. — Ground for repudiation.]—*DE WAAL v. ADLER*, No. 2277, *ante*.

2279. Agreement to carry over—Death of vendor.]—(1) Where a vendor & a purchaser of shares in a co. agree that the shares shall remain unpaid for, & shall be “carried over” on an account delivered on certain days called account or pay days, subject to payment of a stated percentage by the purchaser, & to a payment by the vendor or the purchaser—as the case may be—of the difference between the price of the shares on the last account day, & their price on the day when the account is delivered: the vendor having died during the currency of this arrangement:—*Held*: the day for completing the contract was the first account day following the death of the vendor, unless such day had been altered by agreement between the parties or at the request or to suit the convenience of one of them.

(2) Specific performance of such an agreement will not subsequently be granted at the suit of the purchaser where the shares can be obtained in the market.

(3) Damages for breach of such an agreement will not be given where the contract price of the shares exceeded their value on the day for completion.

(4) Observations as to the measure of damages (see No. 2269, *ante*).—*Re SCHWABACHER, STERN v. SCHWABACHER, KORITSCHONER'S CLAIM* (1907), 98 L. T. 127.

E. Stamp Duty.

2280. Liability to duty.]—Scrip in a railway co. is not “goods, wares, or merchandise,” within the exemption in Stamp Act, 1815 (c. 184), Sched., pt. 3, tit. “Agreement.”

In the morning of a day, deft. gave pltf. a verbal order for fifty shares in a railway co. In the afternoon of the same day, deft. signed a memorandum, that he had bought of pltf. fifty shares in the co., at £10 a share; which memorandum was handed to pltf.:—*Held*: it required an agreement stamp.—*KNIGHT v. BARBER* (1846), 16 M. & W. 66; 2 Car. & Kir. 333; 1 New Pract. Cas. 557; 4 Ry. & Can. Cas. 674; 16 L. J. Ex. 18; 8 L. T. O. S. 121; 10 Jur. 929; 153 E. R. 1101.

Annotation:—*Mentd. Clay v. Crofts* (1851), 17 L. T. O. S. 231.

See, now, Stamp Act, 1891 (c. 39), Sched. I. tit. “Agreement.”

2281. What must be stamped—Memorandum of sale.]—*KNIGHT v. BARBER*, No. 2280, *ante*.
See, generally, REVENUE.

SUB-SECT. 3.—THE TRANSFER.

A. What amounts to a Transfer.

2282. Renunciation in favour of nominee.]—Letters of renunciation of bonus shares in favour of a nominee & of acceptance by that nominee do not, in the absence of special provisions to the contrary, amount to a “transfer” of shares so as to fall within & be subject to the arts. of assocn. of the co. dealing with the transfer of shares of shareholders already registered.—*Re POOL SHIPPING CO., LTD.*, [1920] 1 Ch. 251; 89 L. J. Ch. 111; 122 L. T. 338; 36 T. L. R. 53; 64 Sol. Jo. 115.

2283. Surrender & allotment.]—W. agreed to be a director of a co., & qualification shares were allotted to him. Shortly afterwards, on his desiring to have nothing to do with the co. he received back from the co. the amount he had paid on his shares, an entry was made in the register of members that his shares were cancelled, & shares bearing the same numbers were allotted to two other persons, who paid for them in cash. The co. had more than enough shares apart from these to satisfy the applications of these two persons. The arts. provided forms in which transfers of shares should be made, & that surrenders might be made on terms agreed upon. The co. having gone into liquidation:—*Held*: there had been no effectual surrender or transfer of W.'s shares, & he was liable as a contributory.—*Re COMPANIES GUARDIAN SOCIETY, WALLSCOURT'S* (LORD) CASE (1899), 7 Mans. 235.

See, also, Sub-sect. 12, C., *post*.

B. Mode of Transfer.

2284. Under provision in articles—Scrip certificates transferable by delivery.]—A co., by its arts. of assocn., authorised the issue of shares of two classes, (1) “nominative” or ordinary shares, & (2) shares on which, 50 per cent. having been paid, the holder should be entitled to a scrip certificate, enabling him to pass the shares by mere delivery of such certificate:—*Held*: this was an irregular provision, which would have entitled the registrar to refuse a certificate of incorporation, but which did not vitiate an actual incorporation.—*REUSS (PRINCESS) v. BOS* (1871), L. R. 5 H. L. 176; 40 L. J. Ch. 655; 24 L. T. 641, H. L.; *affg. S. C. sub nom. Re GENERAL CO. FOR PROMOTION OF LAND CREDIT* (1870), 5 Ch. App. 363, L. J. Annotations:—*Mentd. Matthaei v. Galitzin* (1874), 22 W. R. 700; *Re Tumacacori Mining Co.* (1874), L. R. 17 Eq. 534; *Re Nassau Phosphate Co.* (1876), 2 Ch. D. 610; *Re Capital Fire Insee. Assocn.* (1882), 21 Ch. D. 209.

2285. — Requiring deed.]—*Re TAHITI COTTON CO., Ex p. SARGENT*, No. 2326, *post*.

2286. — What constitutes seal.]—A.

PART III. SECT. 23, SUB-SECT. 2.—E.

n. Liability to duty—Transfer of shares—Company registered in England.]—Pltf., an Auckland sharebroker, acting upon instructions received from deft., purchased shares in a co., registered in England but not registered in the colony, from the registered owner in England. The co. had a registered office in the colony where it was doing business. Pltf. received the scrip & a transfer of the shares signed by the English shareholder, but with the date of the execution, the name of the transferee, & the amount of the consideration left in blank. The transfer was entered in the colonial register in the

name of the English shareholder:—*Held*: the transfer was void, as not complying with the provisions of Stamp Act, 1882.—*REID v. MCCORQUODALE* (1894), 12 N. Z. L. R. 400.—N.Z.

o. — Effect of non-compliance with Stamp Act, 1882.]—Stamp Act, 1882, does not vitiate & render void a contract for the sale of shares in the performance of which a blank transfer, void under Stamp Act, 1882, has been given, & the transferee is liable to indemnify the transferor against calls. A purchaser, in accepting without objection a blank transfer, void under above Act, does not waive his right to a valid transfer, but dispenses with the

delivery of such a transfer till he asks for it.—*HAMILTON v. HULL, FENWICK v. HULL* (1900), 19 N. Z. L. R. 49.—N.Z.

PART III. SECT. 23, SUB-SECT. 3.—A.

p. Transfer to person who cannot be found—Person not necessarily fictitious.]—A shareholder transferred his shares & procured registration of a transfer to S., which purported to be accepted & signed by him. On the winding up of the co., S. could not be found or heard of:—*Held*: it was not to be presumed he was a fictitious person.—*SIMPSON v. MULLABY* (1871), 2 V. R. (Law) 56.—AUS.

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(a) & (b) i.]

deposited with B., his stockbroker, the certificates of shares in a limited co., & executed a blank transfer to secure the balance of his current account. The arts. of the co. required that transfers of shares should be made by deed. Shortly afterwards B. filled up the blank transfer with the name of L. as transferee, & deposited the shares with L. as security for money borrowed, as he alleged, in pursuance of the general directions of A. Later on B. closed A.'s account & sold the shares. L., who was willing that the purchase should be completed applied to the co. to register the transfer to himself. In the meanwhile A., who had disputed B.'s account, had given the co. notice not to register. L. now moved, under 1862 Act, s. 65, to rectify the register by inserting his name. On production of the transfer it appeared that it contained no seal or wafer in the place of a seal, but only a mark on the paper of the place where the seal ought to be. The transfer was witnessed by B.'s clerk as having been signed, sealed, & delivered by A., but the attesting witness did not make any affidavit, & the evidence of A. & B. as to whether A. put his finger on the seal or not was contradictory:—*Held*: no order could be made on the motion; L. could have no right to be registered unless A. were estopped from denying that the transfer to L. was good, & this estoppel could only arise if the document delivered to L. were *prima facie* complete; it was not complete in the absence of a seal unless it was shown that it had been sealed, & for this the evidence was insufficient.—*Re BALKIS CONSOLIDATED CO., LTD.* (1888), 58 L. T. 300; 36 W. R. 392; 4 T. L. R. 204.

See, generally, DEEDS, Vol. XVII., pp. 201, 202, Nos. 124–127.

2287. — Requiring instrument in writing—Though deed customary.]—*Re TAHITI COTTON CO., Ex p. SARGENT*, No. 2326, *post*.

2288. — Form to be approved by Stock Exchange—No form approved.]—*Re FAITH GOLD MINING CO., LTD.* (1897), 41 Sol. Jo. 788.

2289. — Usual common form—Omission of usual but immaterial details.]—Where the arts. of assocn. of a co. provide that all transfers of shares are to be in the "usual common form," a transfer will not be deemed to have failed to comply with that requirement merely because it omits matters which would be contained in a common form, but are wholly immaterial—for example, the address of the transferor & the denoting number of the share, where both of these are well known to the directors.—*Re LETHEBY & CHRISTOPHER, LTD.*, [1904] 1 Ch. 815; *sub nom. Re LETHEBY & CHRISTOPHER, JONES' CASE*, 73 L. J. Ch. 509; 90 L. T. 774; 52 W. R. 460; 48 Sol. Jo. 416; 11 Mans. 209.

Compliance with formalities.]—See Sub-sect. 3, C., *post*.

PART III. SECT. 23, SUB-SECT. 3.—
C. (a).

q. Company may dispense with formalities.]—When a member transfers shares to the co. the co. may, as between the parties to the transfer, dispense with the machinery rendered necessary by law to transfers generally. Another co. cannot afterwards, as between themselves & the partner with whom they contracted, impeach the transaction.—*TAYLOR v. HUGHES* (1844), 7 I. Eq. R. 529; 2 Jo. & Lat. 24.—*IR.*

r. Non-compliance with formalities

C. Compliance with Formalities.

(a) In General.

2290. Liability for—Purchaser.]—*BURNES v. PENNELL*, No. 2243, *ante*.

2291. — Vendor—Sale of shares by director.]—A director of a co. is in a very different position from that of an ordinary shareholder, for having the means of seeing that all the formalities of transfer required by the constitution of the co. are complied with, he is bound, in transferring his own shares, to see to the regularity of the transfer; if he neglect to do so, & there be a want of formality therein, he remains a contributory.—*Re NEWCASTLE-UPON-TYNE MARINE INSURANCE CO., Ex p. BROWN* (1854), 19 Beav. 97; 2 W. R. 534; 52 E. R. 285.

*Annotations:—***Consd.** *Re Wincham Shipbuilding, Boiler, & Salt Co., Hallmark's Case* (1878), 9 Ch. D. 329. **Refd.** *Re Newcastle-upon-Tyne Marine Insce., Ex p. Henderson* (1854), 19 Beav. 107; *Re Denham* (1883), 25 Ch. D. 752. **Mentd.** *Re West Hartlepool Iron Co., Gray's Case* (1876), 1 Ch. D. 664.

2292. — Auditor.]—A vendor of shares in a co. is bound to inquire whether the formalities prescribed by the deed of settlement with respect to the perfecting of the transfer are observed, especially if he have the means of ascertaining the fact, by reason of holding office, as that of auditor; otherwise he will remain liable to be placed on the list of contributories.—*Re NEWCASTLE-UPON-TYNE MARINE INSURANCE CO., Ex p. HENDERSON* (1854), 19 Beav. 107; 24 L. T. O. S. 86; 3 W. R. 5; 52 E. R. 289.

2293. — Company acting as agents of purchaser—Execution by transferee.]—I., a resident in Smyrna, who employed a co. as his agents, directed them to buy shares in the co. for him. On May 2 they bought shares from M., who executed a transfer to I. on May 4, & left it at the co.'s office on the 7th. The next meeting of the directors was on the 10th; the co. stopped payment on the 11th, & a winding-up petition was presented on the 12th, on which an order was made. I. had signified to the co. his approval of the purchase, but, being in Smyrna, had not executed the transfer, & it had not been registered. An order having been made for rectifying the register by removing the name of M., it was proved on appeal, that although the arts. of assocn. did not prescribe any particular form of transfer, it had been the uniform practice of the co. to have shares transferred by deed executed both by transferor & transferee:—*Held*: (1) the directors were justified in not registering a transfer where the transfer deed had not been executed by the transferee; there had therefore been no default or unnecessary delay by the co. within 1862 Act, s. 35; & the name of M. could not be removed from the register; (2) the first duty of the co. as agents of the purchaser was to procure his execution of the transfer & until such execution they could not put him on the register.—*Re IMPERIAL MERCANTILE CREDIT ASSOCN., MARINO'S*

*of company's deed of settlement—Does not vitiate transfer.]—*A. agreed to sell his shares in a joint-stock bank to B., at par; the shares to be transferred by A. to C., who was to hold the same as a trustee for B., but charged with the purchase-money & interest at 5 per cent, payable half-yearly, until the principal was fully paid. C. agreed to hold the shares upon the trusts expressed. The shares were afterwards transferred by A. to C. by deed, but the deed of settlement required a notice of all proposed transfers to be left at the office of the directors, which was not done. The assignment not having been registered when the first

dividend after the transfer became due, A. received it & retained the surplus, after the payment of the interest of the purchase-money of the shares, on account of another debt due to him by B. A subsequent dividend was received by C., & paid over by him to A., who appropriated it as he had done with the former dividend:—*Held*: A. had ceased to be owner of the shares & was not properly included in the list of contributories. *Seemle*: non-compliance with the formal conditions required by the deed of settlement of a co. for transfer of the shares, does not vitiate a transfer by a shareholder.—*Re TIPPERARY JOINT STOCK BANK,*

PART III.—COMPANIES UNDER COMPANIES (CONSOLIDATION) ACT, 1908, ETC. 361

CASE (1867), 2 Ch. App. 596; 36 L. J. Ch. 468; 16 L. T. 368; 15 W. R. 683, L. JJ.

Annotations:—As to (1) Apld. Re Overend, Gurney, Musgrave & Hart's Case (1867), L. R. 5 Eq. 193. Consd. Re Tahiti Cotton Co., Ex p. Sargent (1874), L. R. 17 Eq. 273. Refd. Re Shaw (1876), 46 L. J. Q. B. 65; Ortigosa v. Brown (1878), 47 L. J. Ch. 168. Generally, Mentd. Re Hydraulic Tube-Drawing & Steel Ordnance Co. (1868), 16 W. R. 572.

2294. — Directors.]—A co. had incurred considerable losses, & unless credit was taken for the value of the goodwill, so much of the capital had been lost that the directors ought, according to the deed of settlement, to have dissolved the co. Reference was made to an accountant, whose report showed heavy losses, & recommended a change. Meetings of the co. were held, at which the accounts of the co. were shown; but this report was not mentioned to the shareholders. The existing directors all transferred their shares to other persons, who became directors. One of the existing directors agreed to transfer his shares to one of the new directors, payment being postponed, & to some extent contingent. A deed of transfer was executed by both. The transfer was entered on the register of transfers of the co. & returned to the Joint Stock Cos. Registry Office. The transferee did not execute a deed of covenant as required by the deed of settlement. By that deed the approval by the directors of a transferee was required, & a certificate of such approval was to be given. No certificate could be found, but there was evidence that such a certificate had been given, but that it was not signed at a meeting, & that two of the directors who signed it were interested in the transfer. A meeting of the co. was held on the day of the transfer, & another a year afterwards. A year after that the co. was wound up:—*Held*: (1) under the circumstances, the transfer was made *bonâ fide*, & the transferor was not a contributory; (2) the non-production of the report was not a ground for impeaching the transaction for fraud; (3) a director, though interested in it, was competent to approve of a transfer; (4) it was the duty of the directors to compel execution of a deed of covenant by the transferee, & the transferee could not be affected by their neglect, though both he & the transferor were directors; (5) the shareholders must have been aware of the transfer, & might have objected at the meetings if they did object; & the irregularities of the transfer could not be taken advantage of after the lapse of several years.

—*Re AGRICULTURIST CATTLE INSURANCE Co., BUSH'S CASE (1870), 6 Ch. App. 246; 40 L. J. Ch. 205; 24 L. T. 1; 19 W. R. 393; affd. sub nom. MURRAY v. BUSH (1873), L. R. 6 H. L. 37, H. L.*

Annotations:—As to (1) Refd. Re Taurine Co. (1883), 25 Ch. D. 118. Generally, Mentd. York Tram. Co. v. Willows (1882), 8 Q. B. D. 685.

2295. Presumption as to—Against company—Company purchasing own shares.]—*Re BRITISH*

PROVIDENT, ETC. ASSURANCE SOCIETY, GRADY'S CASE, No. 2460, *post*.

2296. — Execution by transferees.]—*Re TAURINE Co., No. 2203, ante.*

Formalities as to approval by directors.]—*See Sub-sect. 5, B. (a) & (b), post.*

(b) *Effect of Non-Compliance.*

i. *In General.*

2297. General rule.]—CHAPMAN v. WHITE (1844), 2 L. T. O. S. 419.

2298. —.]—On the formation of a co., their deed of settlement contained certain rules & regulations for the transfer of shares, one of which was, that every erasure or other alteration which should have been made by the directors in the share register book should, as between the co. & the last proprietor, be conclusive on such proprietor as to the title to the shares. There were also various provisions in the deed, framed for the purpose of preventing any fraud or improper transfer of shares, which it was the duty of the officer of the co. to see carried into effect. C., a proprietor of shares in the co., in the character or an exor., deposited the same with the secretary, for the purpose of his registering them in O.'s name; the secretary, instead of so doing, sold the shares to B., & received the purchase-money, & procured the erasure required by the deed to be made in the register book of the co., but the other regulations required by the deed to be observed on a transfer of shares were not complied with. The secretary having absconded, C. filed his bill against the chairman & secretary for the time being, pursuant to a clause in the deed, providing that those parties should sue & be sued on behalf of the co., seeking compensation against the co. in the nature of damages, in respect of the loss sustained by pltf., & a declaration of the ct. to that effect:—*Held*: on demurrer, filed by the two defts., the demurrer was good for want of equity, on the ground that the transfer, not being in accordance with the requisitions of the deed of settlement, did not bind the co.—DUNCAN v. LUNTLEY (1849), 2 Mac. & G. 30; 2 H. & Tw. 78; 14 Jur. 319; 47 E. R. 1604, L. C.

2299. —.]—In 1841 H., a proprietor of several shares in a joint-stock co., transferred sixteen of such shares to B. The purchase was negotiated by C., who paid the purchase-money. B. neither executed nor acceded to the transfer, but repudiated the transaction. The co., in ignorance of this repudiation, entered the transfer in their books, & thenceforth sent all notices of calls in respect of these shares to B. at the residence of C. H. died in 1846, leaving D. his exor. In 1849 the co. was ordered to be wound up:—*Held*: the mode of transfer prescribed by the deed of settlement of the co. not having been carried out by the want of the execution by the transferee, H.'s liability

Ex p. SCULLY (1857), 6 I. Ch. R. 524; 9 Ir. Jur. 450.—IR.

s. Sufficiency of tender — Testing-clause not filled up.]—A transfer might be sufficiently tendered, although the testing-clause is not filled up.—RAIT v. PRIMROSE (1859), 21 Duml. (Ct. of Sess.) 965.—SCOT.

t. Under sequestration order — Failure to complete title to shares—Cannot displace transferee duly entered on register.]—A person executed a transfer of railway shares & a year after his estates were sequestrated. After the sequestration the transfer was duly recorded by the transferee in the railway co.'s register of transfers. Many years after the registration of the

transfer, the trustee in the sequestration, who had not taken the steps to complete his title by Companies Clauses Consolidation (Scotland) Act, 1845 (c. 17), s. 19, raised an action of reduction & reclamation against the transferee & the railway co. in which he claimed the shares on the ground that in virtue of the Act & warrant of confirmation in his favour, which the bankrupt statute declared to be equivalent to an intimated assignation, the shares vested in him at the date of the sequestration:—*Held*: the time criterion of the completion of a title upon a transfer of shares in a public co. was not a bare intimation to the co. but the reception of the transferee

partner of the co. according to the forms prescribed by the statute, & therefore although the trustee at the date of sequestration was in a position to complete a title to the shares he had never complied with the statutory forms, he could not now displace the transferee who had been duly entered in the co.'s register as the holder of the shares.—MORRISON v. HARRISON (1876), 3 R. (Ct. of Sess.) 406; 13 Sc. L. R. 273.—SCOT.

PART III. SECT. 23, SUB-SECT. 3.—C. (b) i.

2297 i. General rule.]—*Ex p. KENNEDY (1856), 6 I. Ch. R. 121.—IR.*

Sect. 23.—Transfer of shares: Sub-sect. 3, C. (b) i. & ii.]

as a shareholder continued, & his exor. was properly placed upon the list of contributories in respect of these shares.

Where the mode prescribed by the deed of settlement for the transfer of shares has not been carried out, no subsequent recognition of the title of the transferee by the directors will operate by way of waiver, as against the co., so as to release the transferor from his liabilities in respect of the shares.—*Re ST. GEORGE STEAM PACKET CO., Ex p. HENESSY* (1850), 2 Mac. & G. 201; 2 H. & Tw. 395; 19 L. J. Ch. 353; 17 L. T. O. S. 57; 14 Jur. 655; 47 E. R. 1737.

Annotation:—Reid. Re Wolverhampton, Chester & Birkenhead Ry., Ex p. Cottle (1850), 15 L. T. O. S. 361.

2300. —.]—In Dec. 1865, a co. registered a transfer of shares from A. to B., which had not been executed by B.; & placed B.'s name on the list of shareholders. In Aug. 1866, the ct., on the application of B., made an order directing B.'s name to be removed from the register of shareholders on the ground that B. had not accepted the shares. The co. accordingly removed B.'s name, but did not restore A.'s. Afterwards the co. was ordered to be wound up:—*Held*: A. was a contributory.—*Re MERCHANTS' CO., HERITAGE'S CASE* (1869), L. R. 9 Eq. 5; 39 L. J. Ch. 238; 21 L. T. 479; 18 W. R. 270.

— **Shareholder's name entered in register.]—**
See No. 1287, *ante*.

2301. Substantial compliance.]—*Re NORTH OF ENGLAND JOINT STOCK BANKING CO., STRAFFON'S EXECUTORS' CASE*, No. 2377, *post*.

2302. Who may set up—Non-compliance due to company.]—By the deed of settlement of a public co., the directors had a power of pre-emption of shares, at a price to be ascertained from the last sales appearing in "the transfer register book," & then, but not before, all future liabilities of the vendors were to cease. In 1840 the directors purchased of B. a number of scrip shares, but having kept no such book, the specific directions were not & could not be followed. The co. was afterwards wound up, when it was sought to charge B. as a contributory:—*Held*: the co. was not entitled to treat the transaction as void, by reason of the non-observance of the forms, which their own irregularity & neglect had made it impossible to observe.—*Re NORTHERN COAL MINING CO., Ex p. BAGGE* (1851), 13 Beav. 162; 20 L. J. Ch. 229; 17 L. T. O. S. 113; 15 Jur. 499; 51 E. R. 63.

Annotation:—Mentd. Bargate v. Shortridge (1855), 5 H. L. Cas. 297.

2303. — Liquidator—Slight defect.]—Where a transfer of shares in a co. has been made with perfect *bona fides* on both sides, but there has been some slight defect in the form of the transfer, the question arising upon that is not one which the official liquidator of the co. can bring forward in order to rectify the register of shareholders by striking off a name that is upon it. The question is simply one between the transferor & transferee, & when they, or either of them, may raise it, the ct. will decide it.—*Re GENERAL FLOATING DOCK CO., LTD.* (1867), 15 L. T. 526; *sub nom. Re*

GENERAL FLOATING DOCK CO., HUGHES' CASE, 15 W. R. 476:

Annotation:—Distd. Re Merchants' Co., Heritage's Case (1869), 18 W. R. 270.

— **Party bound to see formalities complied with.]—**See No. 2243, *ante*.

ii. Particular Formalities.

2304. Notice of intended transfer—Notice not given—Transfer approved by board.]—In 1859, B., who was a director of a co. formed under 1844 Act, sold all his shares to M., the purchase-money not to be paid if the co. was wound up within two years. The co.'s deed of settlement required, on a transfer of shares, a previous notice to the directors; a certificate of approval by them of the transfer; also that the transferee should execute within a month, at the office of the co. or at such other place as the directors should reasonably require, a deed of covenant to abide by the rules of the co. The shares could be transferred only by deed of transfer executed by the transferor. Shortly before the sale of B.'s shares the directors had received an accountant's report of the state of the co.'s affairs, from which it appeared that eighty per cent. of the gross capital had been lost, but it appeared also that the goodwill & connection of the co. was of considerable value, either as a basis for further operations or on a transfer to another co. This report was not communicated to the shareholders. But there was a change of directors, B. & his co-directors transferring their shares to & retiring in favour of M. & others, who were also directors of a banking co. No formal notice of the intended transfer by B. was ever given, nor was any deed of covenant ever executed by or demanded of M. But B. executed a deed of transfer, & the transfer was subsequently approved by the new board of directors, M. himself being present, & notice of the transfer was sent to the registrar of joint-stock cos.:—*Held*: (1) the transfer was valid, though irregular; as M. & the other new directors had taken upon themselves to act, & were at various meetings recognised by the co. as directors, their consent to the transfer was, by 1844 Act, sect. 30, rendered a valid consent, although their qualification had been irregularly obtained, & it was a matter for the directors & no concern of B.'s whether the deed of covenant was or was not demanded of M.; (2) the transaction was not affected by the loss of capital, as the value of the goodwill might have turned the balance, if a proper estimate had been put upon it, & the goodwill was an asset of the co.; & whether the directors ought or not to have wound up the co. at that time, the transfer was not invalidated, since the co. was carried on for nearly two years afterwards.—*MURRAY v. BUSH* (1873), L. R. 6 H. L. 37; 42 L. J. Ch. 586; 29 L. T. 217; 22 W. R. 280, H. L.; *affg. S. C. sub nom. Re AGRICULTURIST CATTLE INSURANCE CO., BUSH'S CASE* (1870), 6 Ch. App. 246, L. C.

Annotations:—As to (1) *Consd. York Tram. Co. v. Willows* (1882), 8 Q. B. D. 685. *Reid. Re Taurine Co.* (1883), 25 Ch. D. 118.

2305. Transfer not executed by transferee—Requirement of company—Jurisdiction of court to

PART III. SECT. 23, SUB-SECT. 3.—
C. (b) ii.

a. Notice of intended transfer —
Transfer for good consideration—
Whether further registration necessary.]
—An assignment of stock in the Provincial Insurance Co., duly executed by assignor & assignee, for a good con-

sideration, with proper notice to the co., was valid without further registration, provided the assignor was not indebted to the co. & owed no calls.—*CRAWFORD v. PROVINCIAL INSURANCE CO.* (1859), 8 C. P. 263.—**CAN.**

b. Transfer of shares in blank —
No special directions as to transfer of

shares adopted by directors—No violation of statutory provisions—Valid.]—No special directions as to the transfer of the directors, but the transfer book had been prepared for, & adapted to, the system of marginal transfer. C. transferred certain shares in blank, subject, by marginal note, initialled by C., to the order of a broker, & subject

rectify register.]—*Re* OVEREND, GURNEY & Co., MUSGRAVE & HART'S CASE, No. 2213, *ante*.

2306. — Executed for him at his request—By clerk of transferor.]—*Re* FINANCIAL INSURANCE Co., BISHOP'S CASE (1869), 7 Ch. App. 296, L. JJ. *Annotation*:—*Reid*. *Re* Letherby & Christopher, [1904] 1 Ch. 815.

2307. — Transferees trustees — Written authority given for purchase of shares.]—A., one of five trustees appointed under a marriage contract, signed with his co-trustees a note approving the purchase of stock in a joint-stock banking co. of unlimited liability. By the authority of the law agent of the trustees, acting on the note of approval, all the names of the trustees appeared in the transfers as accepting the stock, & in the register of members of the co. A. did not sign the transfers, but he signed a subsequent letter to the co. authorising the payment of dividends. The co. was wound up, & A. & his co-trustees were placed on the list of contributories as personally & individually liable for calls. In a petition at the instance of A. for rectification of the register & list of contributories:—*Held*: A. had authorised his name to be placed on the register; the trustees were liable *in solidum* for the whole of the stock, & not *pro rata parte* for one-fifth part only.—CUNINGHAME *v.* CITY OF GLASGOW BANK (1879), 4 App. Cas. 607, H. L.

See, also, No. 2203, *ante*.

2308. Where transfer executed in incomplete form—Numbers of shares omitted.]—A limited co. may become a shareholder in another limited co., if authorised by its own memorandum & arts. of assocn. to do so.

A transfer was executed by P. to co. C. of shares in co. B. The intention of both parties was, that P. should transfer & co. C. accept all the shares which P. held. At the time when P. executed the deed & handed it to his agent, it contained no description of the shares. Before it left his agent's hands it was filled up with the number of shares, being all P.'s shares, & with a description of them as shares in co. B., but the denoting numbers of the shares were not inserted. The seal of the C. Co. was then affixed to it. The denoting numbers of the shares & the date of the transfer were afterwards filled in, it was handed in for registration, & the C. Co. were registered as shareholders:—

Held: the transaction was not invalidated by the fact of the deed of transfer having been executed in an incomplete form, & the C. Co. were liable as shareholders.—*Re* BARNED'S BANKING Co., *Ex p.* CONTRACT CORPN. (1867), 3 Ch. App. 105; 37 L. J. Ch. 81; 17 L. T. 269; 16 W. R. 193, L. J.

Annotations:—*Mentd.* *Re* Peruvian Rys., *Ex p.* International Contract Co. (1838), 17 W. R. 199; *Re* Asiatic Banking Corp., Royal Bank of India's Case (1869), 4 Ch. App. 252; *Re* Peruvian Rys., *Ex p.* International Contract Co. (1869), 19 L. T. 803; *Mersey Steel & Iron Co. v. Naylor* (1882), 9 Q. B. D. 648; *Staple of England (Mayor, etc. of Merchants of) v. Bank of England* (1887), 21 Q. B. D. 160; *Re* Thomas, *Thomas v. Sully*, [1915] 1 Ch. 325.

2309. — — —.]—*Re* LETHEBY & CHRISTOPHER, LTD., No. 2289, *ante*.

2310. — — — Filled up with numbers of unpaid shares—Contract for purchase of fully-paid shares.]—*Re* BLAKELY ORDNANCE Co., BAILEY'S CASE, [1869] W. N. 196.

2311. — Date omitted.]—*Re* BARNED'S BANKING Co., *Ex p.* CONTRACT CORPN., No. 2308, *ante*.

2312. — Address of transferor omitted.]—*Re* LETHEBY & CHRISTOPHER, LTD., No. 2289, *ante*.

2313. — Consideration left blank.]—HAWKINS *v.* MALTBY, No. 2075, *ante*.

2314. Where transfer erroneous — Wrong numbers of shares—Transferor holding as many or more shares.]—In a transfer of shares in a joint-stock co. an error in the distinguishing numbers of the shares is immaterial, provided the transferor has at the time a sufficient number of shares in the co.

Fifty shares were transferred by the chairman of a co. to A., as a trustee for the co., numbered as therein stated, & A.'s name was placed on the register in respect of those shares. The transferor had at the time no shares bearing those numbers, but he had fifty shares bearing other numbers:—*Held*: A. must be on the list of contributories for fifty shares.—*Re* INTERNATIONAL CONTRACT Co., IND'S CASE (1872), 7 Ch. App. 485; 41 L. J. Ch. 564; 26 L. T. 487; 20 W. R. 430, L. JJ.

Annotations:—*Consd.* *Platt v. Rowe* (trading as Chapman & Rowe) & *Mitchell* (1909), 26 T. L. R. 49. *Reid*. *Re* Life Assocn. of England, *Thomson's Case* (1865), 4 De G. J. & Sm. 749; *Re* Letheby & Christopher, [1904] 1 Ch. 815.

Compare No. 1195, *ante*, & Part V., Sect. 8, subsect. 3, & Part IX., Sect. 8, subsect. 6, C. (c), *post*.

by a subsequent marginal note, initialled by the broker, to the order of B. B. signed an acceptance of the shares immediately under the transfer in blank signed by C., & was entered in the books of the bank as the holder of the shares, the intermediate transfers to & from the broker being omitted. The transfer to B., & the acceptance by him, took place within a month of the time of the suspension of the bank:—*Held*: this transfer & acceptance were a sufficient compliance with, or at least not in any way a violation of, the statutory provisions, shares had been formally adopted by & B. became the legal holder of the shares, & was liable as a contributory.—*Re* CENTRAL BANK OF CANADA, BAINES' CASE (1889), 16 A. R. 237.—CAN.

c. Deed to be executed by transferor & transferee—Deed executed by transferor alone—Legal title does not pass.]—Where a transfer of shares in a limited co. is required by law or by the arts. of assocn. of the co. to be made only by a deed executed both by the transferor & by the transferee in the prescribed form:—*Held*: a deed of transfer executed by the transferor alone did not pass to the transferee the title to the shares & an auction purchaser under a subsequent attach-

ment & sale of the shares was entitled to be registered as owner in preference to the private purchaser.—NAGABHUSHANAN *v.* RAMACHANDRA RAO (1922), 1. L. R. 45 Mad. 537.—IND.

2311 i. Where transfer executed in incomplete form—Date omitted.]—Pltf., a sharebroker, acting upon instructions received from deft., purchased shares in a co. registered in England but not registered in the colony, from the registered owner in England. The co. had a registered office in the colony where it was doing business. Pltf. received the scrip & a transfer of the shares signed by the English shareholder, but with the date of the execution, the name of the transferee, & the amount of the consideration left in blank. The transfer was entered in the colonial register in the name of the English shareholder:—*Held*: the transfer was void, as not complying with Stamp Act, 1882.—*REID v. MCCORQUODALE* (1894), 12 N. Z. L. R. 400.—N.Z.

d. Approval by directors — Transfer not authorised in writing by president—According to statute.]—The restriction in Bank of New Zealand Share Guarantee Act, 1894, s. 4, providing that every transfer of shares, after being approved by the directors, shall not be valid until authorised in writing

by the President, cannot be waived, nor can a party be estopped from denying that the provision has been complied with, it being for the protection of the public in respect of the State guarantee conferred by the statute. Shortly after the passing of the above Act certain Bank of New Zealand shares were transferred to resps., who immediately transferred them to other persons. Both transfers were presented together to the bank for registration on July 13, 1894. The bank officials purported to accept & register the transfer to resps., but to reject the transfer from them. Neither transfer was approved by the directors or authorised in writing by the President, the then directors & President being abroad. On Sept. 6, 1894, resps. received new scrip in their names, & gave a receipt therefor. In Nov. 1894, the bank made a call, which it now sued for. Resps., as one defence, denied that they were shareholders when the call was made:—*Held*: even if the requirements of the statute could be waived, there was no waiver, & no facts existed which would estop resps. from setting up the provisions of the above sect.—*BANK OF NEW ZEALAND v. LOGAN* (1899), 18 N. Z. L. R. 117, 641.—N.Z.

Sect. 23.—Transfer of shares: Sub-sect. 3, C. (c) & D. (a) & (b).]

(c) *Waiver of Non-Compliance.*

2315. By universal disregard.]—In a joint-stock co. fifty shares belonging to the co. were transferred & accepted by the transferee, & an entry of the transaction was made in the share ledger of the co. By the deed of settlement certain formalities were to be complied with, without which it was declared that no transfer should have any force either at law or in equity. These formalities had been universally disregarded in the transactions of the co., & were not complied with in this case:—*Held*: there must be taken to have been an universal consent to disregard the provisions of the deed in this respect, & the transferee effectually became a shareholder as between himself & the shareholders generally.—*Re VALE OF NEATH & SOUTH WALES BREWERY CO., Ex p. WALTERS* (1850), 19 L. J. Ch. 501, L. C.; *subsequent proceedings, sub nom. Re VALE OF NEATH & SOUTH WALES BREWERY CO., WALTERS' SECOND CASE*, 3 De G. & Sm. 244.

Annotation:—*Consd. Bargate v. Shortridge* (1855), 5 H. L. Cas. 297.

2316. By transferee acting & being treated as member—Exercise of rights of membership.]—The owner of several shares in a steam-packet co. transferred two of them to his son, by a document which was not executed by the son, nor entered in the co.'s books, nor otherwise perfected according to the provisions of the deed of constitution. The son was not aware of the transfer. By a rule of the co. every proprietor was always entitled to a free passage by the co.'s vessels, & the son, on several occasions, obtained certificates from the co.'s office that he was a proprietor, which entitled him to a free passage; & he also signed each certificate, & the co.'s books in respect of these certificates as proprietor, & obtained a free passage accordingly, but he never received dividends, nor did any other act as a proprietor:—*Held*: the son was a contributory in respect of such two shares.—*Re ST. GEORGE'S STEAM PACKET CO., MAGUIRE'S CASE* (1849), 3 De G. & Sm. 31; 18 L. J. Ch. 256; 13 L. T. O. S. 342; 13 Jur. 673; 64 E. R. 367.

Annotations:—*Refd. Re Royal British Bank, Ex p. Walton, Ex p. Hue* (1857), 26 L. J. Ch. 545; *Re Electric Telegraph Co. of Ireland, Bunn's Case* (1860), 2 De G. F. & J. 275; *Ilfracombe Ry. v. Nash* (1870), 18 W. R. 431.

2317. — Receipt of dividends & notices.]—27 shares in a joint-stock trading co. were assigned by two shareholders to a purchaser in 1842. Notice thereof was given to the secretary in 1843, & he made an entry of the transfers in pencil in the share ledger of the co. The co. was dissolved in May, 1847, & in Aug. following the secretary perfected in ink the entry which he had so made in pencil; but other formalities required by the co.'s deed of settlement to render transfers of shares valid were not complied with. The purchaser, by letter, in 1843, requested that the dividend on his shares should be paid to a specified individual; & a dividend, which was the only dividend then payable, was paid accordingly. Notices of meetings & of other proceedings usually sent to shareholders were regularly sent to the purchaser; & in reply to one of such notices in 1845 the purchaser wrote to the secretary concurring in a proposal then made to sell the co.'s place of business, & therewith to pay its liabilities. That letter was recorded in the minutes of the meeting, at which a resolution to the proposed effect was come to:—*Held*: there was a complete agreement on the part of the purchaser to become

a shareholder, & an acceptance of him, as such, by persons having the management of the affairs of the co., who were competent to act as they did; & the purchaser's name was properly placed upon the list of contributories.—*Re VALE OF NEATH & SOUTH WALES BREWERY CO., GORDON'S CASE* (1850), 3 De G. & Sm. 249; 64 E. R. 465.

Annotation:—*Refd. Re Royal British Bank, Ex p. Walton, Ex p. Hue* (1857), 26 L. J. Ch. 545.

2318. — —.]—A person in 1844 bought shares in a banking co., & had them transferred to him. The co. afterwards registered under Joint Stock Banking Companies Act, 1857 (c. 49), so as to come within the 1856 Act. He was never entered on the list of shareholders under that Act, but had received dividends; & after his death his exors. received dividends, & then sold the shares:—*Held*: as he would have been a contributory under the old Acts, his exors. were now contributories.—*Re NORTHUMBERLAND & DURHAM DISTRICT BANKING CO., Ex p. DIXON'S EXECUTORS* (1860), 1 Drew. & Sm. 225; 8 W. R. 623; 62 E. R. 365.

2319. — —.]—*Re BRITON MEDICAL & GENERAL LIFE ASSOCN., LTD.* (1889), 5 T. L. R. 502.

2320. By company—Conduct amounting to acceptance as shareholder.]—*Re VALE OF NEATH & SOUTH WALES BREWERY CO., GORDON'S CASE*, No. 2317, *ante*.

2321. By directors—As against company.]—*Re ST. GEORGE STEAM PACKET CO., Ex p. HENESSY*, No. 2299, *ante*.

2322. By shareholders—No objection taken for several years.]—*Re AGRICULTURIST CATTLE INSURANCE CO., BUSH'S CASE*, No. 2294, *ante*.

D. Blank Transfers.

(a) Validity.

2323. Where deed necessary—At common law.]—A deed executed with the name of the transferee, vendee, etc., in blank, is void at common law.—*HIBBLEWHITE v. M'MORINE* (1840), 6 M. & W. 200; 9 L. J. Ex. 217; 4 Jur. 769; 151 E. R. 380; *sub nom. HEBBLEWHITE v. M'MORINE*, 2 Ry. & Can. Cas. 31.

Annotations:—*Folld. Enthoven v. Hoyle* (1852), 18 L. T. O. S. 317; *Taylor v. Great Indian Peninsular Ry.* (1859), 28 L. J. Ch. 285. *Apprvd. Burgis v. Constantine*, [1908] 2 K. B. 484. *Refd. L. & B. Ry. v. Fairclough* (1841), 2 Man. & G. 674; *Re North British Australasian Co., Ex p. Swan* (1859), 7 C. B. N. S. 400; *Swan v. North British Australasian Co.* (1862), 7 H. & N. 603; *France v. Clark* (1884), 26 Ch. D. 257; *Soc. Générale de Paris v. Walker* (1885), 11 App. Cas. 20; *Magnus v. Queensland National Bank* (1887), 36 Ch. D. 25; *Powell v. London & Provincial Bank*, [1893] 2 Ch. 555. *Mentd. De Medina v. Norman* (1842), 9 M. & W. 820; *Davidson v. Cooper* (1844), 13 M. & W. 343; *Sims v. Marryat* (1851), 17 Q. B. 281; *Fazakerly v. M'Knight* (1856), 26 L. J. Q. B. 30; *Taylor v. Stray* (1857), 2 C. B. N. S. 175; *Tupper v. Foulkes* (1861), 9 C. B. N. S. 797.

2324. — Delivery of blank transfer & certificates.]—*FRANCE v. CLARK*, No. 2338, *post*.

2325. — Blanks completed after execution by transferor—Necessity for redelivery.]—The arts. of assocn. of a co. formed under Cos. Acts provided that shares should be transferable only by deed executed by the transferor & the transferee & registered:—*Held*: (1) a transfer of shares in which the name of the transferee & the number & numbers of the shares were filled in after execution by the transferor could not operate as the deed of the transferor without redelivery by him; (2) the execution of a transfer deed did not before registration confer on the transferee a legal title preferable as such to a prior equitable interest.

The certificates issued by the co. contained a note that no transfer of any shares represented

thereby would be registered except upon the production thereof. There was no similar provision in the arts. of assocn.:—*Held*: (3) the co. was entitled to refuse registration of a transfer until the certificate of the shares comprised therein was produced or its absence accounted for, & was bound to refuse registration on receiving notice that the certificate was outstanding in the hands of a *bonâ fide* holder for value with an equitable title prior in date to the transfer.—*SOCIÉTÉ GÉNÉRALE DE PARIS v. WALKER* (1885), 11 App. Cas. 20; 55 L. J. Q. B. 169; 54 L. T. 389; 34 W. R. 662; 2 T. L. R. 200, H. L.; *affg.* S. C. *sub nom.* *SOCIÉTÉ GÉNÉRALE DE PARIS v. TRAMWAYS UNION Co.* (1884), 14 Q. B. D. 424, C. A.

Annotations:—*As to* (1) *Apld.* *Re Seymour, Fielding v. Seymour*, [1913] 1 Ch. 475. *Refd.* *Magnus v. Queensland National Bank* (1887), 36 Ch. D. 25; *Burgis v. Constantine*, [1908] 2 K. B. 484. *As to* (2) *Apld.* *Nanney v. Morgan* (1887), 35 Ch. D. 598. *Consd.* *Roots v. Williamson* (1888), 38 Ch. D. 485. *Foll.* *Powell v. London & Provincial Bank*, [1893] 1 Ch. 610; *Ireland v. Hart*, [1902] 1 Ch. 522. *Refd.* *Moore v. North Western Bank*, [1891] 2 Ch. 599. *As to* (3) *Consd.* *Colonial Bank v. Whinney* (1886), 11 App. Cas. 426. *Refd.* *Colonial Bank v. Hepworth* (1887), 36 Ch. D. 36; *Williams v. Colonial Bank*, *Williams v. London Chartered Bank of Australia* (1888), 38 Ch. D. 388; *Re Cawley* (1889), 42 Ch. D. 209; *Rainford v. Keith & Blackman Co.*, [1905] 1 Ch. 296; *Mackereth v. Wigan Coal & Iron Co.*, [1916] 2 Ch. 293. *Generally*, *Refd.* *Bradford Banking Co. v. Briggs* (1886), 12 App. Cas. 29. *Mentd.* *Balkis Consolidated Co. v. Tomkinson*, [1893] A. C. 396; *Re Ottos Kopje Diamond Mines*, [1893] 1 Ch. 618; *Wells v. Smith*, [1914] 3 K. B. 722.

See, also, No. 2308, *ante*, & compare, No. 2425, *post*, & Part IX., Sect. 8, sub-sect. 6, C. (d), *post*.

See, generally, DEEDS & OTHER INSTRUMENTS, Vol. XVII., pp. 214, 215.

2326. Where deed not necessary—Practice of company to require deed.—(1) The ct. has no jurisdiction under 1862 Act, s. 35, to grant specific performance of an agreement to transfer shares or to enforce against the co. an equitable claim to be registered as a shareholder, but where an applt. has a legal title, the ct. will compel the co. to enter his name on the register, although his title is disputed by the person registered as holder.

(2) The pledgee of shares with transfers executed by the pledgor with the date & name of transferee in blank has, & also his transferee has, implied power to fill up the blanks. Such transfers, although executed as deeds by the original pledgor, will not operate as deeds, & if the regulations of the co. require a deed, will only confer an equitable interest & operate as contracts to transfer, but when the arts. of assocn. did not require a deed & the blanks had been filled up by the transferee of the pledgor:—*Held*: they operated as valid transfers & conferred on him a right to be registered as a shareholder, which the ct. would enforce on summons under sect. 35.

(3) If the arts. require a deed, a deed is necessary but not otherwise (*JESSEL, M.R.*).—*Re TAHITI COTTON Co., Ex p. SARGENT* (1874), L. R. 17 Eq. 273; 43 L. J. Ch. 425; 22 W. R. 815.

Annotations:—*As to* (1) *Refd.* *Re Diamond Rock Boring Co., Ex p. Shaw* (1877), 2 Q. B. D. 463. *As to* (2) *Foll.* *Ortigosa v. Brown* (1877), 47 L. J. Ch. 168. *Consd.* *France v. Clark* (1884), 26 Ch. D. 257. *Refd.* *Re Tees Bottle Co., Davies' Case* (1876), 33 L. T. 834; *Re Lancaster, Ex p. Lancaster* (1877), 5 Ch. D. 911; *Re Kimberley North Block Diamond Mining Co., Ex p. Wernher* (1888), 58 L. T. 305; *Moore v. North-Western Bank*

(1891), 64 L. T. 456; *Ireland v. Hart*, [1902] 1 Ch. 522. *Generally*, *Mentd.* *Re Keith Prowse*, [1918] 1 Ch. 487.

2327. ——(1) A., the owner of shares, deposited with B. the certificates of his shares & a transfer thereof signed by him, but with the name of the transferee left blank, to secure a previously existing debt. The arts. of assocn. of the co. permitted a transfer of shares to be made by "instrument in writing." The debt remaining unpaid, B. filled in his own name as transferee, & the co. declining to register, applied under 1862 Act, s. 35, to have the register rectified:—*Held*: B. was entitled to have his name on the register.

(2) Where a mtgee. of shares, claiming under a legal title, applies under 1862 Act, s. 35, to have the register of the co. rectified, the ct. may direct an account to be taken of what is due from the mtgor. to the mtgee.; & in the event of the mtgor. declining to take such account within a limited time, will order the mtgee.'s name to be put on the register.—*Re TEES BOTTLE Co., LTD., DAVIES' CASE* (1876), 33 L. T. 834.

Annotation:—*As to* (1) *Foll.* *Ortigosa v. Brown* (1878), 47 L. J. Ch. 168.

2328. — Though purporting to be a deed.]—*ORTIGOSA v. BROWN*, No. 2702, *post*.

2329. Effect of custom of Stock Exchange.—*TAYLER v. GREAT INDIAN PENINSULA RY. Co.*, No. 2337, *post*.

See, generally, CUSTOM & USAGES; STOCK EXCHANGE.

Blank transfers by way of mortgage—Fraudulent mortgage by trustees.—*See* Nos. 2425, 2429, 2699, *post*.

Transfers executed incomplete in form.—*See* Nos. 2075, 2289, 2308, 2310, *ante*.

(b) *Effect as between Parties.*

2330. Estoppel against transferor—Completeness of document.—*Re BALKIS CONSOLIDATED Co., LTD.*, No. 2286, *ante*.

2331. — In favour of *bonâ fide* transferee for value.]—*HOOPER v. HERTS*, No. 2222, *ante*.

2332. — Negligence affording opportunity for forgery.]—Pltf., wishing to sell certain shares of which he was the owner, was induced by his broker to execute a transfer, leaving a blank for the broker to insert the numbers & description of the shares. The broker fraudulently filled up the blank with the numbers & description of other shares belonging to pltf., but in a different co., namely, that of defts., & passed the transfer as a genuine transfer to a purchaser. By the rules of defts.' co. it was necessary to produce certificates of the shares before a purchaser's name could be entered on the register as the holder of the shares. The certificates of the shares in question were kept by pltf. in a box in the broker's custody. The box was locked, & pltf. kept the key. The broker, however, managed to get a duplicate key & stole the certificates, & produced them with the transfer, & the name of the purchaser was registered. In an action by pltf., claiming damages & a mandamus to have his name restored to the register in respect of the shares:—*Held*: pltf. had been guilty of no false representation or culpable negligence such as estopped him from charging that the transfer deed was a forgery.—*SWAN v. NORTH BRITISH AUSTRALASIAN Co.* (1863), 2 H. & C. 175; 2 New Rep.

PART III. SECT. 23, SUB-SECT. 3.— D. (b).

2331 i. Estoppel against transferor—In favour of *bonâ fide* transferee for value.—*WATERHOUSE v. BANK OF IRELAND* (1891), 29 L. R. Ir. 384.—*IR.*
e. *General rule*—*Valid.*—Assign-

ments of shares in a mining co. by blank forms of transfer, are valid as between the parties thereto.—*ATKINSON v. LANSSELL* (1878), 4 V. L. R. 236.—*AUS.*

i. — — —.]—Where the transfer endorsed upon a share certificate

has been duly executed by the registered owner of the shares, the name of the transferee being left blank, delivery of the certificate in that condition by him or by his authority transmits his title to the shares both legal & equitable.—*MACDONALD v. BANK OF*

Sect. 23.—Transfer of shares: Sub-sect. 3, D. (b).]

521; 32 L. J. Ex. 273; 10 Jur. N. S. 102; 11 W. R. 862; 159 E. R. 73, Ex. Ch.

*Annotations:—**Apld.* Johnson v. Credit Lyonnais Co. (1877), 3 C. P. D. 32; Coventry v. G. E. Ry. (1883), 11 Q. B. D. 776; Seton v. Lafone (1887), 19 Q. B. D. 68. *Consd.* Scholfield v. Londesborough, [1896] A. C. 514. *Apld.* Farquharson v. King, [1901] 2 K. B. 697; Bell v. Marsh, [1903] 1 Ch. 528. *Consd.* Longman v. Bath Electric Trams, [1905] 1 Ch. 646; London Joint Stock Bank v. MacMillan & Arthur, [1918] A. C. 777. *Refd.* *Re* Bahia & San Francisco Ry. (1868), L. R. 3 Q. B. 584; Foster v. Mackinnon (1869), L. R. 4 C. P. 704; Hunter v. Walters, Curling v. Walters, Darnell v. Hunter (1871), 7 Ch. App. 75; Halifax Union v. Wheelwright (1875), L. R. 10 Exch. 183; Arnold v. Cheque Bank, Arnold v. City Bank (1876), 1 C. P. D. 578; Dickson v. Reuter's Telegram Co. (1877), 3 C. P. D. 1; Baxendale v. Bennett (1878), 3 Q. B. D. 525; Ortigosa v. Brown (1878), 47 L. J. Ch. 168; Hall v. West-End Advance Co. (1883), Cab. & El. 161; Staple of England (Mayor, etc. of Merchants of) v. Bank of England (1887), 21 Q. B. D. 160; Bank of England v. Vagliano, [1891] A. C. 107; Lewis v. Clay (1897), 77 L. T. 653; Spooner v. Browning Todd & Whish (1897), 77 L. T. 685; Rimmer v. Webster, [1902] 2 Ch. 163; Kepitigalla Rubber Estates v. National Bank of India, [1909] 2 K. B. 1010; Carlisle & Cumberland Banking Co. v. Bragg, [1911] 1 K. B. 489. *Mentd.* France v. Clark (1884), 26 Ch. D. 257; Soc. Générale de Paris v. Walker (1885), 11 App. Cas. 20; Favell v. Wright (1891), 64 L. T. 85; Union Credit Bank v. Mersey Docks & Harbour Board, Union Credit Bank v. Mersey Docks & Harbour Board & North & South Wales Bank, [1899] 2 Q. B. 205; Brandon v. Michelham (1919), 35 T. L. R. 617.

2333. — Transfer indorsed on certificates—

Certificates left in hands of brokers—Priorities on fraudulent dealings by brokers.]—(1) A New York Co. issued to registered shareholders share certificates; each certificate being for ten shares, & on the back being a blank form of transfer, & a blank form of power of attorney to execute a surrender & cancellation of the certificate. The mode of transfer was as follows: the transfer & power of attorney were signed by the registered shareholder. When this blank transfer reached the hand of some holder who desired to be registered his name was filled in by himself or on his behalf, & the certificate was left with the co.; it was then cancelled, the transferee was registered, & a new certificate in his name was issued. In Aug. 1883, the brokers of deft. purchased for him on the market certain shares in the co. The certificates were permitted by deft. to remain with the brokers; who, in Nov. 1883, deposited them with plffs. as security for a large sum borrowed by them from the bank. On Dec. 11, following the bank re-delivered to the brokers the certificates for the shares on the ground that they were desirous of sending them in for registration, & on the same day the brokers filled in the name & address of deft. on the blank transfers & forms of surrender of the same certificates as the person in whose name the shares were to be registered. The new certificates were made out in deft.'s name, & were ready for issue on Dec. 20. The blank transfers on the back of these certificates were never signed by deft. On Dec. 11, when the brokers handed the certificates to the agents of the co. for registration, they received from them a receipt which they then sent to plffs., which receipt plffs. kept till the beginning of Feb. 1884, when having learnt that a member of the firm of brokers had absconded, they sent a clerk to the agents with the receipt, & obtained from them the new certificates for the shares which up to the

commencement of the action remained in the possession.

Plffs. claimed a declaration that they were entitled to the shares:—*Held*: the case did not fall within the principle of estoppel, & deft. was the legal owner of the shares, & entitled to have the new certificates handed to him.

(2) No estoppel can be raised on a document inconsistent with the document itself.

(3) The right principle to adopt with reference to documents such as the certificates with blank transfers duly signed by the registered holders is that each prior holder confers on the *bond fide* holders for value of the certificates for the time being an authority to fill in the name of the transferee, & is estopped from denying such authority & to this extent, but no further, is estopped from denying the title of such holder for the time being.

(4) By delivery an inchoate legal title passes but a title by unregistered transfer is not equivalent to the legal estate in the shares or to the complete dominion over them.—*COLONIAL BANK v. HEF. WORTH* (1887), 36 Ch. D. 36; 56 L. J. Ch. 1089; 57 L. T. 148; 36 W. R. 259; 3 T. L. R. 650.

*Annotations:—**As to* (3) *Consd.* Williams v. Colonial Bank, Williams v. London Chartered Bank of Australia (1888), 38 Ch. D. 388. *Refd.* Fox v. Martin (1895), 64 L. J. Ch. 473.

2334. — — — — —.]—The registered owner of shares in a New York co. held certificates which stated that the shares were held by him & were transferable in person or by attorney on the books of the co. only on the surrender & cancellation of the certificate by an indorsement thereof. The indorsement was in the form of a transfer for value received, blank in the names of the transferor & transferee with a power of attorney in blank to carry out the transfer. On the death of the owner his exors. obtained probate of his will, & in order that the shares might be registered in their own names signed as exors. the transfers on the back of each certificate, without filling up the blanks, & sent the certificates to their broker, who fraudulently deposited the certificates with a bank which took them *bond fide* & without notice as security for advances. The bank retained the certificates & took no steps to obtain registration. By the law of New York such a delivery of signed transfers by the registered owner of shares would estop him from setting up his title against a purchaser for value without notice. But neither on the New York nor on the London Stock Exchange are transfers so signed by exors. treated as being in order or received as sufficient security for advances, unless duly authenticated. The exors. having brought an action against the bank to establish their title to the certificates:—*Held*: since all the dealings with the certificates were transacted in England by persons domiciled there, the respective rights of the exors. & the bank must be determined by English law; the conduct of the exors. in delivering the transfers was consistent either with an intention to sell or pledge the shares or to have themselves registered as the owners, & therefore did not estop them from setting up their title as against the bank, for the bank ought to have inquired into the broker's authority.—*COLONIAL BANK v. CADY & WILLIAMS*,

VANCOUVER (1915), 32 W. L. R. 339; 9 W. W. R. 8; 25 D. L. R. 567; 22 B. C. R. 310.—CAN.

g. — — —.]—Delivery of the share certificates with the transfers executed in blank passes not the property in the shares, but a title legal & equitable which enables the holder to

vest himself with the shares without the risk of his right being defeated by the registered owner or any other person deriving title from the registered owner.—*FAZAL v. MAUGALDAS* (1901), 1 L. R. 46 Bom. 489.—IND.

h. — — —.]—Stamp Act, 1882,

does not vitiate & render void a contract for the sale of shares in the performance of which a blank transfer, void under the Act, has been given, & the transferee is therefore liable to indemnify the transferor against calls.—*HAMILTON v. HULL, FENWICK v. HULL* (1900), 19 N. Z. L. R. 49.—N.Z.

LONDON CHARTERED BANK OF AUSTRALIA v. CADDY & WILLIAMS (1890), 15 App. Cas. 267; 60 L. J. Ch. 131; 63 L. T. 27; 39 W. R. 17; 6 T. L. R. 329, H. L.; *affg.* S. C. *sub nom.* WILLIAMS v. COLONIAL BANK, WILLIAMS v. LONDON CHARTERED BANK OF AUSTRALIA (1888), 38 Ch. D. 388, C. A.

Annotations:—*Consd.* Bentinck v. London Joint Stock Bank, [1893] 2 Ch. 120. *Distd.* Fry v. Smellie, [1912] 3 K. B. 282. *Appld.* Fuller v. Glyn, Mills, Currie, [1914] 2 K. B. 168. *Refd.* Venables v. Baring, [1892] 3 Ch. 527; Fox v. Martin (1895), 64 L. J. Ch. 473; Stern v. R., [1896] 1 Q. B. 211; Montagu v. Weston, Clevedon & Portishead Light Rys. (1903), 19 T. L. R. 272. *Mentd.* Simmons v. London Joint Stock Bank, Little v. London Joint Stock Bank, [1891] 1 Ch. 270; Alcock v. Smith, [1892] 1 Ch. 238; Scholfield v. Lonsborough, [1896] A. C. 514; Bechuanaland Exploration Co. v. London Trading Bank, [1898] 2 Q. B. 658.

2335. ————.]—Pltf. purchased through stockbrokers, & paid for, a number of ordinary shares in a co. The certificates delivered by the vendor to the brokers bore on the back transfers signed in blank by the vendor as the registered holder. Pltf. left the certificates in the possession of his brokers, & on their advice consented to the shares remaining registered in the name of the vendor. Pltf. knew that certificates indorsed as these were, could be transferred to & registered in the name of another person without any act on the part of pltf. The brokers subsequently, without the knowledge or consent of pltf., deposited the certificates with deft. bank as security for advances made by the bank to them, & the shares were registered, at the request of the brokers, in the names of the bank's nominees. The brokers subsequently defaulted, owing a sum to deft. bank largely in excess of the value of the shares. Pltf. brought this action against deft. bank to recover the shares so deposited by the brokers with them:—*Held*: pltf. was estopped from claiming the certificates from deft. bank who had taken them in good faith & for value.—FULLER v. GLYN, MILLS, CURRIE & CO., [1914] 2 K. B. 168; 83 L. J. K. B. 764; 110 L. T. 318; 30 T. L. R. 162; 58 Sol. Jo. 235; 19 Com. Cas. 186.

2336. ———— Blank transfer affording opportunity for forgery.]—*Re* NORTH BRITISH AUSTRALASIAN CO., LTD., *Ex p.* SWAN, No. 1342, *ante*.
See, also, No. 2702, *post*.

2337. Position of transferee—As to title—Title derived through intermediate party.]—(1) The holder of 120 £20 shares in a co. having afterwards become entitled to sixty additional £2 shares, instructed his broker to sell the latter. The broker obtained from him blank transfers with stamps sufficient to pass the £20 shares, & filled in the blanks for the descriptions of the shares with those of the £20 shares, leaving the names of the transferees in blank. The shares were purchased by jobbers, the blanks for the names of the transferees remaining in blank, which appeared to be a common course of dealing. The jobbers after-

wards sold them, & filled in the name of the ultimate purchaser:—*Held*: the transfer in blank was void, & the first-mentioned holder was entitled to have the shares delivered up, & their registration in the name of the purchaser restrained.

(2) The practice of the Stock Exchange for a broker to deliver deeds of transfers in blank cannot prevail against the rule of law.—TAYLER v. GREAT INDIAN PENINSULA RY. CO. (1859), 4 De G. & J. 559; 28 L. J. Ch. 709; 33 L. T. O. S. 361; 5 Jur. N. S. 1087; 7 W. R. 637; 45 E. R. 217, L. JJ.

Annotations:—*As to* (1) *Consd.* Swan v. North British Australasian Co. (1863), 2 H. & C. 175. *Distd.* Hawkins v. Maltby (1867), 3 Ch. App. 188. *Consd.* France v. Clark (1884), 26 Ch. D. 257. *Refd.* *Re* North British Australasian Co., *Ex p.* Swan (1859), 7 C. B. N. S. 400; Soc. Générale de Paris v. Walker (1885), 11 App. Cas. 20. *Generally, Mentd.* Hunter v. Walters, Curling v. Walters, Darnell v. Hunter (1870), L. R. 11 Eq. 292; *Re* Queensland Land & Coal Co., Davis v. Martin (1894), 71 L. T. 115.

2338. ————.]—(1) F., a registered owner of shares in a co., transferable without seal, deposited the certificates of his shares, with an instrument in form of a deed of transfer signed by himself, but blank as to the date, the consideration, & the name of the transferee, with C. to secure a loan of £150; & C., without the knowledge of F., afterwards deposited the certificates & blank transfer with Q. to secure the repayment of £250. Q. inserted the date & his own name as transferee in the transfer:—*Held*: C. was in the position of an equitable mtgee. of the shares, & could only transfer to Q. such rights as he himself had against F.; the blank transfer when taken by Q. from C. conferred no legal authority upon him, & he had no authority from pltf. to insert his own name as transferee; &, on payment of £150 & interest, F. was entitled to have the shares re-transferred to him.

(2) There is no evidence that, as a matter of fact, blank transfers, accompanied by certificates of shares registered in the names of transferors, pass from hand to hand like negotiable instruments (LORD SELBORNE, C.).—FRANCE v. CLARK (1884), 26 Ch. D. 257; 53 L. J. Ch. 585; 50 L. T. 1; 32 W. R. 466, C. A.

Annotations:—*As to* (1) *Consd.* Powell v. London & Provincial Bank, [1893] 2 Ch. 555. *Folld.* Fox v. Martin (1895), 64 L. J. Ch. 473. *Consd.* Montagu v. Weston Clevedon, & Portishead Light Rys. (1903), 19 T. L. R. 272. *Distd.* Fry v. Smellie, [1912] 3 K. B. 282. *Refd.* Hutchison v. Colorado United Mining Co. & Hamill, Hamill v. Lilley (1886), 3 T. L. R. 265; Moore v. North Western Bank (1891), 64 L. T. 456; Faulks v. Atkins (1893), 10 T. L. R. 178. *As to* (2) *Refd.* Williams v. Colonial Bank, Williams v. London Chartered Bank of Australia (1888), 38 Ch. D. 388; Simmons v. London Joint Stock Bank, Little v. London Joint Stock Bank (1890), 39 W. R. 449; Watkin v. Lamb (1901), 85 L. T. 483. *Generally, Mentd.* Easton v. London Joint Stock Bank (1886), 55 L. T. 678; London & Midland Bank v. Mitchell, [1899] 2 Ch. 161; Herdman v. Wheeler, [1902] 1 K. B. 361; Lloyds Bank v. Cooke, [1907] 1 K. B. 794; Stubbs v. Slater & Bond (1910), 102 L. T. 444; Macmillan v. London Joint Stock Bank, [1917] 2 K. B. 439.

2339. ————.]—HUTCHISON v. COLORADO UNITED MINING CO. & HAMILL, HAMILL v.

2337 i. Position of transferee—As to title—Title derived through intermediate party.]—Shares in the National Bank were sold by the allottee, & a transfer in the form required by the arts. of assocn. of the Bank was executed, but no name was inserted as transferee. The purchaser pledged them with the I. P. L. & China Bank, & deposited with them the blank transfer. This bank applied to the National Bank without producing a letter from the pledgor to register their lien, & on its refusal sold the shares to pltf., & delivered to him the transfer, also in blank. Pltf. inserted his own name in the transfer, & requested the National

Bank to register the shares in his name. In an action against the National Bank to recover the price of the shares:—*Held*: they were justified in refusing to register, & pltf., having received back from his vendors the price of his shares, had no cause of action.—KNOWLES v. NATIONAL BANK OF INDIA (1869), 2 B. L. R. 158.—IND.

2337 ii. ————.]—A. deposited with a bank a blank transfer of railway stock, indorsed: "Transfer & certificate for stock in co.'s office." A. afterwards received from the co. a certificate for the stock & lodged it with B., together with a blank transfer. More than a year afterwards C., to

whom B. had sold the stock, & the bank, apprehending the failure of A., filled up their respective transfers, & lodged them with the co. for registration. The co. refused to register either transfer. C. brought an action against the bank to establish his right to be registered as the owner of the stock:—*Held*: the bank was guilty of negligence, under the circumstances in leaving the certificate outstanding, & by this negligence allowed A. to represent himself as the owner of the stock & therefore C. had a superior equity to the stock.—KELLY v. MUNSTER & LEINSTER BANK (1890), 29 L. R. Ir. 19.—IR.

Sect. 23.—Transfer of shares: Sub-sect. 3, D. (b) & E.; sub-sects. 4 & 5, A.]

LILLEY (1886), 3 T. L. R. 265, C. A.; *affy.* S. C. *sub nom.* HAMILL v. LILLEY, LILLEY v. HAMILL & COLORADO UNITED MINING Co., 2 T. L. R. 596.

2340. ——— Right of transferor to restrain registration.]—Pltf., the registered owner of shares in a limited co., instructed a broker to sell the same, & for that purpose delivered to him the share certificate & a blank transfer signed by pltf. The arts. of the co. did not require a deed. The broker improperly deposited the blank transfer & certificate with deft. as security for his own debt. Deft. afterwards filled up the blank transfer with the date, consideration, & name of transferee, & sent it for registration to the office of the co., where it lay for more than a fortnight without being registered. The co. had then no notice of any invalidity in the transfer, & had no power under the arts. to refuse to register the transfer. Pltf. on discovering the facts brought this action to restrain registration & establish his title to the shares:—*Held*: deft. had acquired no title to the shares as against pltf.; &, therefore, deft. had no inchoate title which was capable of being treated as completed by registration according to the doctrine that an unconditional right to have a transfer registered may be equivalent to actual registration.—FOX v. MARTIN (1895), 64 L. J. Ch. 473.

Annotation:—*Reid.* Fry v. Smellie, [1912] 3 K. B. 282.

—— **Agreement to take transfer of fully-paid shares—Transfer filled up with unpaid shares.]—**See No. 2450, *post*.

2341. ——— Transfers completed & dated after bankruptcy of transferor.]—A holder of shares in a co. instructed his broker to sell them, which the broker did, & handed to the purchaser transfers executed by the shareholder but with blanks for the dates & the name of the transferees. The purchaser on receiving the transfers paid the purchase-money, & subsequently resold some of the shares & filled up the transfers with the names of the sub-purchasers & the dates of the sub-purchases. In the interval the original vendor had been adjudicated bkpt. & the co. on that account declined to register the transfers so filled up. On a bill filed by the original purchaser against bkpt.'s assignees they were ordered to transfer the shares. The co. was formed under 1844 Act, but the original purchaser, who was himself a transferee of the shares, had not been registered in respect of them:—*Held*: he was not

by that omission precluded from transferring them; sect. 24 of the Act, notwithstanding generality of its language, being restricted subscribers & not applying to actual shareholders.—MORRIS v. CANNAN (1862), 4 De G. F. & 581; 31 L. J. Ch. 425; 6 L. T. 521; 8 Jur. N 653; 10 W. R. 589; 45 E. R. 1310, L. C.

Annotation:—*Consd.* Murray v. Bush (1873), L. R. 6 H 37.

2342. ——— Certificates & transfer pledged agent of transferor—Whether sub-mortgagee affected with notice.]—SHEFFIELD (EARL) v. LOND JOINT STOCK BANK, No. 2671, *post*.

2343. Liability for calls.]—HUMBLE v. LANGSTON, No. 2070, *ante*.

Blank transfer entrusted to agent to obtain certain loan—Agent not following instructions: Position of lender.]—See AGENCY, Vol. I., p. 3 No. 381.

E. Alteration of Transfer.

After execution by vendor.]—See Nos. 2308, 2310, *ante*, No. 8088, *post*.

SUB-SECT. 4.—RIGHTS AND DUTIES OF TRANSFEROR AND TRANSFEE.

2344. Inter se—After registration of transfer Both in class B. of contributories.]—Pltf., a holder of certain shares in a limited co., transferred them to deft., who transferred them to M. The co. was ordered to be wound up, & a call of £40 a share was made on the contributories in Class A., being the existing members, amongst whom M. was placed; these, including M., being unable to pay the call, & deft. were placed upon the list of contributories in Class B, as past members, under 1862 Act, s. 38; & deft. was ordered in Mar., 1867, to pay a call of £40 per share. Deft. had executed a deed of insolvency under Bankruptcy Act, 1861 (c. 134), s. 192, which was duly registered Dec. 1867. The liquidator of the co. proved for the amount of calls against deft.'s estate, but a part was paid, & pltf. having paid a sum in compromise of the money remaining due on the shares sued deft. for the amount:—*Held*: deft. was liable to indemnify pltf. against calls made after deft. had transferred his interest to M.; & the claim of pltf. was not provable under Bankruptcy Act, 1861 (c. 134), s. 153, & deft.'s deed therefore afforded no defence.—KELLOCK v. ENTHOVE (1874), L. R. 9 Q. B. 241; 43 L. J. Q. B. 90; 1

PART III. SECT. 23, SUB-SECT. 4.

k. Duty of transferor — Must see that his name is removed from register.]—Upon an application by H. to have his name removed from list of contributories:—*Held*: it was the duty of H. as transferor to see that his name was removed from register & that the co. was not bound by act of the secretary in sending notices to C. & that the co. had not accepted C. as a member in respect of these shares & there being no negligence or default on part of C., H. was rightly placed on list of contributories.—*Re* CHATSWORTH ESTATE CO., LTD., *Re* CLARKE, *Ex p.* HARTNELL (1892), 18 V. L. R. 442.—AUS.

l. Right of original shareholder — After transfer of shares—To take up new shares in company—No express reservation of right by transferor.]—The registered holder of 100 shares in a co. agreed on Oct. 1, 1913, to sell them to a purchaser. The co. had on Sept. 18, 1913, passed a resolution for the issue of new shares, the arts. of assocn. of

the co. providing that such new shares should be offered, in the first instance, to existing shareholders. This resolution required confirmation, which was done on Oct. 2, 1913:—*Held*: as there did not appear to have been any express reservation by the vendor of the right to take up the new shares, this right passed to the purchaser.—SPENCE v. MITCHELL (1914), 14 S. R. N. S. W. 121.—AUS.

m. Registered holder not vendor — Implied warranty of title.]—When shares in a joint-stock co. are sold for cash & a certificate delivered with a form of transfer indorsed purporting to be signed by the registered holder who is not the vendor, the latter must be taken to affirm that he has vested in him, by virtue of such certificate & transfer, a title which will enable the purchaser to be registered as the holder.—CASTLEMAN v. WAGHORN, GWYNN & CO. (1908), 13 B. C. R. 351; *reversd.* 41 S. C. R. 88.—CAN.

n. Neglect of transferee & com-

pany—Right of transferor to apply for rectification.]—The transferor has statutory right to apply for rectification if the transferee & the co. neglect their obvious duty in the matter.—UNION INDIAN SUGAR MILLS CO. v. JAI DEO (1921), I. L. R. 44 All. 151.—IND.

o. Shares not properly transferred by registration only—Instrument of transfer must be registered.]—A., shareholder in a co. under Companies Act, 1882, transferred his shares to B. The co. refused to register the transfer. On a summons to the co. for the rectification of the register, A. obtained an order of the ct. for the registration of the transfer, but the transfer not being presented again for registration A.'s name remained on the register. A. subsequently, while absent from New Zealand, was adjudged bkpt. the Official Assignee without notice of the transfer or order paid calls, sold the shares, & afterwards, having had notice of both transfer & order, sold

L. T. 68; 22 W. R. 322, Ex. Ch.; *affg.* (1873), L. R. 8 Q. B. 458.

Annotations:—*Reid*. *Dent v. Nickalls* (1873), 29 L. T. 536. *Mentd.* *Robinson v. Mollett* (1875), L. R. 7 H. L. 802.

— Before registration of transfer.]—*See* Sub-sect. 2, C., *ante*.

— Indemnity in respect of calls.]—*See* Sect. 21, sub-sect. 4, *ante*.

— Transfer executed in blank.]—*See* No. 2222, *ante*.

— Transfer by operation of law—Bankruptcy.]—*See* No. 2637, *post*.

— Defective transfer.]—*See* No. 2303, *ante*.

— Right to dividend.]—*See* No. 2224, *ante*.

As between transferee & company—Completion of transfer.]—*See* Nos. 2243, 2292, *ante*.

2345. As between transferee & third party—Before registration.]—*SOCIÉTÉ GÉNÉRALE DE PARIS v. WALKER*, No. 2325, *ante*.

SUB-SECT. 5.—CONSENT OR APPROVAL OF DIRECTORS.

A. Apart from Special Powers.

2346. Power of directors apart from articles—General rule.]—A., B., & C. agreed to transfer shares in a co. to D., who was known to be a pauper & unable to pay calls, & though the arts. of assocn. gave the directors no discretion to refuse transfers except where the transferee was a debtor to the co., the directors refused to register the shares:—*Held*: notwithstanding the absence of any provision to that effect, the directors had an inherent discretion to refuse transfers, & a motion to compel the directors to register the transfers was refused with costs.—*Re NATIONAL MARINE INSURANCE CO., PARKER'S CASE* (1867), 15 W. R. 974; *affd.* on other grounds, 2 Ch. App. 685, L. J.

2347. ———.]—The directors of a co. have no discretionary power, independently of powers expressly given to them by the arts. of assocn., to refuse to register a transfer which has been *bond fide* made. Therefore where a transferee gave an address at which he was only an occasional visitor:—*Held*: the directors were bound to register the transfer, although the co. was at the time in difficulties, & the shares were sold by the transferor in order to get rid of his responsibility.—*Re SMITH, KNIGHT & CO., WESTON'S CASE* (1868), 4 Ch. App. 20; 38 L. J. Ch. 49; 19 L. T. 337; 17 W. R. 62, L. J.

Annotations:—*Consd.* *Moffatt v. Farquhar* (1878), 7 Ch. D. 591. *Reid*. *Re National Provincial Marine Insco., Gilbert's Case* (1870), 5 Ch. App. 559; *Re Taurine Co.* (1883), 25 Ch. D. 118; *Re Discoverers Finance Corp., Lindlar's Case*, [1910] 1 Ch. 312. *Mentd.* *Re Contract Corp.* (1871), 6 Ch. App. 145; *Re Imperial Land Co. of Marseilles, Ex p. Colborne & Strawbridge* (1871), L. R. 11 Eq. 478;

to C. the residue of the estate with the right to recover back the calls paid:—*Held*: shares under Companies Act do not pass simply by registration, but by registration of an instrument of transfer; & the order implied that the transfer was to be re-presented, & not having been done the co. were not in a position to rectify; there was no duty on the part of the co. to inform the Official Assignee of the transfer or order; & C. could not recover back the calls paid.—*SMITH v. WELLINGTON WOOLLEN MANUFACTURING CO., LTD.* (1888), 6 N. Z. L. R. 654.—N.Z.

PART III. SECT. 23, SUB-SECT. 5.—A.

p. Power of directors to refuse to register shares—Must be exercised in good faith.]—Directors of a co. in exercising their power of refusal to register transfer of shares, must

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exercise it in good faith & with due regard to transferor's right of property in the shares, & rights of the transferee, & must fairly consider question of transferee's fitness.

In an application under Companies Act, 1899, s. 232, to compel directors of co. to register transfer, appct. must satisfy ct. there is no sufficient reason of directors to refuse. The ct. may in absence of direct evidence on point draw inferences of fact from circumstances surrounding refusal, & if reasons inferred are improper or insufficient, may direct co. to register.—*NEW LAMBTON LAND & COAL CO., LTD. v. LONDON BANK OF AUSTRALIA, LTD.* (1904), 1 C. L. R. 524.—AUS.

q. ———.]—A co. incorporated under 27 & 28 Vict. c. 23, has not power to refuse to allow a transfer of shares of its stock without assigning

Re McColla, Ex p. McLaren (1881), 16 Ch. D. 534; *Re British Burmah Land Co.* (1888), 4 T. L. R. 631; *Re London Dry Docks Corp.* (1888), 39 Ch. D. 306; *Re Roundwood Colliery Co., Lee v. Roundwood Colliery Co.*, [1897] 1 Ch. 373.

2348. ———.]—*Re NATIONAL PROVINCIAL MARINE INSURANCE CO., GILBERT'S CASE*, No. 2037, *ante*.

2349. Grounds for refusing—Bankrupt shareholder—Indebted to company.]—*MELIORUCCHI v. ROYAL EXCHANGE ASSURANCE CO.* (1728), 1 Eq. Cas. Abr. 8; 21 E. R. 833, L. C.

Annotation:—*Mentd.* *Ryall v. Rowles* (1750), 1 Ves. Sen 348.

Lien on shares generally, *see* Sect. 22, *ante*.

2350. ——— Transfer by unregistered assignee.]—B., on account of some shares which he held in a defunct co., was entitled to an allotment of shares in a new co., formed to take over the business of the defunct co. An allotment of shares was accordingly made to him, upon condition that he paid one shilling per share on the shares so allotted. He never made the payment, & the directors of the co. forfeited his shares. Before this was done, B. became a bkpt. He gave up the certificates of his old shares to the assignee, & was then told that they were worthless, but he did not inform the assignee of his right to have shares in the new co. After B. had obtained his order of discharge, the directors again made him an allotment of shares in the new co., one of the directors paying the one shilling per share for B. out of his own pocket. More than two years afterwards, the new co. having become a flourishing concern, the assignee transferred these shares for value to R. The shares being registered in B.'s name, & the certificates being in his possession, the co. refused to register the transfer. On motion by R. to compel them to do so, the assignee making no complaint of what had been done:—*Held*: the co. was justified in its refusal.—*Re MINERVA UNION MINING CO.* (1866), 13 L. T. 791; 14 W. R. 276.

2351. ——— Refusal by transferor to leave certificate.]—*Re EAST WHEAL MARTHA MINING CO.*, No. 2411, *post*.

See generally, Sub-sect. 6, *post*.

2352. ——— Transferee a pauper.]—*Re NATIONAL MARINE INSURANCE CO., PARKER'S CASE*, No. 2346, *ante*.

Transfers to paupers to avoid liability, *see, generally*, Sub-sect. 13, B. (b), *post*.

2353. ——— Transfer not executed by transferee—Practice of company.]—*Re IMPERIAL MERCANTILE CREDIT ASSOCN., MARINO'S CASE*, No. 2293, *ante*.

2354. ——— Temporary address given for transferee.]—*Re SMITH, KNIGHT & CO., WESTON'S CASE*, No. 2347, *ante*.

a sufficient reason therefor.—*Re SMITH v. CANADA CAR CO.* (1873), 6 P. R. 107.—CAN.

r. ———.]—In the absence of special provision in the special Act of incorporation of a Dominion Co. (Dominion) Companies Act, incorporated in the special Act, does not give the directors of the co. power to place any restrictions other than those set forth in sects. 138, 143, 145, & 146 of the Act, upon the transfer & registration of shares, & a bye-law authorising the directors to refuse to register any transfer without reason:—*Held ultra vires*.—*HUTCHINGS v. GREAT WEST PERMANENT LOAN CO.*, [1917] 2 W. W. R. 513.—CAN.

s. ———.]—B., a shareholder duly registered having paid one call transferred his shares to L., an infant, & the co. refused to register such

B B

Sect. 23.—Transfer of shares: Sub-sect. 5, A. & B.
(a) & (b) i.]

2355. — Transferee a bankrupt.]—A co. cannot refuse to register a transfer of shares to a bkpt. director on the ground that, if registered, the shares will pass to the trustee in bkpcy.—**SUTTON v. ENGLISH & COLONIAL PRODUCE CO.**, [1902] 2 Ch. 502; 71 L. J. Ch. 685; 87 L. T. 438; 50 W. R. 571; 18 T. L. R. 647; 9 Mans. 101.

Annotation:—Mentd. *Boschoek Proprietary Co. v. Fuke*, [1906] 1 Ch. 148.

2356. — Consideration understated—Stamp insufficient for true consideration.]—A transfer to pltf. of shares in deft. co. was presented for registration. The stamp on the transfer was in accordance with the consideration stated on the face of it, but it was discovered that the consideration so stated was less than that which had been given. The directors thereupon refused to register the transfer. In an action to recover damages arising out of the refusal:—**Held**: since a transfer not duly stamped according to law would not, by reason of Stamp Act, 1891 (c. 39), s. 14 (4), be available in a ct. of law either to enforce rights of the co. against the transferee, or to justify an alteration of the register of shareholders, the directors were entitled to refuse to register the transfer, & in determining whether the transfer was duly stamped they were entitled to go behind that which appeared on the face of the document.—**MAYNARD v. CONSOLIDATED KENT COLLIERIES CORPN.**, [1903] 2 K. B. 121; 72 L. J. K. B. 681; 88 L. T. 676; 52 W. R. 117; 19 T. L. R. 448; 47 Sol. Jo. 513; 10 Mans. 386, C. A.

Annotation:—Refd. *Indo-China Steam Navigation Co.*, [1917] 2 Ch. 100.

2357. — Transfer assumed to be breach of trust.]—A co. is not justified in refusing to register a transfer of shares on the assumption that it would be a breach of trust. The proper course is for the co. to give notice to the person objecting to the transfer that unless he takes legal proceedings within a limited time to prevent the registration the co. will proceed to register the transfer.—**GRUNDY v. BRIGGS**, [1910] 1 Ch. 444; 79 L. J. Ch. 244; 101 L. T. 901; 54 Sol. Jo. 163; 17 Mans. 30.

Annotation:—Mentd. *Mackereth v. Wigan Coal & Iron Co.*, [1916] 2 Ch. 293.

B. Under Special Powers conferred by Articles.

(a) In General.

2358. Whether article requiring consent valid—Article conferring lien on shares.]—BANK OF

transfer. B. applied for mandamus:—Held: the co. should not be compelled to register a transfer which might be repudiated hereafter by the transferee.—**R. v. MIDLAND COUNTIES & SHANNON JUNCTION RY. CO.** (1862), 15 I. C. L. R. 514.—**IR.**

t. — Adverse interest alleged—Person alleging should bring interdict.]—Where a public co. is called upon to register a transfer of stock & receives an objection to the registration from a person alleging an adverse interest their proper course is to call upon the objector to bring an interdict, & failing that to proceed to register.—**SHAW v. CALEDONIAN RY. CO.** (1890), 17 R. (Ct. of Sess.) 466; 27 So. L. R. 429.—**SCOT.**

PART III. SECT. 23, SUB-SECT. 5.—
B. (a).

a. Whether article requiring consent valid—Directors must act in good faith.]—A provision in the charter of a co. incorporated under Ontario Cos. Act, that "the shares of the co. shall not be transferred without the consent

of the board of directors" is valid. If the directors' consent to a transfer is necessary & in giving or refusing it they act *bona fide* with a view to protecting the interests of the co., the exercise of their discretion will not be interfered with; the *onus* of proving they have acted improperly is on the person complaining of their conduct.—**Re PHILLIPS & LA PALOMA SWEETS, LTD.** (1921), 51 O. L. R. 125.—**CAN.**

b. —.]—The holder of fully-paid shares in a limited co., & also of partly-paid shares on which a call was due, transferred the fully-paid shares to a third party for onerous consideration. The transferee presented the transfer for registration, & according to the existing regulations of the co. was then entitled to be put on the register. Thereafter the co., by special resolution duly confirmed, & for the purpose of defeating this application altered the arts. of assocn. to the effect of giving the co. a lien on all shares registered in the name of a member for all calls due on any shares registered in the name of such member,

AFRICA v. SALISBURY GOLD MINING CO., No. 2187, *ante*.

See, generally, Sect. 22, ante.

2359. Whether dispensed with—Usual practice of company—Transfer registered.]—BARGATE v. SHORTRIDGE, No. 2378, *post*.

2360. —.]—By the deed of settlement & charter of a bank it was provided that, upon a transfer of shares taking place, seven days' previous notice in writing of the proposed transfer, specifying the various particulars, should be given to the directors before any transfer could be made & that after the consent of the directors had been given, the transfer should be executed & delivered to the secretary to be registered, whereupon a new certificate was to be delivered to the transferee. The co. had departed from this form, & the usual practice had been for the secretary to deliver out a blank form of transfer without any previous notice, & when returned, filled up & executed, it was registered, & new certificates handed to the transferee. Certain shareholders who had executed the transfer, but whose transfers had not been registered, objected to being placed upon the list of contributories, on the ground that the consent of the directors had been practically dispensed with in all previous transfers:—**Held**: although the seven days' notice had been waived for the sake of facilitating transfers, the consent of the directors was necessary, which consent was proved by the registry on the books of the co.; & consequently, the objecting shareholders were liable as contributories.—**Re ROYAL BRITISH BANK, Ex p. WALTON, Ex p. HUE** (1857), 26 L. J. Ch. 545; 29 L. T. O. S. 322; 3 Jur. N. S. 853; 5 W. R. 637.

Annotation:—Refd. *Remfry v. Butler* (1858), E. B. & E. 887.

2361. — Liquidation begun before transfer lodged for approval.]—Where the arts. of assocn. of a co. provided that no transfer of shares should be registered unless executed by the transferor & transferee, or unless the transferee had been approved by the board of directors, & a transfer was made after the stoppage of the co. & the commencement of the winding up, & such transfer was executed by the transferor only, but owing to the winding up was not brought before the directors for their approval; upon application of transferor to be removed from the register of shareholders, & that the transferee's name might be inserted in lieu thereof:—**Held**: the ct. could not dispense with the directions contained in the arts., & the transfer not having been registered or submitted to the directors for their approval, the

& refused to register the transfer until the call due on the partly-paid shares had been paid. In a petition for rectification of the register:—**Held**: the right of the transferee to be put on the register was not affected by the resolution passed subsequent to the date of the transfer, he was in the same position as on the date when the transfer was presented for registration, & he was entitled to be put on the register accordingly.—**M'ARTHUR (W. & A.), LTD. (LIQUIDATOR) v. GULF LINE, LTD.**, [1909] S. C. 732; 46 So. L. R. 497; 1 S. L. T. 279.—**SCOT.**

c. Construction of articles—Restriction on transfer.]—The arts. of assocn. of a limited co. contained the following arts.: Art. 12. The directors may, after Dec. 31, 1888, without assigning any reason therefor, decline to register any successor to a deceased member other than a purchaser. Art. 13. The directors may from the commencement of the co., in like manner, decline to register any successor to a bkpt. member, or any transfers of shares to purchasers or others.

transferor's name must remain on the list of shareholders.—*Re OVEREND, GURNEY & Co., WALKER'S CASE* (1866), L. R. 2 Eq. 554; 35 L. J. Ch. 826; 15 L. T. 32; 31 J. P. 4; 14 W. R. 1008.

Annotations:—*Consd. Re Imperial Mercantile Credit Assocn., Marino's Case* (1867), 15 W. R. 557. *Distd. Re Overend, Gurney, Ward & Garfitts' Case* (1867), L. R. 4 Eq. 189.

2362. — Director refusing to attend to form quorum.—The arts. of assocn. of a private co. provided that no share should be transferred to any person not already a member without the consent of the directors. There were two directors only, E. & P., E. being the chairman & having in that character a casting vote. The quorum necessary for the transaction of business was two. E. without first having obtained the consent of the board, executed transfers of some of his shares to persons not already members of the co., & sent the transfers to the co. for registration. P. purposely refused to attend board meetings summoned to consider the transfers in order to prevent a quorum being formed. On an application by the transferees under 1908 Act, s. 32:—*Held*: (1) the arts. did not require the directors' consent to be obtained before the execution of the transfers & the transfers therefore were not inoperative documents though they had no legal effect till the consent of the directors had been obtained & registration effected; (2) P. could not by wilfully refusing to attend board meetings prevent the transfers from being registered & the transferees under the circumstances were entitled to an order directing the co. to register the transfers.—*Re COPAL VARNISH CO., LTD.*, [1917] 2 Ch. 349; 87 L. J. Ch. 132; 117 L. T. 508.

Annotation:—*Generally, Mentd. Re Keith Prowse*, [1918] 1 Ch. 487.

2363. Whether condition waived — Delay in registration.—The directors of a co., by a clause in the arts. of assocn., had power to refuse to register any transfer to an irresponsible transferee:—*Held*: it being a condition precedent to the transfer, that the transferee should be a responsible person, undue delay in registering a transfer left for registration was no waiver of such condition.—*Re JOINT STOCK DISCOUNT CO., SHIPMAN'S CASE* (1868), L. R. 5 Eq. 219; 37 L. J. Ch. 193; 16 W. R. 354.

Annotations:—*Consd. Union Debenture Co. v. Fletcher*

Art. 14. If such declinature is made as above provided for, the co. shall be bound to purchase the shares in question at the price at which they were valued under sect. 61 of these arts. In an action brought by the widow & extrix. of a person who held certain partly paid-up shares against the co. for declarator that the co. were bound to register her as owner of the shares, the co. in defence founded on art. 12 as entitling them to decline to register the pursuer, but offered to find a purchaser of the shares at the valuation under art. 61. Pursuer maintained that art. 12 was qualified by art. 14, & that as the co. could not legally purchase the shares art. 12 was inoperative:—*Held*: art. 14 did not qualify art. 12 by a condition, but merely created an obligation which could not be enforced, & defenders were entitled under art. 12 to refuse to register the pursuer.—*MOIR v. DUFF & Co.* (1900), 2 F. (Ct. of Sess.) 265; 37 Sc. L. R. 985.—SCOT.

d. —.]—The widow of a shareholder whose estate consisted almost entirely of his shares in the co. having repudiated his settlement & claimed her legal rights intimated to his exors., who had been registered as holders of his shares that she was willing & desired to take out one-third

of the shares *pro tanto* in satisfaction of her *jus relictæ* provided she could be registered as a shareholder. The directors having refused to register the transfer in the widow's favour of one share which the exors. had executed, for the purpose of having the question determined, the widow raised an action against the directors for decree ordaining them to register the transfer. The widow was one of the original shareholders of the co. & was on the register as the holder of one share. Pursuer maintained that she was entitled to registration *de plano* under art. 37 as being "a person becoming entitled to a share or shares in consequence of the death of a member"; alternatively, if her rights depended on art. 33 pursuer maintained that she was entitled to registration in respect that the director's refusal to register was corrupt & fraudulent, & in any case that the valuation made by the directors under art. 113, at which valuation they found a purchaser, was far below the true value of the shares:—*Held*: (1) pursuer's rights were regulated by art. 33 & not by art. 37; (2) defenders in refusing to register pursuer's transfer had not acted corruptly or capriciously & their valuation of the shares was not unreasonable.—*STEWART v. KEILLER*

(1895), 59 J. P. 708. *Reid. Re Hercules Insee., Lowe's Case* (1870), L. R. 9 Eq. 589. *Mentd. Re Mercantile Trading Co., Ex p. Official Liquidator, Stringer's Case* (1869), 20 L. T. 591.

See, also, No. 2233, ante.

Duty to obtain.—*See Sub-sect. 2, C. (b), ante.*

(b) Exercise of Power.

i. In General.

2364. How to be exercised—With a view to securing proper transferees—Not for purposes of a compromise.—(1) By the deed of settlement of a joint-stock co., it was provided that a shareholder who wished to sell his shares must give notice to the directors, stating the name & address of the proposed transferee; that the directors should then take the matter into consideration, & signify their approval or disapproval of the transfer, & that in case of their approval the transfer might be completed. A., the lessor of mines held by the co., had a large claim for rent, & his son B. had also a large demand against the co. Dissensions having arisen in the co., a large body of shareholders wished to retire, & an arrangement was come to between them & the directors that they should be allowed to transfer their shares to B. & another person on paying £9,000 for the use of the co. This arrangement was carried out, & the shares were regularly transferred; & as a part of the same transaction, A. & B. executed deeds for releasing the retiring shareholders from all liability in respect of their demands:—*Held*: the power given to the directors of consenting to a transfer of shares was to be exercised with regard to the circumstances of each transfer, with a view to securing proper transferees, & could not be exercised for the purpose of carrying out a compromise, by which a body of dissatisfied shareholders were to be let out of the co.; the transfers in question were therefore not binding on the co., & the transferors were properly placed on the list of contributories.

(2) Directors of a public co. are trustees for the shareholders, & their private interests must yield to their public duty whenever they are conflicting.—*Re CAMERON'S COALBROOK STEAM COAL & SWANSEA & LOUGHER RY. CO., BENNETT'S CASE* (1854), 5 De G. M. & G. 284; 2 Eq. Rep. 973; 24

(JAMES) & SONS, LTD. (1902), 4 F. (Ct. of Sess.) 657; 39 Sc. L. R. 353.—SCOT.

PART III. SECT. 23, SUB-SECT. 5.— B. (b) i.

e. *Shares not fully paid-up — Articles providing that no transfer be made to a bankrupt—Transfer to insolvent not a bankrupt—Whether valid.*—*FURNESS & Co. v. CYNTHIANA S.S. CO., LTD.* (1893), 21 R. (Ct. of Sess.) 239; 31 Sc. L. R. 189; 1 S. L. T. 365.—SCOT.

f. *Refusal to register — Applies to voluntary transfer only.*—(1) A provision in arts. of assocn. of a joint-stock co., that the co., in certain events, may decline to register a transfer of shares, applies only to a voluntary transfer, not to a transfer *in invitum*.

(2) A transfer of a share in a joint-stock co., by a bailiff of a county ct., under an execution sale entitled the transferee to be registered as a shareholder, notwithstanding an art. of assocn. that no shareholder shall transfer without first offering his shares to the co.

(3) An art. of assocn. empowering a joint-stock co. to decline to register a transfer of shares made by a member

Sect. 23.—Transfer of shares: Sub-sect. 5, B. (b) i. & ii., & (c) i.]

L. J. Ch. 130; 23 L. T. O. S. 122; 2 W. R. 448; 43 E. R. 879, L. JJ.

Annotations:—As to (1) *Distd. Re London & County Assce., Jessop's Case* (1858), 2 De G. & J. 638; *Re Agriculturists' Insce., Brotherhood's Case* (1862), 31 Beav. 365.

See, also, Nos. 2367, 2368, *post*.

2365. — Reasonably.]—By the deed of settlement of a banking co. it was declared that no person should be entitled to become a transferee of a share unless he was approved by the ct. of directors:—*Held*: the ct. must exercise its power reasonably, & would be controlled by a Court of Equity.—*ROBINSON v. CHARTERED BANK* (1865), L. R. 1 Eq. 32; 35 Beav. 79; 13 L. T. 454; 14 W. R. 71; 55 E. R. 824.

Annotations:—*Expld. Re Gresham Life Assce. Soc., Ex p. Penney* (1872), 8 Ch. App. 446. *Refd. Moffatt v. Farquhar* (1878), 7 Ch. D. 591; *Re Bell, Ex p. Hodgson* (1891), 65 L. T. 245. *Mentd. Evans v. Davis* (1878), 10 Ch. D. 747.

2366. — Not arbitrarily.]—A power under arts. of assocn. of a co. to decline to register any transfer of shares "unless the transfer is approved by the board," is not to be arbitrarily exercised.—*SLEE v. INTERNATIONAL BANK* (1868), 17 L. T. 425, L. C.

2367. — —.]—*Re CEYLON LAND & PRODUCE CO., LTD., Ex p. ANDERSON* (1891), 7 T. L. R. 692.

2368. — In good faith.]—The directors of a co., in exercising their power of refusal to register transfers of shares, must exercise such power in good faith in the interest of the co., & with due regard to the shareholder's right to transfer his shares; & the question of the transferee's fitness must be fairly considered at a board meeting.—*Re BELL BROTHERS, Ex p. HODGSON* (1891), 65 L. T. 245; 7 T. L. R. 689.

Annotations:—*Apprvd. Re Bede S.S. Co., [1917] 1 Ch. 123. Refd. Re Ceylon Land & Produce Co., Ex p. Anderson* (1891), 7 T. L. R. 692. *Mentd. Weinberger v. Inglis, [1919] A. C. 606.*

See, also, No. 2408, *post*.

Transfer to director—Subsequent bankruptcy—Whether misfeasance under 1862 Act, s. 165.]—*See* No. 1131, *ante*.

who is indebted to the co., applies only to indebtedness as a member of the co., as for calls, fines, etc.—*Re COMPANIES STATUTE, 1864, Re McCulloch (W.) & Co., LTD., Ex p. TREVASCUS* (1879), 5 V. L. R. 195.—**AUS.**

2368 i. How to be exercised—In good faith.]—Application by the transferee of certain shares in a joint-stock co. for a *mandamus* to the directors to enter such transfer in the books of the co. The bye-law of the co. provided that "any shareholder may, by leave of the directors, but not otherwise, transfer his share, or shares, by making an entry of such transfer in a book," etc. The directors declined to grant the required leave, but gave no reason to appct. for their refusal:—*Held*: it was for the directors to exercise their discretion, & they need not give any reasons, & having exercised this discretion without any evidence of caprice, the application could not succeed.—*Re MACDONALD & MAIL PRINTING & PUBLISHING CO.* (1876), 6 P. R. 309.—**CAN.**

2368 ii. — —.]—Where the registration of a transfer of shares in a co. is, under arts. of assocn., subject to the approval of the transferee by the directors, the fact that the proposed transferee is already a shareholder does not entitle him to have the transfer registered as matter of course; but it is discretionary with the directors to register the transfer to him or not, & in the absence of evidence that the

Effect of refusal of approval to transfer—On rights of vendor & purchaser of shares.]—*See* No. 2257, *ante*.

ii. Control by Court.

2369. What court has jurisdiction.]—*TAFT v. HARRISON*, No. 2405, *post*.

2370. — —.]—*ROBINSON v. CHARTERED BANK*, No. 2365, *ante*.

2371. Whether court will interfere.]—*BERMINGHAM v. SHERIDAN, Re WATERLOO CO.* (No. 4), No. 2231, *ante*.

2372. — Power exercised capriciously.]—*Re GRESHAM LIFE ASSURANCE SOCIETY, Ex p. PENNEY*, No. 2408, *post*.

2373. — Power exercised bona fide.]—*Re YURUARI CO., LTD.*, No. 2403, *post*.

2374. — —.]—*Re SOUTH YORKSHIRE WINE, SPIRIT & MINERAL WATER CO.* (1892), 8 T. L. R. 413.

2375. How jurisdiction exercised—Application under 1862 Act, s. 35.]—*Re GRESHAM LIFE ASSURANCE SOCIETY, Ex p. PENNEY*, No. 2408, *post*.

See, now, 1908 Act, s. 32, & generally, Sect. 13, sub-sect. 5, B., *ante*.

(c) Consent to Transfer.

i. Sufficiency and Proof.

2376. Sufficiency of consent—Certificate in incorrect form—Signed by directors separately.]—To a *scire facias* issued Jan. 24, 1848, against a member for the time being of a banking co-partnership, on a judgment obtained against their public officer, deft. pleaded that at the time of the issuing of the writ he was not a member *modo et formâ*. At the trial it appeared that in July, 1847, deft. who was an original shareholder, agreed through a broker to sell his shares to T. The broker, in order to carry this sale into effect, went to the bank, & there delivered to one of the clerks a notice, dated Aug. 21, 1847, of deft.'s intention to sell his shares. On the same paper on which this notice was contained, three clauses from the

directors have acted *malâ fide*, their refusal to register cannot be questioned.—*Re DUBLIN NORTH CITY MILLING CO., [1909] 1 I. R. 179; 43 I. L. T. 121.*—**IR.**

g. No option as to registering shareholder purchasing shares in execution.]—*R. v. EAST INDIAN RY. CO.* (1866), 1 Ind. Jur. N. S. 258; *Bourke*, 395.—**IND.**

h. Power of approval is fiduciary power—Resolution of directors to approve of future transfers—Ultra vires.]—By the arts. of assocn. of the New Great Eastern Spinning & Weaving Co. transfers of shares in the co. were subject to the approval of the directors. On Oct. 18, 1898, the directors passed a resolution "that up to the time of the next ordinary general meeting the board approve of all transfers of shares made by D. & R., two of the shareholders, or either of them & will transfer shares standing in the name of D. & R. in the name of R. to their or his transferees without claiming any lien or raising any objection":—*Held*: the above resolution was *ultra vires* & not binding on the co. The power conferred on the directors by the arts. of assocn. was a fiduciary power to be exercised for the benefit of the co., & could not be exercised until the question of each transfer together with the names of the transferor & the transferee was before them & they had an opportunity of considering each case.—*Re NEW GREAT EASTERN SPINNING & WEAVING CO.,*

Ex p. RAMDAS KESSOWJI (1899), 1 L. R. 23 Bom. 685.—**IND.**

k. — —.]—The directors of a co. must act strictly as trustees in carrying through transfers of shares, unfettered by any undertaking or promise to any intending purchaser.—*CLARK v. WORKMAN, [1920] 1 I. R. 107.*—**IR.**

PART III. SECT. 23, SUB-SECT. 5.—B. (b) ii.

2373 i. Whether court will interfere—Power exercised bona fide.]—Where under the arts. of assocn. the discretion of the directors of a co. to refuse to register a transfer of shares is absolute, the ct. will nevertheless control such discretion even although the directors in refusing the transfer believe themselves to be acting in the best interests of the co., & not actuated by any ill feeling towards the transferor or the transferee. Such a discretion though the terms are absolute, is in the nature of a trust, & therefore must not be exercised capriciously or unjustly where directors refuse on their cross-examination on their affidavits to give their reason for declining to register a transfer of shares the ct. may infer the true reasons for such refusal from the evidence before it.—*Re SHAW & CO., LTD., HUGHES' CASE* (1896), 21 V. L. R. 599.—**AUS.**

l. — Articles giving power to refuse registration—Without assigning reasons.]—*KENNEDY v. NORTH BRITISH WIRELESS SCHOOLS, LTD.* (1916), 53 Sc. L. R. 543.—**SCOT.**

co.'s deed of settlement were printed. One clause provided that no person should be registered as a shareholder without the consent of the board of directors, who might testify the same by a certificate signed by three directors, a form of which was given; another provided that, before such certificate should be given the price to be received for the shares proposed to be transferred should be sent in writing by the vendor to the board of directors; & the third provided that in case the board of directors should refuse their consent, they should, at the request of the holder, be obliged to purchase the shares. The broker, together with the notice, delivered to the clerk at the bank deft.'s certificate of his shares, & asked if the transfer would be allowed. The clerk went into an inner room, & came out, saying that the transfer would be accepted. On Aug. 25, T. paid deft. the price of the shares, & on the next day received a certificate signed by three directors, certifying that he was the proprietor of these shares, & that they stood in his name in "The Share Register Book." No consent to the transfer was ever given by a board of directors; but the certificate, which was not in the form prescribed by the above clause, was signed, first by the managing director, & afterwards by the two others, separately at their private residences. T. on receiving this certificate, signed a receipt which was delivered to & kept by the bank, in which T. stated that he was the holder of these shares, & that, having executed the deed of settlement he agreed to abide by the rules & regulations of the co. Soon afterwards the managing directors caused the transfer to be entered in "The Share Register Book." On Jan. 14, 1848, a board of directors was held, & by their direction an entry was made, declaring the transfer to T. null & void. For five or six years past all transfers of shares had been made in the same manner:—*Held*: there was no such consent to the transfer by "a board of directors," as required by the deed of settlement, & this irregular mode of transfer, though adopted for some years, was wholly ineffectual, & consequently deft. remained liable as a shareholder.

Qu.: whether if three directors had given a certificate in the prescribed form the parties transferring & receiving the shares might not have treated that certificate as conclusive evidence of a consent by the board.—*BOSANQUET v. SHORTRIDGE* (1850), 4 Exch. 699; 20 L. J. Ex. 57; 154 E. R. 1395.

Annotations:—*Distd.* *Re North of England Joint Stock Banking Co., Straffon's Exors.' Case* (1852), 1 De G. M. & G. 576. *Mentd.* *Burmester v. Norris* (1851), 21 L. J. Ex. 43; *East Anglian Rys. v. Eastern Counties Ry.* (1851), 11 C. B. 775.

2377. — Substantial compliance—Notice of transfer signed instead of instrument of transfer.]—By a clause in the deed of settlement, shareholders were allowed to sell & transfer their shares with the consent of the directors, such consent to be testified by the managing directors signing their names in the margin of the instrument of transfer. This was not done, but across the notice to the directors of the vendor's intention to sell was written the word "transferred" signed by a director. The deed, which was executed in the place of the deed of settlement, was not signed by the purchaser, but in his name by a member of his family, who was in the habit of signing for him, but this was unknown to the directors; & the purchaser subsequently received regularly the dividends upon the shares. The deed of settlement contained a clause, that all sales & transfers of any shares not made conformably to the

provisions of the deed of settlement, & according to the regulations of the directors, shall be invalid at law & in equity:—*Held*: all matters of substance having been complied with, & the deed, which was executed, being considered equivalent to an execution of the original deed by the purchaser, the purchaser was properly placed on the list of contributories. *Semble*: if any formalities have been wanting upon a sale & transfer of shares, either the seller or the purchaser has a right in this ct. as against the other to compel him to do all acts necessary; as to the seller, to relieve him from all liability as owner; as to the purchaser, to clothe him with the complete legal interest. *Re NORTH OF ENGLAND JOINT STOCK BANKING CO., STRAFFON'S EXECUTORS' CASE* (1852), 1 De G. M. & G. 576; 22 L. J. Ch. 194; 19 L. T. O. S. 78; 16 Jur. 435; 42 E. R. 676, L. C.

Annotations:—*Consd.* *Hay v. Willoughby* (1852), 10 Hare, 242. *Distd.* *Re Newcastle-upon-Tyne Marine Insee., Ex p. Brown* (1854), 19 Beav. 97; *Re Newcastle-upon-Tyne Marine Insee., Ex p. Henderson* (1854), 19 Beav. 107. *Reid.* *Re Cameron's Coalbrook Steam Coal & Swansea & Loughor Ry., Ex p. Bennett* (1854), 23 L. T. O. S. 122; *Re Pennant & Craigwen Consolidated Lead Mining Co., Mayhew's Case* (1854), 2 W. R. 486; *Bargate v. Shortridge* (1855), 5 H. L. Cas. 297; *Bloxam v. Metropolitan Cab & Carriage Co.* (1864), 4 New Rep. 51. *Mentd.* *Re North of England Joint Stock Banking Co., Ex p. Crossfield* (1852), 16 Jur. 731; *Heward v. Wheatley, Ex p. Ogden* (1853), 3 De G. M. & G. 628; *Re North British Australasian Co., Ex p. Swan* (1859), 7 C. B. N. S. 400; *Swan v. North British Australasian Co.* (1862), 7 H. & N. 603.

2378. — As against company—Signed by directors separately.]—The deed of settlement of a banking co. allowed shareholders to dispose of their shares upon obtaining "the consent of the board of directors," which was to be testified by "a certificate in writing, signed by three of the directors." During the whole time that the bank carried on business a managing director received the applications for sales of shares, consented, & signed the certificate of "consent," which was afterwards signed by two other directors, but was never signed by the three assembled as a board. S., a shareholder, had at various times, with such consents, sold his shares. The directors, under Country Bankers Act, 1826 (c. 46), made a return to that effect. The co. failed, & the directors passed a resolution declaring that there had been no valid transfer of the shares of S.:—*Held*: as between him & the co. the consents given by the directors, although informal & irregular, were valid, & they could not afterwards treat S. as a member of the co.—*BARGATE v. SHORTRIDGE* (1855), 5 H. L. Cas. 297; 3 Eq. Rep. 605; 24 L. J. Ch. 457; 25 L. T. O. S. 204; 3 W. R. 423; 10 E. R. 914, H. L.; *affg.* S. C. *sub nom.* *SHORTRIDGE v. BOSANQUET* (1852), 16 Beav. 84.

Annotations:—*Distd.* *Re Newcastle-upon-Tyne Marine Insee., Ex p. Brown* (1854), 19 Beav. 97; *Re Newcastle-upon-Tyne Marine Insee., Ex p. Henderson* (1854), 19 Beav. 107; *Re Mitre Assce., Eyre's Case* (1862), 31 Beav. 177. *Consd.* *Murray v. Bush* (1873), L. R. 8 H. L. 37. *Reid.* *Re Royal British Bank, Ex p. Walton & Huo* (1857), 5 W. R. 637; *Re British Provident Life & Fire Assce. Soc., Grady's Case* (1863), 1 De G. J. & Sm. 488; *Re British Provident Life & Fire Assce. Soc., Lane's Case* (1863), 3 New Rep. 50; *Re Bamed's Banking Co., Ex p. Contract Corp'n.* (1867), 36 L. J. Ch. 732; *Re Smith, Knight, Weston's Case* (1868), 4 Ch. App. 20; *Moffatt v. Farquhar* (1878), 7 Ch. D. 591. *Mentd.* *Eastern Counties Ry. v. Hawkes* (1855), 5 H. L. Cas. 331; *Horn v. Kilkenny & G. S. & W. Ry.* (1855), 3 Eq. Rep. 812; *Prince of Wales Assce. Soc. v. Athenæum Assce. Soc.* (1858), E. B. & E. 183; *Woodhams v. Anglo-Australian & Universal Family Life Assce.* (1864), 2 De G. J. & Sm. 162; *Fountain v. Carmarthen Ry.* (1868), L. R. 5 Eq. 316; *Spackman v. Evans* (1868), L. R. 3 H. L. 171; *Re Land Credit Co. of Ireland, Ex p. Overend, Gurney* (1869), 4 Ch. App. 460; *Escott v. Gray* (1878), 47 L. J. Q. B. 606.

2379. — Approval by interested director.]—*Re AGRICULTURIST CATTLE INSURANCE CO., BUSH'S CASE*, No. 2294, *ante*.

Sect. 23.—Transfer of shares: Sub-sect. 5, B. (c) i. & ii., & (d) i.]

2380. — Power of refusal subject to conditions—Conditions no longer capable of fulfilment.]—A co. with the consent of all the shareholders made over its business & all its assets to another co. Afterwards an arrangement was made between the second co. & the directors of the first co. for rescinding the amalgamation, & the directors of the first co. thereupon elected several new directors, of whom A. was one, & at a meeting of directors at which A. was present a transfer of 200 shares out of A.'s name was sanctioned. The transfer was registered, & the co. was now being wound up. The arts. only gave the directors powers to refuse to sanction a transfer on condition of their getting some other transferee to take the shares at the market price. But at the time of A.'s transfer the shares were worse than valueless:—*Held*: (1) the transfer by A. was invalid, & he was properly placed on the list of contributories for the 200 shares; (2) the agreement with the corpn. amounted to a virtual dissolution of the co., after which the shares were incapable of being transferred.—*Re ACCIDENTAL DEATH INSURANCE CO., ALLIN'S CASE* (1873), L. R. 16 Eq. 449; 43 L. J. Ch. 116; 21 W. R. 900.

Annotations:—As to (2) Re Taurine Co. (1883), 25 Ch. D. 118. Generally, Re City of Glasgow Bank, Mitchell's Case (1879), 4 App. Cas. 567.

See, also, No. 2406, post.

2381. Time for giving—Whether before or after execution of transfer.]—*Re COPAL VARNISH CO., LTD., No. 2362, ante.*

2382. Proof of consent—Transfer to company—Dividends carried to company's account.]—(1) The deed of settlement of a banking co. provided that shares might be transferred with the consent of the directors, but that the transfers should be registered, & that an indorsement of the registry should be made on the deed of transfer, & should be sufficient evidence of the directors' consent. A shareholder placed his shares in the hands of a broker, & they were sold nominally to the solr. of the co., but really, though without the knowledge of the shareholder, to the co. itself, the purchase-money being paid out of the co.'s funds, & the subsequent dividends being carried to their credit:—*Held*: although there was no indorsement on the transfer to the solicitor, the directors' consent was sufficiently proved, & that on the co. being wound up the vendor ought not to be placed on the list of contributories as a present shareholder.

(2) Liability for statements—by directors influencing strangers commented on (*see No. 1573, ante*).—*Re ROYAL BRITISH BANK, NICOL'S CASE* (1859), 3 De G. & J. 387; 28 L. J. Ch. 257; 33 L. T. O. S. 14; 5 Jur. N. S. 205; 7 W. R. 217; 44 E. R. 1317, L. C. & L. JJ.

Annotations:—As to (2) Consd. Spackman v. Evans (1868), L. R. 3 H. L. 171. Re T. Re Royal British Bank, Mixer's Case (1859), 4 De G. & J. 575; Conybeare v. New Brunswick, etc., Co. (1860), 1 De G. F. & J. 578; Re Royal British Bank, Ex p. Frowd (1861), 30 L. J. Ch. 322; Re Overend, Gurney, Ex p. Oakes & Peek (1867), L. R. 3 Eq. 576; Western Bank of Scotland v. Addie, Addie v. Western Bank of Scotland (1867), L. R. 1 Sc. & Div. 145. Generally, Mendl. Re Home Counties & General Life Assce. (1859), 33 L. T. O. S. 196; Re London & Eastern Banking Corpn., Ex p. Longworth's exors. (1859), 29 L. J. Ch. 55; Re Mexican & South American Co., Grisevood & Smith's Case, De Pass's Case (1859), 4 De G. & J. 544; Re National Patent Steam Fuel Co., Ex p. Worth (1859), 28 L. J. Ch. 589; Re National Assce. & Investment Asscon. (Bank of Deposit), Ex p. Davies, Ex p. Abercorn (1862), 31 L. J. Ch. 828; Re Scottish & Universal Finance Bank, Ship's Case (1865), 11 Jur. N. S. 331; Re Cachar Co., Ex p. Lawrence (1867), 36 L. J. Ch. 490.

2383. — Whether direct proof necessary.]—

Where a co.'s arts. of assocn. provided that "no share shall be transferred without the approval of the board," it is not necessary to show a direct approval by the board, but such approval may be inferred from the way the shares have been dealt with in the co.'s books.—*Re BRANKSEA ISLAND CO., Ex p. BENTINCK* (No. 2) (1888), 1 Meg. 23, C. A.

ii. *Consent based on Mistake or Misrepresentation.*

2384. Approval obtained by misrepresentation—Capacity of transferee—Infant.]—It is the duty of a transferor of shares in a joint-stock co. to see that the transferee is a competent person. Therefore where the holder of shares transferred to an infant, both the transferor & the co. being ignorant of his infancy, & the transfer was registered, the co. being ordered to be wound up five months afterwards:—*Held*: the transferor was a contributory in the place of the infant.—*Re JOINT STOCK DISCOUNT CO., MANN'S CASE* (1867), 3 Ch. App. 459, n.; 15 W. R. 1124, L. J.

Annotations:—Folld. Re Imperial Mercantile Credit Assocn., Curtis's Case (1868), L. R. 6 Eq. 455. Re T. Re Blakely Ordnance Co., Lunsden's Case (1868), 4 Ch. App. 31; Re China Steamship & Labuan Coal Co., Capper's Case (1868), 3 Ch. App. 458; Re Crenver & Wheel Abraham United Mining Co. (1872), 27 L. T. 597; Imperial Mercantile Credit Assocn., Richardson's Case (1875), 23 W. R. 467.

2385. — Status of transferee—Consideration for transfer.]—*Re IMPERIAL MERCANTILE CREDIT ASSOCN., WILLIAMS' CASE* (1869), L. R. 9 Eq. 225, n.

Annotations:—Folld. Re Imperial Mercantile Credit Assocn., Payne's Case (1869), L. R. 9 Eq. 223. Apld. Re Bank of Hindustan, China, & Japan, Rogers' Case (1871), 25 L. T. 406. Re T. Re European Bank, Masters' Case (1871), 7 Ch. App. 294, n.

2386. — — — — —.]—On the day prior to the stoppage of a limited co., a transfer of shares was executed by P. to L. for the stated consideration of £17, L. being described as a "gentleman." The transfer was sent by P.'s broker to the office of the co., where it was registered, & L.'s name was inserted on the register of members. Shortly afterwards, a voluntary winding up was resolved upon, which was afterwards ordered to be continued under supervision. Three years afterwards the liquidators discovered that L., at the date of the transfer, was a clerk with a salary of 25s. a week in the same office as P., & that the real consideration was, not £17 paid by L. to P., but £5 paid by P. to L. to induce him to execute the deed. It was admitted that the transfer was out & out; & the directors had power to decline to register any transfer if they did not approve of the transferee:—*Held*: the name of L. must be removed from the register of members & list of contributories, & that of P. substituted.—*Re IMPERIAL MERCANTILE CREDIT ASSOCN., PAYNE'S CASE* (1869), L. R. 9 Eq. 223.

Annotations:—Apld. Re Bank of Hindustan, China, & Japan, Rogers' Case (1871), 25 L. T. 406. Re T. Re European Bank, Masters' Case (1871), 7 Ch. App. 294, n.

2387. — — — — —.]—In a co. where the directors had power to refuse a transferee, a shareholder sent in a transfer of his shares to a person described as a gentleman, in consideration of £1,326, expressed to be paid, & the directors registered the transfer. The transferee was a young man employed in a warehouse at a salary of less than £100 a year, & only gave a promissory note for the consideration. In the winding up of the co., on an application by the liquidator to put the transferor's name on the list of contributories:—*Held*: assuming that an out-&-out sale was intended, the transferee was mis-described & the consideration mis-stated, & the transferor's name

must therefore be put on the list.—*Re BANK OF HINDUSTAN, CHINA, & JAPAN, ROGERS' CASE* (1871), 25 L. T. 406; *sub nom. Re BANK OF HINDUSTAN, CHINA, & JAPAN, LTD., SNOW'S CASE*, 19 W. R. 1057.

Approval given by mistake.]—*See* No. 2440, *post*.

(d) *Refusal of Consent.*

i. *In General.*

2388. What amounts to—*Refusal to register—Whether disapproval within article avoiding disapproved transfers.*—By the arts. of assocn. of a co. it was provided that the directors might refuse to register a transfer of shares while the shareholder making the same was indebted to the co., or if they should consider the transferee an irresponsible person. It was also provided that persons becoming entitled to shares in consequence of the death, insolvency, or bkpcy. of a shareholder might be registered on the production of such evidence as might from time to time be required by the directors, & that any transfer or pretended transfer of shares not being approved by the directors should be absolutely void.

A holder of shares in the co. executed transfers of such shares to the nominees of a bank as a security for advances. The co. refused to register these transfers, on the ground that the transferor was indebted to the co. Subsequently, the transferor having filed a liquidation petition, a trustee in liquidation was duly appointed. Such trustee, with the consent of the bank & their nominees, applied to the directors of the co. to be registered as the owner of the shares, but they refused the application. The bank, though consenting to the trustee's registration, had never waived their security:—*Held*: the declining to register the transfers by the directors was not a disapproval of them so as to render them void within the meaning of the arts.; the trustee was not entitled to the shares within the meaning of the arts. so long as the transfers remained in force; & the trustee was not entitled to be registered, notwithstanding the consent of the transferees.—*Re CANNOCK & RUGELEY COLLIERY CO., Ex p. HARRISON* (1885), 28 Ch. D. 363; 54 L. J. Ch. 554; 53 L. T. 189, C. A.

2389. — *Board equally divided.*—*Re HACKNEY PAVILION, LTD.*, [1923] W. N. 346.

2390. Power to refuse—*Renunciation in favour of nominee.*—*Re POOL SHIPPING CO., LTD.*, No. 2282, *ante*.

2391. Whether valid—*General resolution to register no further transfers—Resolution bonâ fide.*

—(1) If directors in the fair & *bonâ fide* exercise of their powers under the co.'s contract, as managers of the co., & in circumstances which make it a reasonable act of management, resolve not to record future transfers which may seriously affect & alter the liability of the partners, the resolution will be effectual, & the directors in declining to record the transfers cannot be held to be in default within the meaning of sect. 35 of the 1862 Act. Before the commencement of the winding up, but after the stoppage, & after the publishing of a notice by the directors calling a special general meeting of the shareholders of the City of Glasgow Bank, for the purpose of passing a resolution to have the bank wound up by reason of its irretrievable insolvency; & after a resolution by the directors that they would not record any future transfers, one of four trustees whose names appeared as such on the bank register resigned his office of trusteeship under Trusts, S. Act, 1861 (c. 84), s. 1, with the consent of his co-trustees & the beneficiaries. A notarial copy of the resignation was sent the next day to the bank, but the directors refused to alter the register by affixing a note, or in any other way:—*Held*: the resignation was too late to exempt the trustee from personal liability.

(2) The trustee's resignation of his trusteeship alone would not terminate his liability. He ceased to be a trustee; but it remained for him to terminate his liability in respect of the bank by a transfer, or something equivalent to a transfer, of his shares (LORD CAIRNS, C.).

(3) After the issuing of the shareholders & the public of a circular calling a meeting, with a view to the necessary resolution for a voluntary winding up, it is too late for any shareholder to part with his shares, either to the co-partnership itself or to any other person (LORD SELBORNE).—*Re CITY OF GLASGOW BANK, MITCHELL'S CASE* (1879), 4 App. Cas. 548, 567; *sub nom. MITCHELL v. CITY OF GLASGOW BANK & LIQUIDATORS*, 40 L. T. 758; 27 W. R. 873, H. L.

2392. — *Company in pecuniary difficulties—Meeting summoned to pass resolution for winding*

PART III. SECT. 23, SUB-SECT. 5.—
B. (d) i.

m. What amounts to — *Refusal to register—Court may control absolute discretion of directors.*—Where under the arts. of assocn. the discretion of the directors of a co. to refuse to register a transfer of shares is absolute, the ct. will nevertheless control such discretion even although the directors in refusing the transfer believe themselves to be acting in the best interests of the co., & not actuated by any ill feeling towards the transferor or the transferee. Such a discretion though the terms are absolute, is in the nature of a trust, & therefore must not be exercised capriciously or unjustly where directors refuse, on the cross-examination on their affidavits, to give their reason for declining to register a transfer of shares the ct. may infer the true reasons for such refusal from the evidence before it.—*Re SHAW & CO., LTD., HUGHES' CASE* (1896), 21 V. L. R. 599.—AUS.

n. — *Transfer of shares to nominee of shareholder—To increase voting power.*—The arts. of assocn. of a co. provided that the registered holder of ten shares, or of any number of shares less than ten, was entitled

to one vote. S. was the holder of eight shares, & in order to increase his voting power he transferred one of his shares to a nominee. The arts. provided that the shares should only be transferred at the discretion of the directors, & they refused to register the transfer on the ground that the object of the transfer was to increase S.'s voting power. On motion to rectify the register of shareholders, the co. was ordered to register the transfer.—*Re MANNING RIVER, ETC., CO., LTD.* (1914), 14 S. R. N. S. W. 344.—AUS.

o. — — — — —.]—By the arts. of assocn. of a co. incorporated in New South Wales, it was provided that shareholders should be entitled to vote according to the number of shares held by them as follows: holders of one share to ten shares, one vote; holders of eleven shares to twenty-five shares, two votes; holders of twenty-six to fifty shares, three votes; holders of over fifty shares, four votes. It was also provided that shares should be transferred only at the discretion of the directors:—*Held*: the directors might properly, in the exercise of their discretion, refuse to register a transfer of a share where the whole beneficial interest in the share was retained by the trans-

feror & the transfer was made for the purpose of increasing the voting power of the transferor.—*MANNING RIVER CO-OPERATIVE DAIRY CO. v. SHOE-SMITH* (1915), 19 C. L. R. 714.—AUS.

p. Power to refuse — *Transferees indebted to company.*—Pltfs. held transfers of a large block of shares in deft. co. from deft. T., the manager of the co. Deft. co. were subject to the Companies Act (Canada), & their head office in Canada was at Dawson. Sect. 64 of the Act provides that no shares shall be valid until entry of any transfer is duly made in the register of transfers, & sect. 67 provides that the directors may decline to register any transfer of shares belonging to any shareholder who is indebted to the co. Deft. T. refused to allow the transfer of the shares to be registered at the head office at Dawson, & in answer to a motion for a *mandamus*, asserted that pltfs. were indebted to the co., & that an action by the co. against pltfs. had been brought & was pending, to recover the amount in which they were indebted, & also to restrain pltfs. from disposing of the shares of stock held by them, on the ground that they were wrongfully obtained by pltfs. from trustees for the co.:—*Held*: in these circumstances, a *mandamus* could not

Sect. 23.—Transfer of shares: Sub-sect. 5, B. (d) i. & ii.]

up.]—On Sept. 28 & 29, 1878, a shareholder in a joint-stock banking co. sold, through his broker in the usual course of business, on the Glasgow stock exchange, his shares for settling day, Oct. 16. The name of the person in whose name the stock stood in the books of the co. was not made known to the purchasers, nor were the shares marked by numbers, but the brokers on the day of sale sent contract notes intimating the sale & purchase to their respective principals. On Oct. 2, the co. suspended payment, & the directors knew that its insolvency was irretrievable. On Oct. 5, an extraordinary meeting of the co.'s shareholders was summoned by circular for Oct. 22, to pass a resolution to wind up the co. voluntarily, on account of its insolvency. On Oct. 11, the seller was informed that the co. had been the purchasers, they having the power to purchase their own stock by their arts. of copartnership. On Oct. 15, the co. refused to prepare a transfer of the stock to themselves; & on Oct. 18 they refused to register an unilateral deed of transfer which was delivered to them by a notary public. On Oct. 19, the shareholder presented a petition for rectification of the bank's register by the deletion of his name therefrom. On Oct. 22, the extraordinary resolution to wind up voluntarily was passed. The liquidators placed the shareholder's name on the list of contributories. In a question under 1862 Act, s. 35:—*Held*: (1) it would have been improper for the directors under the circumstances to have registered the transfer on Oct. 16, & therefore, the shareholder's name was rightly included in the list of contributories; (2) it was unnecessary in this case to decide whether the contract of sale was null & void under 30 & 31 Vict. c. 29; (3) applt. was liable as a contributory in the winding up of the co., & the directors had been guilty of no default or unnecessary delay within 1862 Act, s. 35, in refusing to execute the transfer of his shares.—*MITCHELL (NELSON) v. CITY OF GLASGOW BANK* (1879), 4 App. Cas. 624; 27 W. R. 875, H. L.

Annotation:—As to (3) Reidd. McEllistrim v. Ballymacolligot Co-op. Agricultural & Dairy Soc., [1919] A. C. 548.

be granted, to grant it, the ct. would have to decide the issue raised in the pending action, without hearing the evidence, & pltfs. were not entitled to an *interim* injunction to restrain deft. co. from holding special & general meetings of shareholders until the issue between pltfs. & defts. had been decided, & if pltfs. were right, they would have a remedy in damages.—*FULLER v. NORTHERN LIGHT, POWER & COAL CO.* (1911), 19 W. L. R. 175.—CAN.

q. — Must be exercised in good faith.]—Where it was found that the real objections entertained by the directors to the various transferees were (a) their connection as employees of the C. Mills with M., the managing director of the C. Mills, & the personal animosity existing between J., the managing director of the M. Mills, & M. & (b) the desire of the directors, of the M. Mills, that M. should not add to his voting power at the meetings of the co., & (c) that therefore the objections were not personal to appets. themselves:—*Held*: where the arts. of assocn. give a discretionary power to the directors to refuse to register a transfer, & it appears that the directors have *bona fide* considered the matter, the cts. will not compel them to disclose their reasons, but if they do disclose their reasons or evidence is produced as to their reasons, the cts. will con-

sider whether those reasons proceeded on a right or wrong principle; & objections not personal to the transferees do not constitute legitimate reasons.—*MUIR MILLS CO., LTD. OF CAWNPORE v. CONDON* (1900), 1 L. R. 22 All. 410.—IND.

r. — .]—Where the registration of a transfer of shares in a co. is, under the arts. of assocn., subject to the approval of the transferee by the directors, the fact that the proposed transferee is already a shareholder does not entitle him to have the transfer registered as matter of course; but it is discretionary with the directors to register the transfer to him or not, & in the absence of evidence that the directors have acted *mala fide*, their refusal to register cannot be questioned.—*Re DUBLIN NORTH CITY MILLING CO.* [1909] 1 I. R. 179; 43 I. L. T. 121.—IR.

s. Shareholder transferring shares after receiving notice of resolution to wind up company.]—*DODDS v. COSMOPOLITAN INSURANCE CORPN., LTD.* (1915), 2 I. L. T. 106.—SCOT.

PART III. SECT. 23, SUB-SECT. 5.— B. (d) ii.

2393 i. Right to refuse.]—In an action against a harbour co. for refusing to register a transfer of stock by S. to pltfs.:—*Held*: the co. had no legal

— Confined to powers in articles—Refusal to prevent legitimate increase of voting powers.]—*See Nos. 2402, 2421, post.*

— Under particular powers.]—*See Sub-sect. 5, B. (d) ii., iii. & iv., post.*

Where lien on shares claimed by company.]—*See Nos. 2164, 2165, 2187, ante.*

ii. Where Transferor Indebted to Company.

2393. Right to refuse.]—*BOALER v. BRODHURST* (1894), 10 T. L. R. 426, H. L.

2394. What is indebtedness—Calls—Notice of call before transfer—Call payable after transfer.]—A call was made on the shares of a joint-stock co., payable 21 days at least after notice. After notice, & before the day of payment, a shareholder transferred his shares, & gave notice thereof to the co. in pursuance of the deed of settlement, which provided that, after such notice, a shareholder should be at liberty to transfer. By a subsequent clause it was provided that no transfer should be complete, nor should any person be registered as a shareholder until he had bound himself to abide by the covenants in the deed of settlement:—*Held*: the co. was not bound to register the transfer, the call not having been paid.—*R. v. PHOENIX LIFE ASSURANCE CO.* (1859), 33 L. T. O. S. 120.

2395. — Resolution for call before transfer lodged—No sufficient notice of call.]—While half the call on the original allotment of shares in a joint-stock co., limited, was due & unpaid, R., a shareholder, executed a transfer of his shares, but the co. refused to register it. He then paid the half-call due, & again tendered the transfer to be registered. The directors again refused to receive it, & the secretary informed R. that some days before he had so paid the half-call, the directors had made a fresh call, payable on a day named a few months after, but he did not state at what place or to whom the call was to be paid. By the deed of assocn. of the co. it was provided, that a call should be deemed to be made when the resolution of the board of directors authorising such call should be passed; & notice was to be given to shareholders of the time & place of payment, & of the persons to whom a

lien on the stock for harbour tolls due by S. to them, & could not therefore on that ground refuse to register the assignment.—*McMURRICH v. BOND HEAD HARBOUR CO.* (1851), 9 U. C. R. 333.—CAN.

2393 ii. — .]—In an action for calls on stock the coroner who summoned the jury was a stockholder, but before receiving the *venire*, transferred his stock which was not all paid up, to the president of the co. The Act of Incorporation declared that no shareholder should be entitled to transfer his stock unless all calls were paid:—*Held*: he had not divested himself of his interest & was not an impartial officer, & there must be a *venire de novo*.—*WOODSTOCK RY. CO. v. TUPPER* (1869), 1 Han. 454.—CAN.

t. What is indebtedness — Calls.]—Joint Stock Companies Act, 1887 (c. 157), s. 44, enacts that the directors of the co. may call in & demand from the shareholders thereof respectively all sums of money by them subscribed, including therefore the 10 per cent mentioned in sect. 45, at such times & places & in such payments or instalments as the letters patent or this Act or the bye-laws of the co. require or allow. In an action for a call:—*Held*: sect. 45 is directory only, & the neglect of the directors to make the call thereunder did not put deft. in arrear for the 10 per cent in respect of

call was to be paid; &, further, that the directors might decline to register any transfer of shares made by any shareholder who was indebted to them:—*Held*: after the half-call had been paid, it was the duty of the directors to have registered the transfer, & the new call made by them did not, under the circumstances of the case, make R. indebted to the co., so as to justify their continued refusal to enter the transferee's name on the register as the holder of the shares.—*R. v. INNS OF COURT HOTEL Co., LTD.* (1863), 2 New Rep. 397; 32 L. J. Q. B. 369; *sub nom.* RUDOLPH *v.* INNS OF COURT HOTEL Co., 8 L. T. 551; *sub nom.* *R. v. INNS OF COURT HOTEL Co., LTD., Ex p. RUDOLF*, 11 W. R. 806.

Annotation:—*Consd. Re Cawley* (1889), 42 Ch. D. 209.

See, generally, Sect. 21, sub-sect. 3, *ante*.

2396. ——— **Whether call paid—Tender of company's overdue interest coupons.**—A. executed a transfer of his shares in a co., & sent it to B. to be left with the secretary for registration, together with £320, being the amount then due for calls on the shares, payment of which was required by the arts. of assocn. before any transfer could be recognised. B. appropriated the £320, but tendered to the secretary, in payment of the amount due from A. for calls, certain overdue coupons, or interest warrants, payable in respect of debentures of the co. which had been issued to B., & on some of which equities were attaching as between himself & the co.:—*Held*: the tender of these coupons, which were subject to all the equities attaching to them as between B. & the co., was not a payment, or anything equivalent to a payment, of the amount due from A. for calls, & consequently the co. were not bound to register the transfer, & A. remained liable for the shares.—*Re EUROPEAN CENTRAL RY. Co., HOLDEN'S CASE* (1869), L. R. 8 Eq. 444; 21 L. T. 197; 17 W. R. 875.

Compare Sect. 21, sub-sect. 6, *ante*.

2397. ——— **Dishonoured bills renewed—Renewed bills not matured.**—*Re LONDON, BIRMINGHAM & SOUTH STAFFORDSHIRE BANKING Co., LTD.*, No. 2164, *ante*.

2398. ——— **Debt due & payable.**—*Re STOCKTON MALLEABLE IRON Co.*, No. 2165, *ante*.

his shares so as to prevent his making a transfer of them. Deft. did make a transfer in the transfer book of pltf.'s assocn. but subsequently the directors of pltf.'s assocn. passed a resolution that deft.'s among other transfers should not be assented to after which resolution they made the call in question:—*Held*: the transfer was validly made & on its being made deft. ceased to be a member of pltf.'s assocn.—*ONTARIO INVESTMENT ASSOCN. v. SIPPI* (1890), 20 O. R. 440.—**CAN.**

a. ———.]—Motion by trustees of the marriage settlement of M. to whom 500 fully paid-up shares of a co. incorporated under the Dominion Companies Act had been assigned & for a *mandamus* to the co. compelling them to register such transfer. The co. had refused to register on the ground that at the date of such application M. was indebted to the co. in respect of calls on other shares:—*Held*: *R. S. C.*, c. 79, s. 67, permitting the directors to refuse to register a transfer of shares belonging to a shareholder who is indebted to the co. applies to an indebtedness existing concurrently with ownership & not to an indebtedness arising after a transfer has been made, & the *mandamus* was granted.—*Re POLSON IRON WORKS* (1912), 22 O. W. R. 84; 3 O. W. N. 1269; 4 D. L. R. 193.—**CAN.**

2398 i. ——— **Debt due & payable.**—A limited co., incorporated under Companies Acts, has, at common law, a right of retention over the shares of a partner in security of debts due by him to the co. The arts. of assocn. of a limited co. bore that the co. should have a first & permanent lien on the shares of members for any debts due by them, & might refuse to register a transfer by such members. The trustee of a bkpt. shareholder, who owed the co. money, applied to be put upon the register of shareholders, in respect of the bkpt.'s shares, & founded on one of the arts. of assocn., which provided that any one becoming interested in a share in consequence of the bkpcy. of a shareholder might be registered:—*Held*: the co. had a lien over the shares in respect of the debt due to them, both at common law & under the arts., & were entitled to decline the application.—*SHARP (BELL'S TRUSTEE) v. COATBRIDGE TIN PLATE Co., LTD.* (1886), 14 R. (Ct. of Sess.) 246.—**SCOT.**

2398 ii. ———.]—A lien conferred upon a co. by its arts. of assocn. on all shares registered in the name of a member for his debts to the co. such member's title to transfer the same, while he remains indebted, being thereby made dependent on the approval of the directors, is valid. Such lien may be discharged by a new arrangement between creditor &

2399. ——— **1862 Act, Table A, art. 10—Application of clause—Transmission by devolution of law.**—1862 Act, Sched. 1, Table A., art. 10 does not apply to persons claiming shares by transmission under art. 13 of the Table. Therefore, where a co. has adopted Table A. as its arts. of assocn., it cannot refuse to register the name of a trustee in bkpcy. of a shareholder on the ground that the shareholder is indebted to the co.—*Re BENTHAM MILLS SPINNING Co.* (1879), 11 Ch. D. 900; 48 L. J. Ch. 671; 41 L. T. 10; 28 W. R. 26, C. A.

2400. ——— **Indebtedness on any account.**—The provision in 1862 Act, Sched. 1, Table A, art. 10—that “the co. may decline to register any transfer of shares made by a member who is indebted to them”—is not limited to cases where the member is indebted for calls or otherwise in respect of the particular share proposed to be transferred, but enables the co. to decline to register the transfer if the member is indebted to them on any account whatever.—*Ex p. STRINGER* (1882), 9 Q. B. D. 436.

See, now, 1908 Act, Table A, arts. 9, 20.

2401. Time for ascertaining.—(1) Under 1862 Act, s. 22, the right to transfer his shares is incident to every shareholder; &, therefore, a director-shareholder has as much right as any ordinary shareholder to transfer his shares & to have his transfer registered, unless he falls within a provision in the co.'s arts. of assocn. enabling the directors to refuse registration where the shareholder seeking to transfer is “indebted to the co. in respect of calls or otherwise”; & the ct. will, on an application by the director-shareholder under 1862 Act, s. 35, exercise its power of compelling registration provided there is no equity against him as director, such as having been party to a postponement of a call to enable him to get rid of his shares & so evade liability.

(2) Where the arts. of assocn. of a limited co. give the directors a discretion to refuse to register a transfer of shares by a shareholder if he is indebted to the co., the time at which it is to be ascertained whether he is indebted or not is when the transfer is sent to the proper officer of the co. for registration, & not when it subsequently comes before

debtor, the terms of which are incompatible with its retention or which show an intention to waive it. Where an indebted shareholder applied to the co. for time & the indulgence was granted in consideration of his giving a promissory note & authorising certain shares, other than those on which there was such a lien, to be sold on default without the delay prescribed by the arts.:—*Held*: no limitation of the lien was thereby contemplated by either party, & a transfer by the indebted shareholder of the shares subject to the lien, without the approval of the directors, should be refused.—*BANK OF AFRICA v. SALISBURY GOLD MINING Co., LTD.* (1890), 11 N. L. 11. 41; (1891), 13 N. L. R. 94.—**S. AF.**

b. ——— **Transfer of fully-paid shares by owner of fully-paid & partly-paid shares—Refusal to register.**—The holder of fully-paid shares in a limited co., & also of partly-paid shares on which a call was due, transferred the fully-paid shares to a third party for onerous consideration. The transferee presented the transfer for registration, & according to the existing regulations of the co. was then entitled to be put on the register. Thereafter the co., by special resolution duly confirmed, & for the purpose of defeating this application altered the arts. of assocn. to the effect of giving the co. a lien on all shares registered

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a board-meeting for registration. Thus, where H., a shareholder, who was also a director, executed a transfer of his shares for value, & thereupon the transferee sent it in to the secretary of the co. for registration as required by the arts. of assocn., & shortly afterwards the transfer was submitted by the secretary to the directors at a board-meeting for registration, but the board declined to register it, & passed a resolution for a call:—*Held*: under the co.'s arts. of assocn. the directors had a discretion to refuse registration only where the shareholder seeking to transfer was "indebted to the co. in respect of calls or otherwise"; & as H. was not so indebted at the time his transfer was sent in to the secretary, they were bound to register, even though he was a director & was aware when he executed the transfer that a call was imminent.

(3) A resolution for a call, to be valid, must state not only the amount of the call, but also the time at which it is to be paid. Thus, where the directors of a co. passed a resolution for a call, & the resolution fixed the sum per share to be called up, but left the date at which it was to be paid in blank, & some time afterwards a resolution was passed fixing the date for payment, & notices of the call were sent to the shareholders:—*Held*: there was no proper call made until the second resolution fixing the date of payment, & the second resolution did not, in point of date, relate back to the first.—*Re CAWLEY & Co.* (1889), 42 Ch. D. 209; *sub nom. Re CAWLEY & Co., LTD., Ex p. HALLETT*, 58 L. J. Ch. 633; 61 L. T. 601; 37 W. R. 692; 5 T. L. R. 549; 1 Meg. 251, C. A.
Annotation:—As to (2) *Consd. Re Ottos Kopje Diamond Mines*, [1893] 1 Ch. 618.

iii. Where Transferee Objectionable.

2402. Objecting to person of transferee—Refusal to register transfer to nominee to increase voting power.]—A co. with unlimited liability was formed in 1843, under a deed of settlement, & was afterwards provisionally registered under 1844 Act.

in the name of a member for all calls due on any shares registered in the name of such member, & refused to register the transfer until the call due on the partly-paid shares had been paid. In a petition for rectification of the register:—*Held*: the right of the transferee to be put on the register was not affected by the resolution passed subsequent to the date of the transfer, & he was in the same position as on the date when the transfer was presented for registration, & he was entitled to be put on the register accordingly.—*M'ARTHUR (W. & A.), LTD. (LIQUIDATOR) v. GULF LINE, LTD.*, [1909] S. C. 732; 46 Sc. L. R. 497; 1 S. L. T. 279.—SCOT.

PART III. SECT. 23, SUB-SECT. 5.—B. (d) iii.

c. Transferee personally objectionable.]—Where directors of a co. are empowered by the arts. of assocn. to decline to register any transfer of shares not fully paid up, or any transfer of any shares to any person of whom they do not approve, or to enter the name of the transferee in the register of members in respect of the shares, such power will entitle them to decline to place on the register of shareholders the name of a person who, in consequence of the death of a member having shares not fully paid, has under the arts. been elected by the exor. as transferee of the shares in his stead, but of whom the directors do not

By their deed of settlement no shareholder was have more than twenty votes, however large the number of shares held, & the directors had power to approve or disapprove of any person proposed by a shareholder as a transferee of his shares. difference arose among the shareholders as to the management of the co., & pltf., who was a large shareholder, transferred some of his shares to one person for value, & other shares to another person as trustee for himself, in order to increase his voting power. The directors refused to approve of the transfers, not from any personal objection to the transferees, but on the ground that the transfers were colourable, & were intended to increase the votes of the transferor:—*Held*: (1) the co. was not a mere partnership, but came within the laws applicable to joint stock cos.; (2) the directors had no power to refuse a transfer, which was a right of property, except upon personal objection to the transferee.—*MOFFATT v. FARQUHAR* (1878), 7 Ch. D. 591; 47 L. J. Ch. 355; 38 L. T. 18; 26 W. R. 522.

Annotations:—As to (2) *Apld. Re Ceylon Land & Produce Co., Ex p. Anderson* (1891), 7 T. L. R. 692. *Reid. Re Bell, Ex p. Hodgson* (1891), 65 L. T. 245.

See, also, Nos. 2404, 2421, post.

2403. Transferee undesirable as having interests in business or company of same nature—Member of rival company.]—*Re YURUARI Co., LTD.* (1889), 6 T. L. R. 119, C. A.

2404. Membership of transferee contrary to interests of company—Confined to personal grounds.]—A power for directors to refuse to register transfers of shares if "in their opinion it is contrary to the interests of the co. that the proposed transferee should be a member thereof" only justifies a refusal to register upon grounds personal to the proposed transferee. It does not justify refusal to register transfers of single shares or shares in small numbers because the directors do not think it desirable to increase the number of shareholders, or because they think that the transfer is not *bona fide*, but that the transferee is the mere nominee of the transferor, & the transfer is made to increase the number of shareholders who will support him in a policy which

approve.—*AUSTRALIAN DEPOSIT & MORTGAGE BANK, LTD. v. ROBERTSON* (1897), 22 V. L. R. 549.—AUS.

2403 i. Transferee undesirable as having interests in business or company of same nature—Member of rival company.]—A power given by regulations in absolute & general terms to directors of cos. to refuse to register a transfer of shares must be exercised with due regard to interests of shareholders of the co. & those of the transferee, & possibly also with due regard to interests of transferor & creditors of co. Where directors in exercise of such power have refused to register transfer of shares, on application by the transferee to rectify the register of co. will not set aside the decision of the directors if they have acted honestly & within their powers.

Arts. of a co. provided that the directors may decline to register transfer of shares except by operation of law:—*Held*: the directors had power to refuse to register a transfer of shares on ground that transferor was conducting a rival business to the co. & was stated to be actually desirous of purchasing co.'s business.—*Re MONT DE PIETÉ LOAN & DEPOSIT Co., LTD., Ex p. ALEXANDER & AUR*, [1907] V. L. R. 660.—AUS.

2403 ii. ———.]—The arts. of assocn. of a limited co. contained the following provisions: "The co. shall have a first & paramount lien upon the shares of each member for his

debts, liabilities & engagements, solely or jointly with any other person, to or with the co. whether the period of the payment, fulfilment, or discharge thereof shall have actually arrived or not," etc. "The directors may decline to register any transfer of shares." There was also a power of sale to enforce the lien. A shareholder against whom the co. had an action pending applied to the co. to register a transfer of his shares. It was proved that the transferee was an active trade rival of the co., & that the transfer was dated subsequent to the initiation of the proceedings against the transferor. Also that the directors of a meeting fully discussed & considered the question of the respective rights & positions of the transferor & transferee, & refused to register the transfer. The directors opposed the application, on the ground that it would be inimical to the co.'s interests to register the transfer, & also that they had a lien over the shares pending the result of the litigation:—*Held*: the question of registration was one essentially for the directors; that they had acted honestly, & with excellent reason, & they had a right to refuse, at their discretion, to register any transfer of appct.'s shares until the determination of the pending litigation; & there was reasonable ground for supposing that appct. was under an existing liability within the meaning of the arts.—*Re MAXWELL, Ex p. DONALD & WINCHESTER* (1910), 29 N. Z. L. R. 531.—N.Z.

the directors disapprove.—*Re BEDE STEAM SHIP-PING Co., LTD.*, [1917] 1 Ch. 123; 86 L. J. Ch. 65; 115 L. T. 580; 33 T. L. R. 13; 61 Sol. Jo. 26, O. A.

Annotations:—*Reid. Weinberger v. Inglis*, [1919] A. C. 606. *Mentd. Re Copal Varnish Co.*, [1917] 2 Ch. 349; *Hopkinson v. Mortimer, Harley*, [1917] 1 Ch. 646; *Phillips & Phillips v. Manufacturers' Securities* (1917), 116 L. T. 290.

Transferee man of straw—Transfer to avoid liability.—*See* Sub-sect. 13, B. (b), *post*.

iv. *Where Article provides for Alternative Transferee.*

2405. Alternative purchase of shares by company—Company without funds.—The deed of settlement of a joint-stock banking co. provided that no person should become a shareholder without the consent of the directors; & in case the board should refuse to consent to any transfer of shares, they should, at the request of the holder, be obliged to purchase the same out of the funds & on behalf of the co., at a price, in case the parties should not agree, to be fixed by arbitration. Pltf. contracted to sell his shares, but the board refused to consent to the transfer, & he then required the board to purchase them. Pltf.'s shares not being purchased for the co., he filed his bill to compel the co. to purchase the shares:—*Held*: (1) the fact that, at the time the application was made by pltf. to the board to purchase his shares out of the funds & on behalf of the co., & thenceforward, the co. had no funds applicable to the purchase of shares, was a defence to the equity of pltf., founded on the provisions of the deed to compel such purchase, & it did not follow from the absence of such funds of the co. that the board of directors was, under all circumstances, bound to adopt the alternative of permitting pltf. to transfer his shares to any other person; (2) the question whether the board were justified by the facts of the case in refusing either to permit the transfer of the shares or to purchase them for the co., was a question to be tried in equity.—*TAFT v. HARRISON* (1853), 10 Hare. 489; 68 E. R. 1020.

2406. Transfer to be approved if alternative transferee not found—Power of directors.—(1) The A. co. entered into an agreement with the M. corpn. that all its business should be transferred to the corpn., & that its shareholders should be entitled to shares in the corpn. in exchange for their shares in the co. But the co. was not formally dissolved or wound up. Afterwards the corpn., not being successful, was wound up voluntarily. A few days before the commencement of the winding up, the former directors of the A. co., in the name of the co., entered into an agreement with the corpn. for a retransfer of the principal part of the business of the co., & notice was given to the shareholders that the co. had resumed business. A board meeting of the former directors

was held in the same month, in which they sanctioned a transfer by C., the solr. of the co., of 2,145 shares for a nominal consideration. By the arts. of the co. the directors had no power to reject a transfer unless they found a substituted transferee. The co. was afterwards wound up, & C.'s name was settled by the Master of the Rolls on the list of contributories in respect of those shares:—*Held*: (JAMES, L.J.), although the transfer was out & out, & therefore would have been valid if the co. had been a going concern, yet, the transfer of the business to the corpn. having been completed, the shares were no longer capable of being dealt with, & the transfer was invalid (MELLISH, L.J.), the co. not having been formally dissolved or wound up, the shares might still be dealt with, & the transfer was good.

(2) The deed of settlement of a co. provided that where a shareholder wished to transfer his shares he should leave notice at the office of the co., & the directors should consider the proposal, & signify their acceptance or rejection of the proposed transferee: & if they should reject the proposed transferee, & should not, within fourteen days, procure some other person to take the shares at the market price, the proposed transferee should be considered as approved by the directors, & should be entitled to take the transfer accordingly:—*Held*: (MELLISH, L.J.), the directors had not an absolute power to reject a proposed transferee; but could only do so if they could provide a substitute for him.—*Re ACCIDENTAL DEATH INSURANCE Co., CHAPPELL'S CASE* (1871), 6 Ch. App. 902; 25 L. T. 438; 20 W. R. 9, L.JJ.

Annotations:—*As to* (1) *Folld. Re Accidental Death Insce., Allin's Case* (1873), L. R. 16 Eq. 449. *Distd. Re Taurine Co.* (1883), 25 Ch. D. 118.

See, also, No. 2380, *ante*.

v. *Effect of Refusal.*

2407. Whether notice of refusal to register necessary.—*Re EUROPEAN CENTRAL RY. Co., GUSTARD'S CASE*, No. 1672, *ante*.

2408. Whether directors must give reasons.—The deed of settlement of a life insurance co. provided that any shareholder should be at liberty, to transfer his shares to any other person who was already a shareholder, or who should be approved by the board of directors, & that no person not being already a shareholder, or the exor., etc., of a shareholder, should be entitled to become the transferee of any share unless approved of by the board:—*Held*: the directors were not bound to disclose their reasons for rejecting a transferee, provided they had fairly considered the question at a meeting of the board; & in the absence of evidence to the contrary, the ct. would take for granted that they acted reasonably & *bonâ fide*; if there is evidence to show that directors who have such a power have exercised it capriciously or

PART III. SECT. 23, SUB-SECT. 5.—
B. (d) v.

d. *Transfer before liquidation of company—Refusal of directors to register—Court will not exercise directors' discretion after liquidation.*—Upon an application by H. to have register rectified by removing his name from register & substituting name of G. as shareholder:—*Held*: the directors having power to decline to accept a transfer the ct. had no jurisdiction after the co. had gone into liquidation to exercise the discretion which rested with the directors.—*Re CHATSWORTH ESTATE Co., LTD., Re CLARKE, Ex p. HARTNELL* (1892), 18 V. L. R. 442.—*AUS.*

e. *Measure of damages.*—In an action against a harbour co. for refusing to register a transfer of stock by S. to pltf.:—*Held*: as to the shares for which pltf. were entitled to recover, they were entitled only to their value at the time of demand & refusal to transfer; but the jury having allowed a larger sum, & this question not having been pressed on the argument, the ct. did not reduce the verdict.—*McMURRICH v. BOND HEAD HARBOUR Co.* (1851), 9 U. C. R. 333.—*CAN.*

f. —.]—The C. Syndicate was composed of three directors of the co. & the wife of one of them. The syndicate were owners of a fund of 250,000 shares of \$1 each in the co.

out of which 10,000 shares were issued to pltf. in consideration of agreeing to become a director in the co. He subsequently decided not to become a director & returned the 10,000 to B., one of the syndicate, who handed him 2,000 shares back in consideration of services. Pltf. subsequently had a purchaser for 1,000 of these shares. The co. then demanded the 2,000 back & instructed their agents not to register the transfer of any of the 2,000 shares on the ground that he had obtained them by fraud, i.e., on the representation that he would become a director of the co. The co. alleged that the shares belonged to the C. Syndicate. In an action for a declaration as to the ownership of the

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unfairly, the ct. has jurisdiction to interfere, & this jurisdiction may be exercised on a summons under 1862 Act, s. 35.—*Re GRESHAM LIFE ASSURANCE SOCIETY, Ex p. PENNEY* (1872), 8 Ch. App. 446; 42 L. J. Ch. 183; 28 L. T. 150; 21 W. R. 186, L. J.

Annotations:—*Distd. Moffatt v. Farquhar* (1878), 7 Ch. D. 591. *Apld. Cassel v. Inglis*, [1916] 2 Ch. 211; *Re Bede S.S. Co.*, [1917] 1 Ch. 123; *Weinberger v. Inglis*, [1919] A. C. 606. *Reid. Re Bell, Ex p. Hodgson* (1891), 65 L. T. 245; *Re Coalport China Co.*, [1895] 2 Ch. 404; *Re Hannan's King (Browning) Gold Mining Co.* (1898), 14 T. L. R. 314; *McEllistram v. Ballymacelligott Co-op. Agricultural & Dairy Soc.*, [1919] A. C. 548. *Mentd. Weinberger v. Inglis*, [1918] 1 Ch. 133.

2409. —.—The rule that directors who have power to refuse to register a transfer of shares are not bound to disclose their reasons for refusing, if they have considered the question & have acted *bonâ fide*, applies to cases where their power is limited to particular grounds for refusal as well as to cases where their power is absolute.—*Re COALPORT CHINA CO.*, [1895] 2 Ch. 404; 64 L. J. Ch. 710; 73 L. T. 46; 2 Mans. 532; 12 R. 462; *sub nom. Re COALPORT CHINA CO., LTD., Ex p. MIDDLETON & BELL*, 44 W. R. 38, C. A.

Annotations:—*Reid. Cassel v. Inglis*, [1916] 2 Ch. 211; *Re Bede S.S. Co.*, [1917] 1 Ch. 123; *McEllistram v. Ballymacelligott Co-op. Agricultural & Dairy Soc.*, [1919] A. C. 548; *Weinberger v. Inglis*, [1919] A. C. 606.

2410. Measure of damages—Special contract between parties.]—*SKINNER v. CITY OF LONDON MARINE INSURANCE CORPN.*, No. 2216, *ante*.

On rights of parties to specific performance—Against purchaser.]—*See No. 2231, ante.*

—Against vendor.]—*See No. 2257, ante.*

As ground for rectification of register—Onus of proof.]—*See No. 1372, ante.*

SUB-SECT. 6.—PRODUCTION OF SHARE CERTIFICATE.

2411. Necessity for—Discretion of directors.]—

A shareholder executed a transfer of his shares,

which he took, together with his certificate of shares, to the co.'s office for registration. He left the transfer, but refused to leave the certificate for the inspection of the directors:—*Held*: the ct. would not, on motion under 1862 Act, s. 35, compel the co. to register the transfer, & the ct. refused a motion for that object with costs.

There was sufficient to justify the directors in requiring the document itself to be left for their inspection, I see nothing unreasonable in this requisition, & the Act gave them authority to make it (*ROMILLY, M.R.*).—*Re EAST WHEAL MARTHA MINING CO.* (1863), 33 Beav. 119; 2 New Rep. 543; 55 E. R. 312.

Annotation:—*Reid. Hooper v. Herts*, [1906] 1 Ch. 549.

2412. —.—(1) H. was director of a co., & was the registered proprietor of certain shares, which he held as trustee for the co. R., believing H. to be absolute owner of the shares, lent money to him upon the deposit of the certificates as security. No transfer was executed, & no notice of the transaction was given to the co. After R.'s death, the co. discovered the fraud of H. & gave notice to R.'s extrix. that H. held the shares as trustee. After this notice H. executed a transfer of the stock to the extrix.; & she then required the co. to register the transfer, & her name as proprietor of the stock, which they refused to do. Upon an application for a peremptory writ of *mandamus* to compel them to do so:—*Held*: the extrix. was not entitled to a *mandamus*, for that H. could not give a third person any title to the shares as against his *cestuis que trust*, in the absence of any fraud or misrepresentation on their part; & the fact that he was in possession of certificates which imported that he was absolute owner of the shares did not preclude the co. from setting up their right as against the *bonâ fide* mtgee. without notice.

(2) Whether a transfer of shares in a co. can or cannot be made without the production of the certificates of the shares is a matter entirely within the discretion of the directors.—*SHROPSHIRE UNION RAILWAYS & CANAL CO. v. R.* (1875), L. R. 7

shares & for damages:—*Held*: the shares were the property of pltf., & he was entitled to damages against the co. for its refusal to permit the transfer to the extent of \$1,350, being the difference between the purchase price of the sale thus blocked & the price of the shares at the date of the action, & it was immaterial that there was no binding contract between pltf. & purchaser.—*WOLVERTON v. BLACK DIAMOND OIL FIELDS, LTD., & COALING SYNDICATE* (1914), 30 W. L. R. 142; 8 W. W. R. 471.—*CAN.*

g. Refusal to register transfer—Unless transferees approved of certain change in company's organisation—Transferees already members of company.]—One of the arts. of assocn. of the C. Co. provided that the board of directors might decline to register any transfer of shares, unless the transferees were approved by the Board. A shareholder, holding 423 shares, became insolvent, & his shares thereupon vested in the Official Assignee who sold them. The purchaser required the Official Assignee to transfer the shares into the names of two nominees, viz., 200 shares to the name of one nominee, & 223 shares to the name of the other. The Official Assignee executed the necessary transfer deeds & sent them to the co. with a request that the shares might be transferred accordingly. The proposed nominees were already members of the co. & registered holders of shares in it, & no objection was taken to them in their personal capacity. The directors, however, de-

clined to approve of the transferees & to register the transfer, unless the transferees would pledge themselves to approve a certain change in the mode of remunerating the agents of the co. which the directors desired to effect, & which they believed would be very advantageous to the co. The transferees refused to pledge themselves in any way as to their future action & brought this suit to enforce registration of the transfer:—*Held*: the directors were bound to register the transfers.—*KAIKHOSRO MUNCHERJI HEERAMANECK v. COORLA SPINNING & WEAVING CO.* (1891), L. L. R. 16 Bom. 80.—*IND.*

h. Articles providing that directors might refuse to register transfer—Transferee's title incomplete—Approval of directors to transfer not obtained.]—G. bought some shares in the B. Co. & applied to the directors for registration as a shareholder in respect of the shares bought. The directors refused the application, giving no reason for so doing. G. now applied to the ct. for an order compelling the directors to register him as a shareholder. The arts. of assocn. of the co. provided, *inter alia*, that any shareholder might, with the sanction of the board of directors, sell or dispose of & transfer all or any of his shares to any other person approved by the board who shall not be bound to assign any reason for the withholding of such sanction:—*Held*: G. was a transferee whose title was not complete, inasmuch as the requisite sanction to the transfer

had not been obtained, & therefore, there was no privity between him & the directors of the co., & he had no right to complain.—*Re BOMBAY FIRE INSURANCE CO., LTD., Ex p. GILBERT* (1892), L. L. R. 16 Bom. 398.—*IND.*

k. —.—A. sold to B. certain shares in a co. whose arts. of assocn. provided, as was known both to A. & B. at the date of the sale, that the directors might without assigning any reasons refuse to register any transfer of shares to any person not approved of by them. In an action at the instance of A. against B. decree was pronounced ordaining B. to pay the price of the shares in exchange for a transfer of shares in ordinary form. B. thereupon paid the price & having received a transfer from A. presented it to the co. The co. refused to register B. as proprietor of the shares or pay him any dividends accruing on the shares. A. whose name remained on the register declined to receive from the co. the dividends accruing on the shares. In an action at the instance of B. against A.:—*Held*: (1) B. had the sole beneficial right, title, & interest in the shares & dividend thereon; (2) the shares were held by A. & his heirs, etc., for behoof of B. so long as A.'s name should remain on the shareholder's register, & B. continued to hold the beneficial interest therein, & also granted decree ordaining A. to make payment to B. of all dividends accruing on the shares.—*STEVENSON v. WILSON*, [1907] S. C. 445; 44 Sc. L. R. 339; 14 S. L. T. 743.—*SCOT.*

H. L. 496; 45 L. J. Q. B. 31; 32 L. T. 283; 23 W. R. 709, H. L.; *reversg.* S. C. *sub nom.* R. v. SHROPSHIRE UNION RAILWAYS & CANAL CO. (1873), L. R. 8 Q. B. 420, Ex. Ch.

Annotations:—*As to* (1) *Consd.* *Ortigosa v. Brown* (1878), 47 L. J. Ch. 168; *R. v. Charnwood Forest Ry.* (1884), Cab. & El. 419; *Carritt v. Real & Personal Advance Co.* (1889), 42 Ch. D. 263; *Rainford v. Keith & Blackman Co.*, [1905] 1 Ch. 296. *Reid.* *Bradley v. Riches* (1878), 9 Ch. D. 189; *Soc. Générale de Paris v. Walker* (1885), 11 App. Cas. 20; *R. v. Lambourn Valley Ry.* (1888), 22 Q. B. D. 463; *Union Bank of London v. Kent* (1888), 39 Ch. D. 238; *Taylor v. Russell*, [1891] 1 Ch. 8; *Powell v. London & Provincial Bank* (1893), 62 L. J. Ch. 795; *Ward v. Duncombe*, [1893] A. C. 369; *Taylor v. London & County Banking Co., London & County Banking Co. v. Nixon*, [1901] 2 Ch. 231; *Rimmer v. Webster*, [1902] 2 Ch. 163; *Burgis v. Constantine*, [1908] 2 K. B. 484. *As to* (2) *Consd.* *Ortigosa v. Brown* (1878), 47 L. J. Ch. 168; *Rainford v. Keith & Blackman Co.*, [1905] 1 Ch. 296. *Reid.* *Soc. Générale de Paris v. Walker* (1885), 11 App. Cas. 20; *Longman v. Bath Electric Tramways*, [1905] 1 Ch. 646. *Generally, Mentd.* *Re Vernon Fwens* (1886), 33 Ch. D. 402; *Roots v. Williamson* (1888), 38 Ch. D. 485; *Re Richards, Humber v. Richards* (1890), 45 Ch. D. 589; *Lloyds Bank v. Bullock*, [1896] 2 Ch. 192; *Re Wasdale, Britten v. Partridge*, [1899] 1 Ch. 163; *Lloyds Bank v. Pearson*, [1901] 1 Ch. 865; *Walker v. Linom*, [1907] 2 Ch. 104; *Coleman v. London County & Westminster Bank*, [1916] 2 Ch. 353; *Hill v. Peters*, [1918] 2 Ch. 273.

2413. Effect of notice on certificate requiring production—No similar provision in articles.]—*SOCIÉTÉ GÉNÉRALE DE PARIS v. WALKER*, No. 2325, *ante*.

2414. — Similar provision in articles.]—The arts. of assocn. of a co. provided that “any members may transfer his shares, but any transfer must be left at the office of the co., accompanied by the certificate of the shares to be transferred & such other evidence as the directors may require to prove the title of the intending transferor.” Transfers of the co.’s shares did not necessarily have to be by deed. A certificate issued by the co. to a shareholder had the following note at the foot: “No transfer of the above shares will be registered without production of this certificate.” The shareholder transferred his shares for value to pltf., handing them the certificate with a transfer in which the name of the transferees was left blank. Subsequently the shareholder, by the production of a forged certificate for the shares, transferred them for value to R. & V., & that transfer was registered by the co. Subsequently pltf. filled in their transfer & presented it for registration, which was refused. In an action against the co. claiming (1) a declaration that pltf. were entitled to be placed on the register; (2) rectification of the register; & (3) alternatively, damages:—*Held*: when the transfer to R. & V. was put upon the register, those two persons had a completely executed transfer, whereas pltf. had at that time no more than an unexecuted authority, & therefore pltf. could not rely on a right of property to claim rectification of the register. The note appended to the certificate was a mere statement of fact as the co.’s practice, & was not a contract that they would not register a transfer without production of the certificate; & therefore the action failed.—*GUY v. WATERLOW BROTHERS & LAYTON, LTD.* (1909), 25 T. L. R. 515.

2415. — Production dispensed with—Certificate in hands of mortgagee—Liability of company to mortgagee.]—C., the registered holder of shares in debt. co., in May, 1903, deposited the certificate for the shares with pltf. as security for a loan, & executed a transfer to pltf. with the date left in blank. There was a note at the foot of the certificate: “without the production of this certificate no transfer of the shares mentioned therein can be registered.” C., who was in the

employment of the co., in June, 1903, entered into an arrangement with the managing director & two of the officers of the co. for an advance to be made to him by the co., part of the arrangement being that he should sell his shares in the co., & that the proceeds of sale should be paid to the co. in part repayment of the loan. C. sold his shares to Y. for £90, & the money was paid by Y. to the co. C. lodged a transfer of the shares to Y. with the co. for registration without the certificate, but with a declaration that the certificate was held by a friend of his, but not “as a charge against any loan or other consideration.” C. was trusted by the directors, & they, acting in good faith, accepted his statement, & registered the transfer to Y., & issued a new certificate to him:—*Held*: on the facts, the co. had received the £90 with such knowledge & under such circumstances that they ought to be treated as having received it to the use of the plaintiff, & the plaintiff was entitled to recover it from the co.—*RAINFORD v. KEITH (JAMES) & BLACKMAN CO., LTD.*, [1905] 2 Ch. 147; 74 L. J. Ch. 531; 92 L. T. 786; 54 W. R. 189; 21 T. L. R. 582; 49 Sol. Jo. 551; 12 Mans. 278, C. A.

Annotations:—*Folld.* *Guy v. Waterlow & Layton* (1909), 25 T. L. R. 515. *Reid.* *Mackereth v. Wigan Coal & Iron Co.*, [1916] 2 Ch. 293.

2416. Refusal of transferor to leave for inspection.]—*Re EAST WHEAL MARTHA MINING CO.*, No. 2411, *ante*.

SUB-SECT. 7.—CERTIFICATION.

2417. Effect of—Estoppel of company.]—P., a shareholder in debts’ co., transferred his shares to a purchaser, & his share certificate was lodged with the co. to enable such purchaser to complete his title. P. subsequently purported to transfer a portion of the shares to another purchaser, who again sold, & executed a transfer of the shares to pltf. Such last-mentioned transfer was certificated by debts’ secretary in the manner usual upon the transfer of shares, by placing upon it the words “certificate lodged,” although no certificate was in fact lodged in respect of such transfer; & upon the faith of such “certification” pltf. paid the price of the shares. Debts. subsequently refusing to recognise pltf. as the owner of the shares, he brought his action to recover their value from debts.:—*Held*: such a “certification” could only be taken to amount to a representation by debts. that a document or documents had been lodged with them apparently in order, & showing *prima facie* that the transferor was entitled to the shares, i.e. either what purported to be a certificate that he was the registered owner of the shares, or what purported to be a certificate that some one else was such owner, accompanied by a document or documents purporting to transfer the shares from such person to the transferor; but such “certification” did not import a warranty of the transferor’s title or of the validity of such document or documents. It did not therefore estop debts. from impugning pltf.’s title on the ground of the invalidity of the transfer to pltf.’s transferor; pltf. could not therefore make a title to the shares against debts. by estoppel; & as no action would lie against debts. for a careless misrepresentation without fraud, pltf. could not recover.—*BISHOP v. BALKIS CONSOLIDATED CO., LTD.* (1890), 25 Q. B. D. 512; 59 L. J. Q. B. 565; 63 L. T. 601; 39 W. R. 99; 6 T. L. R. 450; 2 Meg. 292, C. A.

Annotations:—*Consd.* *Tomkinson v. Balkis Consolidated Co.*, [1891] 2 Q. B. 614; *Re Concessions Trust, McKay’s*

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Case, [1896] 2 Ch. 757; *Whitechurch v. Cavanagh*, [1902] A. C. 117. *Reid. Dixon v. Kennaway*, [1900] 1 Ch. 833; *Longman v. Bath Electric Tramways*, [1905] 1 Ch. 646. *Mentd. Peat v. Clayton*, [1906] 1 Ch. 659; *Banbury v. Bank of Montreal*, [1918] A. C. 626.

2418. ———.]—Where a transfer for value purporting to relate to fully paid shares in a co. bears on the face of it a certification by the secretary of the co. that the share certificate has been lodged with the co., the certification amounts to a statement that a certificate of the shares described in the transfer has been lodged, & the co. is estopped from denying that the shares are fully paid up, even though no certificate has been lodged with the secretary or the certificate lodged does not say whether the shares are fully paid up or not.—*Re CONCESSIONS TRUST, MCKAY'S CASE*, [1896] 2 Ch. 757; 65 L. J. Ch. 909; 75 L. T. 298; 12 T. L. R. 636; 3 Mans. 274.

2419. ———.]—A co. is not bound by the representations of its secretary, who is only a servant with powers limited to his instructions; & the certification by the secretary of the transfer of shares by a person who had no power of dealing with such shares cannot operate as an estoppel against the co. from denying the title of the alleged transferee, or make it liable in damages for refusing to register such transferee as a shareholder. Nor can the recognition by a managing director of such certification, or even the representation by him that the certification would be acted upon by the co. & entitle the transferee to be placed on the register, create such estoppel. A representation, to be effective for such a purpose, must be one of an existing fact, & not constitute a mere promise of future action.—*WHITECHURCH (GEORGE), LTD. v. CAVANAGH*, [1902] A. C. 117; 71 L. J. K. B. 400; 85 L. T. 349; 50 W. R. 218; 17 T. L. R. 746; 9 Mans. 351, H. L.; *reusg. S. C. sub nom. CAVANAGH v. WHITECHURCH (GEORGE), LTD.* (1900), 16 T. L. R. 303, C. A.

Annotations:—Consd. Ruben v. Great Fingall Consolidated, [1904] 2 K. B. 712. *Reid. Platt v. Rowe (Trading as Chapman & Rowe) & Mitchell*, 26 T. L. R. 49; *Lloyd v. Grace Smith*, [1911] 2 K. B. 489. *Mentd. Tendring Hundred Waterworks Co. v. Jones*, [1903] 2 Ch. 615; *Hambro v. Burnand*, (1904), 9 Com. Cas. 251; *Porter v. Moore*, [1904] 2 Ch. 367; *Comitti v. Maher* (1905), 22 T. L. R. 121; *Anglo-American Oil Co. v. Manning*, [1908] 1 K. B. 536; *Malcolm, Brunner v. Waterhouse* (1908), 24 T. L. R. 854; *Fry v. Smollie*, [1912] 3 K. B. 282; *Brandon v. Michelham* (1919), 35 T. L. R. 617; *Doey v. L. & N. W. Ry.*, [1919] 1 K. B. 623.

2420. ——— **Duty of company in regard to custody of certificate.]—LONGMAN v. BATH ELECTRIC TRAMWAYS, LTD., No. 1778, ante.**

SUB-SECT. 8.—REGISTRATION OF TRANSFER.

A. Rights and Duties of Company and Parties.

(a) Duties of Company.

2421. As to time of registration—Duty to register at once—Purpose of transfers to increase voting power.]—Where there is no reason to the contrary under the arts. of assocn. of a co., it is the duty of directors to receive & register transfers at once, & this, although the object of the transfers is to distribute the shares & so to obtain a larger number of votes, & command greater influence at a meeting of shareholders already summoned.—*Re STRANTON IRON & STEEL Co.* (1873), L. R. 16 Eq. 559; 43 L. J. Ch. 215.

Annotations:—Consd. Moffatt v. Farquhar (1878), 7 Ch. D. 591. *Reid. Re Bell, Ex p. Hodgson* (1891), 65 L. T. 245.

2422. ———.]—*Re CADOGAN & HANS PLACE ESTATE Co., Ex p. ROLT*, [1876] W. N. 91.

2423. ——— **Right of directors to reasonable time to consider.]—A.** bought from B. 4,300 shares in a co. upon the faith of a share certificate issued by the co. certifying that B. was the registered owner of 4,300 specified shares in the co. A. then tendered to the co. a transfer from B. to himself duly executed, together with B.'s share certificate, but the co., having recently discovered that the certificate had been fraudulently obtained, refused to register the transfer:—*Held*: (1) although the certificate was not a warranty of title upon which A. could maintain an action at common law against the co., it estopped the co. from disputing A.'s right to be registered; the certificate is a representation intended to be shown to a purchaser at the time of a purchase, the effect of which is that the co. is estopped from denying its truth as against a purchaser, & must treat him as having a good title; (2) A.'s cause of action arose from the refusal of the co. to perform the duty of registering a transferee who had shown that the co. were estopped from denying to be a good title; (3) the measure of damages was the value of the shares at the time of the refusal to register.

(4) The directors of a co. are entitled to a reasonable time for the consideration of every transfer before they register it, although not expressly empowered in that behalf by the arts. of assocn.

(5) *Semble*: the ct. has no jurisdiction, under 1862 Act, s. 35, to direct a co. to pay damages, except in case where an order is made for rectification of the register.—*Re OTTOS KOPJE DIAMOND MINES, LTD.*, [1893] 1 Ch. 618; 62 L. J. Ch. 166; 68 L. T. 138; 41 W. R. 258; 37 Sol. Jo. 115; 2 R. 257, C. A.

Annotations:—As to (1) Reid. Longman v. Bath Electric Tramways, [1905] 1 Ch. 646. *As to (2) & (3) Reid. Platt v. Rowe (Trading as Chapman & Rowe) & Mitchell* (1909), 26 T. L. R. 49.

PART III. SECT. 23, SUB-SECT. 8.—A. (a).

1. As to time of registration—No unnecessary delay.]—Semble: where there has been a transfer of shares in a co. & unnecessary delay has taken place in rectifying the register of the co. to give effect thereto the ct. has power to direct the date on which the transfer should have been registered to be entered in the register.—*Re BLACKWOOD*, [1908] V. L. R. 517.—**AUS.**

m. As to giving notice—To official assignee in bankruptcy.]—A., a shareholder in a co. under the Cos. Act, 1882, transferred his shares to B. The co. refused to register the transfer. On a summons to the co. for the rectification of the register, A. obtained an order of the ct. for the registration of the transfer, but the transfer not being presented again for registration,

A.'s name remained on the register. A. subsequently, while absent from New Zealand, was adjudged bkpt.; the official assignee without notice of the transfer or order paid calls, sold the shares, & afterwards, having had notice of both transfer & order, sold to C. the residue of the estate with the right to recover back the calls paid:—*Held*: shares under the Cos. Act do not pass simply by registration, but by registration of an instrument of transfer; the order implied that the transfer was to be represented, & that not having been done the co. were not in a position to rectify; there was no duty on the part of the co. to inform the official assignee of the transfer or order; & C. could not recover back the calls paid.—*SMITH v. WELLINGTON WOOLLEN MANUFACTURING Co., LTD.* (1888), 6 N. Z. L. R. 654.—**N.Z.**

n. As to insisting upon production

of certificate before registering transfer.]

—A co. incorporated under the Ontario Joint Stock Cos. Letters Patent Act, R. S. O. 1887, c. 157, issued a certificate stating that a certain shareholder was entitled to 22 shares of the capital stock, as he in fact at the time was. The shares were not numbered or identified, but the certificate was numbered & contained the words "Transferable only on the books of the co. in person or by attorney on the surrender of this certificate." The shareholder assigned the shares to pltf. for value, & gave the certificate to him with an assignment indorsed thereon. Pltf. gave no notice to the co., & did not apply to be registered as a shareholder until several months had elapsed, & in the meantime the shareholder executed another transfer of the shares for value to an innocent transferee, who was registered by the co. as the holder

2424. — Inquiry into position of transferee.]—UNION DEBENTURE CO. v. FLETCHER, No. 2122, ante.

2425. — Whether at first meeting of directors—Objection by transferor.]—(1) H. held certain shares in a co. in trust for his wife, L., & without her consent or knowledge, executed a blank transfer of the shares, & gave the same to G. as security for a loan. On Nov. 23, 1901, G. sent the transfer, which he had filled in with his own name, & the certificate of the shares, to the offices of the co. for registration. On Nov. 26, the managing director of the co. saw H., who said that G. had no right to transfer the shares, & asked for postponement of the registration. On Nov. 27, a meeting of the directors was held, & these circumstances mentioned to the directors; but the transfer was not registered. On the same day L. commenced an action for an injunction to restrain the registration. The arts. of assocn. of the co. provided that every instrument of transfer should be left at the office for registration accompanied by the certificate of the shares to be transferred, & such other evidence as the co. might require to prove the title of the transferor to his right to transfer the shares:—*Held*: G. had not on Nov. 27, a "present, absolute, & unconditional" right to the registration of the transfer, & therefore the prior equitable title of L. must prevail.

(2) Directors are not bound to register a transfer at the next meeting after it has been handed in, when it has come to their knowledge that the transferor objects to the registration, although the transfer is in order, & nothing further is required to be done on the part of the transferee—

of the shares without production of the certificate:—*Held*: the transfer to pltf., in view of the provisions of s. 52 of above Act, conferred upon him a mere equitable title which was cut out by the subsequent transfer, & while the co. might have insisted upon production of the certificate they were not bound to do so, & were not estopped from denying pltf.'s right to the shares.—SMITH v. WALKERVILLE MALLEABLE IRON CO. (1896), 23 A. R. 95.—CAN.

a. As to compliance by transferee with conditions in articles of association.—Although the arts. of assocn. prescribe certain conditions which have to be complied with to entitle a transferee to get his name on the co.'s register as a member of the co., those are matters which the co. may or may not insist upon. If the co. insists upon them & an alleged transferee is not recognised as such by the co., & the co. refuses to register his name he may apply to compel the co. to register his name & then the question will arise whether he has complied with the arts. or not & whether the co. has a right to insist upon conformity with the arts. But a co. has always a right to accept such evidence as satisfies its mind that an appct. is really the owner & a real transferee entitled to be registered.—UNION INDIAN SUGAR MILLS CO. v. JAI DEO (1921), I. L. R. 44 All. 151.—IND.

PART III. SECT. 23, SUB-SECT. 8.—
A. (b).

p. Transferor — Transfer not registered.—Judgment creditors of an incorporated co. being unable to realise anything on their judgment, brought action against G. as a shareholder. Evidence was given that the shares once held by G. had been transferred to H., but were not registered in the co.'s books:—*Held*: the shares were duly transferred to H. though not registered, as it appeared that H. had acted for some time as president of, &

executed documents for, the co., & the only way he could have held shares entitling him to do so was by transfer from G.—HAMILTON v. GRANT (1900), 30 S. C. R. 566.—CAN.

2428 i. — Liability for registration.]—When, by the terms of a contract for a sale of shares not on the Stock Exchange, the purchase-money is to be paid on the execution of the transfer by the vendor, & the handing over by him of the transfer & share-certificates to the purchaser, & nothing is said as to whether the vendor or purchaser is to procure the registration of the transfer, an undertaking by the vendor to procure such registration will not be implied as part of the contract. *Semble*: on a sale of shares not on the Stock Exchange, no duty to procure registration of the transfer rests on the transferor.—FORSYTH v. PARKER (1897), 15 N. Z. L. R. 282.—N.Z.

q. Transferee — Shares acquired under execution sale.—A transfer of a share in a joint-stock co., by a bailiff of a county ct., under an execution sale, entitles the transferee to be registered as a shareholder, notwithstanding an art. of assocn. that no shareholder shall transfer without first offering his shares to the co.—*Re COMPANIES STATUTE 1864, Re M'CULLOCH (W.) & CO., LTD., Ex p. TREVASCUS* (1879), 5 V. L. R. 195.—AUS.

r. — Purchase of shares on faith of company's certificate that vendor is the owner.—Where shares in a limited co. are purchased from a person having no title thereto, on the faith of a certificate issued by the co. that the vendor is the duly registered holder thereof, the purchaser is entitled as against the co. to damages, & also to retain all dividends paid to him before he receives notice that the co. refuses to recognise his title to the shares.—DAILY TELEGRAPH NEWSPAPER CO., LTD. v. COHEN (1905), 5 S. R. N. S. W. 520; 22

IRELAND v. HART, [1902] 1 Ch. 522; 71 L. J. Ch. 276; 86 L. T. 385; 50 W. R. 315; 18 T. L. R. 253; 46 Sol. Jo. 214; 9 Mans. 209.

Annotation:—As to (1) *Refd. Rimmer v. Webster*, [1902] 2 Ch. 163.

2426. As to giving notice—To party objecting to transfer—Intention to register.]—*Re CADOGAN & HANS PLACE ESTATE CO., Ex p. ROLT*, No. 2422, ante.

2427. — To transferor—Objection to register transferee.]—UNION DEBENTURE CO. v. FLETCHER, No. 2122, ante.

Notice by company, generally, see Sect. 31, sub-sect. 6, B., post.

Investigation of title of married woman applying to registration to separate use.]—See No. 2574, post.

(b) Rights and Liabilities of Parties.

2428. Transferor—Liability for registration.]—

(1) F., a registered holder of shares in a limited co., transferred them to S., but the transfer was not registered, through the default of the co. An order was made to wind up the co. in March, 1866, & in June F. appeared in person at chambers on a summons to place him on the list of contributories, but no order was made on the summons. In June, 1867, S. died, & had no legal personal representative. In May, 1869, F. received notice from the official liquidator that his name was placed on the list of contributories. He then applied to have it removed:—*Held*: there was no laches on the part of F., & his name must be removed from the list of contributories.

(2) The fact that the transferee had no legal personal representative, & that, consequently,

N. S. W. W. N. 172.—AUS.

s. Transferee — Transfer registered after sequestration of transferor's estate — Related action by trustee.—MORRISON v. HARRISON (1876), 3 R. (Ct. of Sess.) 406; 13 Sc. L. R. 273.—SCOT.

t. Purchaser — Unable to obtain registration as holder.—Where a purchaser of shares is unable to obtain registration as holder, he has a right to recover back the purchase-money from the vendor; & such right is not lost by his endeavouring to become registered, nor by the loss of the certificate without his fault.—CASTLEMAN v. WAGHORN, GWYNN & CO. (1908), 13 B. C. R. 351; *reversd.* 41 S. C. R. 88.—CAN.

u. Injunction preventing registration—Right of transferee to damages—For ensuing loss of sale.—Pltf. purchased from defts. 1,000 shares of mining stock, & received from them a certificate for that number of shares, made out in favour of C., & by him indorsed with a transfer in blank. Pltf., having contracted to sell the shares at a profit, endeavoured to have himself registered as the owner, but was refused registration because of an injunction, obtained by defts., restraining the transfer agents of the mining co. from registering any transfer of shares standing in the name of C.:—*Held*: pltf. was entitled to recover from defts. as damages the difference between the price at which he had contracted to sell the shares & the price which he afterwards obtained when the injunction was dissolved & he was registered as owner of the shares.—BOULTBEER v. WILLS & CO. (1907), 15 O. L. R. 227; 10 O. W. R. 993.—CAN.

b. Insolvency of shareholder — Right of official assignee to sell shares — & enforce registration of transfer.—One of the arts. of assocn. of a co. provided that the board of directors might decline to register any transfer of shares, unless the transferee were

Sect. 23.—Transfer of shares: Sub-sect. 8, A. (b), B., C., D. & E.; sub-sect. 9.]

there was no person who could be put on the list in F.'s place, was not material.—*Re JOINT STOCK DISCOUNT CO., FYFE'S CASE* (1869), 4 Ch. App. 768; 38 L. J. Ch. 725; 21 L. T. 131; 17 W. R. 978, L. J.

Annotations:—As to (1) *Consd. Union Debenture Co. v. Fletcher* (1895), 11 T. L. R. 193; *Re National Bank of Wales, Taylor, Phillips & Rickards' Cases*, [1897] 1 Ch. 298. *Reid. Re Hercules Insce., Lowe's Case* (1870), L. R. 9 Eq. 589.

See, also, Nos. 1288, 1420, 1422, *ante*.

Rights of parties generally, see Sub-sect. 2, C. (a), *ante*.

B. Delay in Registration.

As ground for rectification of register.]—See Sect. 13, sub-sect. 5, B. (a), iii., *ante*.

2429. Effect—On pre-existing title.]—A co.'s arts. provided that no person should exercise the rights of a shareholder until he had been registered; that every transfer of a share not effected by operation of law should be effected in such form as the directors should approve; that any transfer not approved of by the directors should be void. The directors had 14 days within which to approve of or decline a proposed transferee. B. fraudulently deposited certificates of shares which were in his sole name, as trustee for pl'ts., with defts., together with a form of transfer in blank as to the numbers of the shares & the names of the transferees. The bank, who took for value & without notice, filled in the transfers with the names of some proposed transferees, & left them with the co. for registration. On the next day pl'ts. gave the co. notice of their prior claim, & the co. declined to register the transfer:—*Held*: the title of the transferees was not complete when the transfer was presented, there being more than a mere ministerial act to be performed by the co. before the transferees could claim to be registered as shareholders, & the prior equity of pl'ts. prevailed.—*MOORE v. NORTH WESTERN BANK*, [1891] 2 Ch. 599; 60 L. J. Ch. 627; 64 L. T. 456; 40 W. R. 93; 7 T. L. R. 430.

Annotations:—*Reid. Ireland v. Hart*, [1902] 1 Ch. 522. *Mentd. Rimmer v. Webster* (1902), 71 L. J. Ch. 561.

C. Irregular Registration.

2430. Transfer from transferor registered before transfer of shares to transferor registered.]—One of two partners in a foreign firm of bankers lent to L. in this country a sum of money, L. executing, by way of security, a transfer to the firm of shares in a co., which was executed by the above-named partner in the name of his firm, & the transfer

was approved of by the directors. L. at that time held transfers of a corresponding number of shares, but the transfers were not registered. Some time afterwards the transfer deeds were left at the office of the co., & the transfers were registered, the registration of the transfer to the bankers being dated before the registration of the transfers to L., & being in the name of the bankers as a firm. The loan was afterwards repaid, & the shares were re-transferred to L. by the same partner, he executing the deed in the name of the firm, & the transfer was duly registered. Within a year from this time an order for winding up the co. was made:—*Held*: (1) under the circumstances the one partner could accept shares so as to bind the firm; (2) shares can be sufficiently registered in the name of a firm; (3) the errors & irregularities in the registration did not affect the liability of the firm; (4) the firm of bankers were, in respect of these shares, liable as past members of the co.—*Re LAND CREDIT CO. OF IRELAND, WEIKERSHEIM'S CASE* (1873), 8 Ch. App. 831; 42 L. J. Ch. 435; 28 L. T. 653; 21 W. R. 612, L. JJ.

Annotations:—As to (1) *Expld. Niemann v. Niemann* (1889), 43 Ch. D. 198. As to (2) *Reid. Re Vagliano Anthracite Collieries* (1910), 79 L. J. Ch. 769. *Generally, Mentd. Re Printing Telegraph & Construction Co. of Agence Havas, Ex p. Cammell* (1894), 1 Mans. 274.

2431. Transfer of shares to trustees for company—Consent of trustees to registration required by articles—Registration without consent.]—An agreement was made for the purchase by a co. from R. of his business, part of the purchase-money, namely, £40,000, to be paid in 1,000 shares of £50 each, upon which £40 per share should be credited as paid. R. guaranteed to the co. for five years a yearly dividend of £10 per cent., & it was thereby agreed that the vendor's shares should be transferred to A. & B. as trustees for the co. to secure the performance of the guarantee. The agreement was incorporated in the articles of the co., by which it was provided also that A. & B.'s names should not be placed on the register of members without their consent. The shares were allotted to R. & he executed a transfer of them to A. & B., & a certificate of transfer was issued. Subsequently, the certificates of these shares, the deed of transfer, & a certificate of transfer were deposited with the bankers of the co. for safe custody. In July, 1875, an order was made for winding up the co. The liquidators placed the names of A. & B. without their consent on the register of members & list of contributories:—*Held*: the names of A. & B. must be removed from the list of shareholders.—*Re WEST HARTLEPOOL IRON CO., GRAY'S CASE*

approved by the board. A shareholder, holding 423 shares, became insolvent, & his shares thereupon vested in the official assignee, who sold them. The purchaser required the official assignee to transfer the shares into the names of two nominees. The official assignee executed the necessary transfer deeds & sent them to the co., with a request that the shares might be transferred accordingly. The proposed nominees were already members of the co. & registered holders of shares in it, & no objection was taken to them in their personal capacity. It was contended that neither the official assignee nor the transferees had any legal right to call on the co. to register the transfers:—*Held*: having regard to the provision of the arts. of assocn. of the co., the official assignee was entitled to have the shares registered in the names of his vendees.—*KAIKHOSRO MUNCHERJI HEERAMANICK v. COORLA SPINNING & WEAVING CO.*

(1891) 1 L. R. 16 Bom. 80.—IND.

c. Alteration in articles of association—Whether effective against prior application for registration.]—*M'ARTHUR (W. & A.), LTD. (LIQUIDATOR) v. GULF LINE, LTD.*, [1909] S. C. 732; 46 Sc. L. R. 497; 1 S. L. T. 279.—SCOT.

d. Transferee inserting own name on blank transfer form—Refusal of company to register transfer.]—Shares in the N. Bank were sold by the allottee, & a transfer in the form required by the arts. of assocn. of the Bank was executed, but no name was inserted as transferee. The purchaser pledged them with another bank, & deposited with them the blank transfer. This bank applied to the N. Bank, without producing a letter from the pledgor, to register their lien, & on its refusal sold the shares to pl'tf. & delivered to him the transfer, also in blank. Pl'tf. inserted his own name in

the transfer, & requested the N. Bank to register the shares in his name:—*Held*: the N. Bank were justified in refusing to register, & pl'tf., having received back from his vendors the price of his shares, had no cause of action.—*KNOWLES v. NATIONAL BANK OF INDIA* (1869), 2 B. L. R. 158.—IND.

PART III. SECT. 23, SUB-SECT. 8.—B.

e. As ground for rectification of register.]—*Semble*: where there has been a transfer of shares in a co. & unnecessary delay has taken place in rectifying the register of the co. to give effect thereto, the ct. has power to direct the date on which the transfer should have been registered to be entered in the register.—*Re BLACKWOOD*, [1908] V. L. R. 517.—AUS.

f. —.]—PROPERTY INVESTMENT CO. OF SCOTLAND, LTD. *v. DUNCAN* (1887), 14 R. (Ct. of Sess.) 299; 21 Sc. L. R. 221.—SCOT.

(1876), 1 Ch. D. 664; 45 L. J. Ch. 342; 34 L. T. 164; 24 W. R. 508.

2432. Entry in register by secretary without authority—Subsequent refusal by directors to sanction transfer.]—By one of the arts. of assocn. of a co., "the directors may decline to register any transfer of shares upon which the co. has a lien, & in case of shares not fully paid-up may refuse to register a transfer to a transferee of whom they do not approve." Deft., who was the registered holder of partly paid shares in a co., executed a transfer of them, & the transfer was lodged with the secretary, who at once entered the name of the transferee in the register. The transfer came subsequently before the directors, who, acting under the above article, refused to pass it, & the secretary struck the name of the transferee out of the register. The directors afterwards made a call upon the shares. In an action to recover the calls the secretary in his evidence stated that he had no authority to pass transfers, & that he made the entry in the register merely in order to keep pace with the work, & that the directors had never before refused to sanction a transfer:—*Held*: the secretary had no authority to enter the transfers at once, & therefore, deft. remained the registered holder of the shares, & was liable for calls.—*CHIDA MINES, LTD. v. ANDERSON* (1905), 22 T. L. R. 27.

Irregular rectification of register by secretary.]—*See* No. 1303, *ante*.

D. Refusal to Register.

2433. Damages—Jurisdiction of court to award.]—*Re OTTOS KOPJE DIAMOND MINES, LTD.*, No. 2423, *ante*.

2434. — Measure of.]—*Re OTTOS KOPJE DIAMOND MINES, LTD.*, No. 2423, *ante*.

See, further, Sub-sect. 5, A., B. (d), *ante*.

E. Enforcing Registration.

Whether court will enforce.]—*See* Sub-sect. 5, B. (b) i., *ante*.

2435. Whether mandamus lies—More con-

venient remedy provided.]—The ct. will not grant a prerogative writ of *mandamus* to enforce the registration of a transfer of shares in a co., as the remedies provided by the Common Law Procedure Act, 1854 (c. 125), s. 68, & 1862 Act, s. 35, are more convenient than proceeding by *mandamus*.—*R. v. LAMBOURN VALLEY RY. CO.* (1888), 22 Q. B. D. 463; 58 L. J. Q. B. 136; 60 L. T. 54; 53 J. P. 248; 5 T. L. R. 78, D. C.

Annotations:—*Reid. R. v. St. George the Martyr, Southwark Vestry* (1892), 61 L. J. Q. B. 398; *R. v. L. & N. W. Ry.*, [1894] 2 Q. B. 512; *R. v. Incorporated Law Soc.* (1895), 64 L. J. Q. B. 797; *R. v. L. & N. W. Ry. & G. W. Ry.* (1896), 65 L. J. Q. B. 516; *R. v. St. Giles, Camberwell Vestry* (1897), 66 L. J. Q. B. 337; *Smith v. Chorley District Council*, [1897] 1 Q. B. 532; *Davies v. Gas Light & Coke Co.*, [1909] 1 Ch. 248; *R. v. Wilts. & Berks. Canal Co.*, *Ex p. Berkshire County Council* (1912), 107 L. T. 765.

See, generally, CROWN PRACTICE, Vol. XVI., pp. 282 *et seq.*

SUB-SECT. 9.—RESTRAINT OF TRANSFER.

2436. By injunction—When granted—Not without appearance or default of appearance by defendant.]—Injunction to prevent transfer of stocks, not granted till after deft.'s appearance, or being in contempt, & upon notice.—*DOOLITTLE v. WALTON* (1771), 2 Dick. 442; 21 E. R. 341.

2437. — Before answer—Stock standing in name of agent—Strong evidence of fraud.]—Injunction till answer, restraining a transfer of stock, standing in the name of a steward; on strong evidence by affidavit, that it was the produce of his master's property, rents, etc., received for many years without account.—*CHEDWORTH (LORD) v. EDWARDS* (1802), 8 Ves. 46; 32 E. R. 268, L. C.

Annotations:—*Mentd. Lupton v. White, White v. Lupton* (1808), 15 Ves. 432; *Harington v. Hoggart* (1830), 1 B. & Ad. 577; *Re Suisse* (1842), 6 Jur. 654; *Bodenham v. Hoskyns* (1852), 2 De G. M. & G. 903; *Pennell v. Deffell* (1853), 4 De G. M. & G. 372; *Powdrell v. Jones* (1854), 18 Jur. 1111; *Wickham v. Gatrill* (1854), 23 L. T. O. S. 252; *Makepeace v. Rogers* (1865), 5 New Rep. 399; *Re Hallett's Estate, Knatchbull v. Hallett* (1880), 13 Ch. D. 696.

PART III. SECT. 23, SUB-SECT. 8.—E.

g. Whether court will enforce—Resolution at special general meeting—Transferor not present.]—Bank of L. brought an action against S., deft., as shareholder, to recover a call of 10 per cent on 25 shares held by him in that bank. Deft. pleaded that, before receiving notice of the call he had made, in good faith & for valid consideration, a transfer & assignment of all shares & stock which he held in the bank to an authorised & qualified person, & deft. & the transferees of the shares or stock did all the things which were necessary for the valid & final transferring of the shares or stock, but plffs. without legal excuse & without reason, refused to record such transfer, or to register the same in the books of the bank, or to recognise the transfer. Plffs. filed no replication to the plea, but at the trial of the action, they attempted to justify the refusal to permit the transfer of the shares upon the ground that at a special general meeting of the shareholders of the bank, held on June 26, 1873, it was resolved, "that the Bank of L. should not be allowed to go into liquidation, but that steps should be taken to obtain a loan of such sum as may be necessary to enable the bank to resume specie payments & that the shareholders agree to hold their shares without assigning them until the principal & interest due on such loan shall be fully paid, & to execute, when required, a bond to that effect." Deft. was not present at the meeting

when this resolution was passed. Subsequently to the resolution & prior to the sale by deft. of his shares, a large number of other shares had been transferred in the books of the bank. In Oct., 1879, the Bank of L. became insolvent, & the Bank of N. S., plffs., obtained leave to intervene & carry on the action.

At the trial a verdict was found by the judge in favour of defts.; but the Supreme Ct. of Nova Scotia made absolute a rule *nisi* to set aside the verdict.—*BANK OF NOVA SCOTIA (ASSIGNEE) v. SMITH* (1883), 16 N. S. R. (4 R. & G.) 146; *reversed*, 8 S. C. R. 558.—*CAN.*

h. —.]—Motion to compel the trust co. to record a transfer to P. of 4 shares of common stock in the steel co. The transfer was in order & would have been recorded by the secretary of the trust co., but for the instructions they received from the secretary of the steel co. on July 21, not to do so until after July 30. Order made as asked.—*Re PANTON & CRAMP STEEL CO. & NATIONAL TRUST CO.* (1904), 4 O. W. R. 109; 25 C. L. T. 42; 9 O. L. R. 3.—*CAN.*

k. Whether mandamus lies—Notice of facts served on, & demand for registration made to, secretary & treasurer of company.]—Upon an application to compel a railway co. by *mandamus* to register a transfer of stock:—*Held*: the demand for the transfer of stock upon the secretary & treasurer of the co., & a notice of facts

served upon him in the name of the co., were sufficient; service & demand upon the president not being indispensable.—*Re GOODWIN v. OTTAWA & PRESCOTT RY. CO.* (1863), 13 C. P. 254.—*CAN.*

l. —.]—On application for a *mandamus* to a road co. to transfer stock to a purchaser thereof under execution:—*Held*: (1) a demand & refusal after service of the attested copy of execution was essential, under C. S. C., c. 70.

Execution debtor was the president of the co., & on showing cause, he asserted payment of the execution before the sale, etc.:—*Held*: (2) this could not justify the co. in refusing to transfer, for they had no concern with the transactions between execution plff. & deft., or between deft. & the sheriff.—*Re GUILLOT & SANDWICH & WINDSOR GRAVEL ROAD CO.* (1867), 26 U. C. R. 246.—*CAN.*

m. — Out & out transfer to man of straw.]—A conditional order for a *mandamus* to register a transfer of shares in a railway co. made absolute, although it appeared that the transfer, which, however, was a transfer out & out not subject to any secret trust for transferor, was made to a pauper, in order to enable transferor to get rid of liability, & that the consideration money stated in the deed was a mere fiction.—*R. (CREA) v. MIDLAND COUNTIES & SHANNON JUNCTION RY. CO.* (1863), 9 L. T. 151.—*IR.*

Sect. 23.—Transfer of shares: Sub-sects. 9, 10, 11 & 12, A.]

2438. — Measure of damages on dissolution of injunction.]—Pltf. having instituted proceedings to establish his alleged title to certain shares in a limited co., as against the registered holder of the shares & his mtgees., obtained an *interim* injunction, upon the usual undertaking in damages, restraining any dealing with the shares until judgment in the action or further order. Subsequently, but before the trial, the mtgees. applied in the action for leave to sell the shares, but pltf. & the registered holder both opposed, & the application was not granted. At the trial the action was dismissed with costs:—*Held*: the measure of damages payable under the undertaking was the difference between the respective prices of the shares at the date of the injunction & at the date of the application for leave to sell.—**MANSELL v. BRITISH LINEN CO. BANK**, [1892] 3 Ch. 159; 61 L. J. Ch. 696; 67 L. T. 171.

By charging order under Judgments Act, 1838 (c. 110), ss. 14, 15.]—See EXECUTION.

Under regulations of company.]—See Sub-sect. 16, post.

SUB-SECT. 10.—CANCELLATION OF TRANSFER.

2439. Cancellation procured by fraud.]—A broker employed by pltf. to purchase shares, which pltf. paid for, procured the instrument of transfer to pltf., & pltf.'s signature thereto, & received from pltf. the certificates & transfer for the purpose of registration. Soon afterwards he fraudulently procured pltf. to cancel his signature to the transfer, & by means of the cancelled transfer & the certificates, induced the vendor to execute a fresh transfer to himself, & thereupon procured the shares to be registered in his own name, & then mortgaged them to one of defts.:—*Held*: the effect of the first transfer was not destroyed by the cancellation fraudulently procured, & the registration in the name of the broker & the transfer to his mtgee. were decreed to be set aside.—**DONALDSON v. GILLOT** (1866), L. R. 3 Eq. 274; 15 L. T. 382; 12 Jur. N. S. 959; 15 W. R. 166.

2440. Approval of transfer by mistake—Cancellation by officer of company without authority.]—A transfer of shares in a co. by a holder who had not paid his calls was duly passed by the board, & remained on the list for thirty-four days, but was subsequently cancelled by the officer without the authority of the board. The co. having been subsequently wound up:—*Held*: the transfer was

invalid, & the transferor must be placed on the list of contributories.

It appears that by a rule of the arts. of assocn. the co. have power to decline to recognise any transfer by a holder of shares from whom any call is due. It has been contended that the co. has exercised this option & that they are bound by the acts of their officers, & further, that they have sanctioned those acts; but it is quite clear that when the transfer was passed, it was passed under a mistake which was corrected & the transfers cancelled within thirty-four days after it had happened (**STUART, V.-C.**).—*Re BANK OF HINDUSTAN, CHINA, & JAPAN, ANDERSON'S CASE* (1869), L. R. 8 Eq. 509.

Forged transfer.]—See No. 8084, post.

SUB-SECT. 11.—SETTING ASIDE TRANSFER.

Irregular or fraudulent transfers.]—See Sub-sect. 12, post.

Forged transfers.]—See Sub-sect. 12, D., post.

Rectification of register.]—See Sect. 13, sub-sect. 5, ante.

Transfers to infants.]—See Sub-sect. 15, A. (b), post.

SUB-SECT. 12.—IRREGULAR & FRAUDULENT TRANSFERS.

A. In General.

2441. Transfer to company—By member of committee of management.]—One of the members of the committee of a joint-stock co. sold his shares to the committee, on behalf of the co., at a price not exceeding the market price of the shares at that time. The shares were transferred to the trustees in trust for the co., & the vendor thenceforward ceased to interfere in their affairs. Three years after it was known to the shareholders generally that the shares had been sold to the co., the co. having during that time continued the business, & having obtained new Parliamentary powers, pltf., on behalf of himself & all the shareholders in the co., filed his bill against the vendor to set aside the sale & transfer of the shares as fraudulent; & to obtain contribution from the vendor towards the debts of the co. The ct. refused to disturb the sale, & dismissed the bill, with costs.

The sale as it was effected was in strictness irregular. A party in the situation of deft. ought not to have sold his own shares to the co. (**WIGRAM**,

PART III. SECT. 23, SUB-SECT. 11.

n. Fraudulent misrepresentation.]—*Opinion*: to make a relevant case for rescission of a transfer of shares on the head of fraud, as in a question with a co., there must be averments of fraudulent misrepresentation made by the co., consisting of the general body of partners, to pursuer of the action.—**BURNES v. PENNELL** (1849), 6 Bell, Sc. App. 541.—**SCOT**.

o. Infringement of statute.]—A transfer, by which a co. purchased its own shares, was many years later & more than 9 years after the death of transferor set aside, as infringing 1862 Act, s. 35, & the personal representatives of transferor were placed on the list of contributories.—**GENERAL PROPERTY INVESTMENT CO. v. MATHESON'S TRUSTEES** (1888), 16 R. (Ct. of Sess.) 282.—**SCOT**.

PART III. SECT. 23, SUB-SECT. 12.—A.

n. Transfer by unauthorised agent

—Responsibility of company.]—Applt., being the holder of 350 shares in deft. co., authorised C., one of the members of the firm of L. Bros., mining agents & brokers, to sell the same. The shares, instead of being sold by C., were sold by A., another member of the firm, & were afterwards transferred by deft. co. to the purchaser on the application of A.:—*Held*: the sale by A. was wholly unauthorised; it was the duty of the co., before transferring the shares, to ascertain whether the firm, purporting to sign his name to the transfer as applt.'s agent, was authorised by applt. so to do.—**CHRISTOE v. GOLDEN CROWN GOLD MINING CO., LTD.** (1887), 3 Q. L. J. 1.—**AUS**.

q. Discretion of directors—Shares transferred for purpose of increasing voting power of transferor.]—By the arts. of assocn. of a co. incorporated in New South Wales it was provided that shareholders should be entitled to vote according to the number of shares held

by them as follows: holders of 1 to 10 shares 1 vote, holders of 11 to 25 shares 2 votes, holders of 26 to 50 shares 3 votes, holders of over 50 shares 4 votes. It was also provided that shares should be transferred only at the discretion of the directors:—*Held*: the directors might properly, in the exercise of their discretion, refuse to register a transfer of a share where the whole beneficial interest in the share was retained by transferor & the transfer was made for the purpose of increasing the voting power of transferor.—**MANNING RIVER CO-OPERATIVE DAIRY CO. v. SHOESMITH** (1915), 19 C. L. R. 714.—**AUS**.

r. Transfer to company—Transferor ignorant that purchase was for an illegal purpose.]—The manager of an insurance co., authorised by the directors, with the moneys of the co., purchased from the holder thereof, who was ignorant of the object intended, a number of partly paid-up shares of the co. on which calls were in arrear, for

V.-C.).—WALFORD *v.* ADIE (1846), 5 Hare, 112; 67 E. R. 849; *sub nom.* WALFORD *v.* ADIE, ADIE *v.* WALFORD 7 L. T. O. S. 27.

2442. Transfer to directors—Sanction of general meeting required under articles—Time for sanction.]—One of the arts. of the deed of settlement of a joint-stock co. authorised the directors to purchase shares of the co. by the authority of a general meeting previously obtained. The directors, without obtaining any previous authority, purchased shares, & transferred them to other shareholders. The money paid & received upon the transfer duly appeared in the balance sheet, which was submitted to the shareholders, but the minutes of the meeting did not contain any reference to the transfer. Five years afterwards a winding-up order was made:—*Held*: the previous consent of the shareholders was not necessary for a conditional contract of sale. A subsequent confirmation of the contract was sufficient to validate the sale; &, under the circumstances, such subsequent confirmation would be presumed.—*Re* BRITISH PROVIDENT LIFE & FIRE ASSURANCE SOCIETY, LANE'S CASE (1863), 1 De G. J. & Sm. 504; 3 New Rep. 50; 33 L. J. Ch. 84; 9 L. T. 461; 27 J. P. 804; 10 Jur. N. S. 25; 12 W. R. 60; 46 E. R. 200, L. C.

Annotations:—*Mentd.* British Provident Life & Fire Assee. Soc. *v.* Norton (1863), 3 New Rep. 147; Spackman *v.* Evans (1868), L. R. 3 H. L. 171; Holmes *v.* Milward (1878), 47 L. J. Ch. 522; Hadley *v.* Hadley (1897), 77 L. T. 131.

2443. Transfer in breach of trust—Transfer from trustee to cestuis que trust.]—*Re* NORTH-UMBERLAND & DURHAM DISTRICT BANKING CO., *Ex p.* BIGGE, No. 2242, *ante*.

2444. — Transfer by trustee by way of mortgage—As security for personal debt.]—ROOTS *v.* WILLIAMSON, No. 2699, *post*.

2445. — Transferee affected with notice after delivery & before registration.]—(1) A sole trustee of shares executed a transfer & delivered it with the certificate of the shares to a mtgee. who had no notice of the trusts. The mtgee. did not register his transfer until after notice of the trust:—*Held*: the transfer could not be impeached.

(2) The certificate showed that the shares had formerly stood in the names of two persons:—*Held*: this was not enough to put the mtgee. on inquiry or fix him with notice.—DODDS *v.* HILLS (1865), 2 Hem. & M. 424; 12 L. T. 139; 71 E. R. 528.

Annotations:—*As to* (1) *Distd.* Ortigosa *v.* Brown (1878), 47 L. J. Ch. 168; Roots *v.* Williamson (1888), 38 Ch. D. 485. *Foll'd.* Powell *v.* London & Provincial Bank (1893), 62 L. J. Ch. 795. *Generally, Refd.* R. *v.* Shropshire Union Co. (1873), L. R. 8 Q. B. 420.

2446. — Whether company estopped by certificate.]—SHROPSHIRE UNION RAILWAYS & CANAL CO. *v.* R., No. 2412, *ante*.

2447. Transfer of shares not belonging to transferor—Subsequent transfer to transferor ante-dated.]—On Apr. 7, 1863, B., being indebted to A., deposited with him 200 shares in a joint-stock co., in satisfaction of the debt. On Apr. 9, A.

called at the co.'s office, executed an acceptance of the shares, & received a certificate of transfer from C., the secretary. On Apr. 11, C. wrote informing A. that the shares did not belong to B., & that, consequently, the transfer was irregular. A. was, within a few days afterwards, informed that the shares which had been deposited with B. belonged to C., & not to B. On Apr. 14, a call was made, of which A. received notice on Apr. 21. On Apr. 22, C. executed a deed purporting to transfer the shares to B., the deed being ante-dated to Apr. 6, & an entry under that date being made in the books of the co. On bill by A.:—*Held*: the transfer by C. to B. was fraudulent & void as against A. & could not have the effect of making him a member of the co. in respect of the particular shares, after the repudiation, by C.'s letter of Apr. 11, of the attempted transfer from B.; & the register must accordingly be rectified.—BLOXAM *v.* METROPOLITAN CAB & CARRIAGE CO., LTD. (1864), 4 New Rep. 51; 12 W. R. 736.

2448. Sale of shares after assignment to trustees for creditors—Conflicting rights of trustees & selling brokers.]—The owner of shares in a co. executed an assignment of all his property to pltf. as trustees for his creditors. Pltf. applied to the debtor for the certificates of the shares, but were unable to obtain them, whereupon they gave notice to the co. of the assignment. The debtor afterwards through his brokers, C. & Co., sold the shares on the Stock Exchange, executed a transfer, & received the purchase-money. The co., notwithstanding the notice, entered the purchaser's name on the register as holder of the shares, but subsequently removed her name from the register & refused to issue certificates. At the request of the purchaser C. & Co. provided her with other shares in the co., & then claimed to be entitled to the shares sold on behalf of the debtor. In an action by pltf. for a declaration that they were entitled to the shares:—*Held*: any lien which C. & Co. might have upon the shares was only upon the debtor's interest, which was subject to the right of pltf.; & pltf., not having been guilty of any negligence to deprive them of their equity, were entitled to be registered as owners of the shares.—PEAT *v.* CLAYTON, [1906] 1 Ch. 659; 75 L. J. Ch. 344; 94 L. T. 465; 54 W. R. 416; 22 T. L. R. 312; 50 Sol. Jo. 291; 13 Mans. 117.

2449. Invalid sub-division of shares—Transfer of sub-divided shares.]—*Re* FINANCIAL CORPN., FEILING'S & RIMINGTON'S CASE, KING'S CASE, HOLMES'S, PRITCHARD'S & ADAMS'S CASES, No. 1447, *ante*.

2450. Agreement to take transfer of fully-paid shares—Blank in transfer for numbers of shares—Filled up with numbers of unpaid shares.]—*Re* BLAKELY ORDNANCE CO., BAILEY'S CASE, [1869] W. N. 196.

2451. Transfer ultra vires—Nominee on behalf of company—Transfer to avoid liability.]—A shareholder transferred 150 shares to the manager & a director "on behalf of the co.," on the understanding that the value of them at par should be credited to him as payment in full on other 50

the purpose of cancellation, taking the transfer to himself as "manager in trust." The co. had no power to deal in its own stock. The shares were never cancelled, the dividends thereon being credited to the co.:—*Held*: in the absence of knowledge by transferor that the purchase was for an illegal purpose, the manager was properly placed on the list of contributories.—*Re* UNION FIRE INSURANCE CO., MCCORD'S CASE (1891), 21 O. R. 264.—CAN.

s. Transfer of shares already assigned—Registration by company—Position of innocent transferee.]—A co. incorporated under the Ontario Joint Stock Cos. Letters Patent Act, R. S. O. 1887, c. 157, issued a certificate stating that a certain shareholder was entitled to 22 shares of the capital stock, as he in fact at the time was. The shares were not numbered or identified, but the certificate was numbered & contained the words "Transferable only on the books of the co. in person or by

attorney on the surrender of this certificate." The shareholder assigned the shares to pltf. for value, & gave the certificate to him with an assignment indorsed thereon. Pltf. gave no notice to the co., & did not apply to be registered as a shareholder until several months had elapsed, & in the meantime the shareholder executed another transfer of the shares for value to an innocent transferee who was registered by the co. as the holder of the shares without production of the certificate:—

Sect. 23.—Transfer of shares: Sub-sect. 12, A., B., C. & D. (a).]

shares, of which he retained possession. The co. had no power to hold its own shares:—*Held*: the transaction being *ultra vires*, he could not thus divest himself of his liability without notice to & the knowledge of all the individual shareholders; & he was still a contributory for the whole number of 200 shares.—*Re GENERAL PROVIDENT ASSURANCE CO., LTD., CROSS'S CASE* (1869), 38 L. J. Ch. 583; 17 W. R. 1006.

2452. ——— Purchase by manager without authority.]—The directors of a co. having under the arts. of assocn. power to buy shares in the co. & to appoint a manager, appointed a manager. A shareholder agreed with the manager for the sale to the co. of his shares, & executed a transfer of his shares to two directors, who were trustees for the co. The transfer was not executed by the two directors but was registered:—*Held*: the transfer was invalid, & the shareholder was a contributory. The directors had no authority to delegate to a manager the power to buy shares, & had not in fact delegated that power or ratified the transaction with the shareholder. The directors were not considered to have such knowledge of the books of the co. as to be affected with knowledge of the transaction.—*Re COUNTY PALATINE LOAN & DISCOUNT CO., CARTMELL'S CASE* (1874), 9 Ch. App. 691; 43 L. J. Ch. 588; 31 L. T. 52; 22 W. R. 697. L. JJ.

2453. Entry of shareholder's name in register—Without consent required by articles.]—*WATSON v. EALES*, No. 2071, *ante*.

— **Without formal transfer.]**—*See* No. 1287, *ante*.

2454. Notice of irregularity—Transfer by one of two former holders shown on certificate—Whether notice to transferee.]—*DODDS v. HILLS*, No. 2445, *ante*.

After company's business transferred.]—*See* Nos. 2380, 2406, *ante*.

Letters of renunciation.]—*See* No. 2282, *ante*.

2455. Loss of right to impeach—Lapse of time.]—*WALFORD v. ADIE*, No. 2441, *ante*.

2456. ——— Recognition of transferee as shareholder—Application for calls.]—*WATSON v. EALES*, No. 2071, *ante*.

Transfer into fictitious name.]—*See* No. 2595, *post*.

B. Transfer by way of Compromise of Proceedings.

2457. Director disapproving policy of majority of board—Proposed policy ultra vires—Transfer bona fide.]—*Re LONDON & COUNTY ASSURANCE CO., JESSOPP'S CASE*, No. 2195, *ante*.

2458. Winding-up petition presented by member—Purchase of shares by directors to stifle inquiries.]—A shareholder presented a petition to wind up a co. The directors, to stifle inquiry, bought him off by taking a transfer of his shares to a nominee of their own. The co. having been ordered to be wound up within two years afterwards:—*Held*: the transfer was not *bona fide*, & such shareholder was a contributory.—*Re MITRE ASSURANCE CO., EYRE'S CASE* (1862), 31 Beav. 177; 31 L. J. Ch. 640; 6 L. T. 599; 8 Jur. N. S. 1070; 10 W. R. 678; 54 E. R. 1106.

Annotation:—*Folld. Re Consols Insee. Assocn., Benham's Case* (1865), 11 Jur. N. S. 381.

2459. Threat to present winding-up petition—Shares purchased by trustee for company.]—A petition presented by shareholders to wind up a co. was dismissed, upon condition that the co. paid the costs of all parties to the petition, & upon the suggestion of the ct. a committee was appointed to investigate the affairs of the co. The committee reported that it would be for the benefit of the shareholders that the co. should go on, & that a voluntary loan should be obtained from the shareholders. B., a large shareholder, was dissatisfied with the report & with the statement of accounts upon which it was founded, & he informed the directors that unless a *bona fide* purchaser was obtained for his shares, & his other claims against the co. were satisfied, he would present another petition to wind up the co. After some negotiations an officer of the co. took a transfer of the shares, representing, as B. alleged that he purchased them on his own account. In fact he purchased them at the instance of the directors, & by means of money belonging to the co., & no *bona fide* purchaser could be obtained:—*Held*: B.'s name must be placed upon the list of contributories.—*Re CONSOLS INSURANCE ASSOCN., BENHAM'S CASE* (1865), 12 L. T. 224; 11 Jur. N. S. 381; 13 W. R. 483.

2460. Compromise of action brought by shareholder—Transfer to director as trustee for company—Knowledge of shareholder.]—Upon the compromise of an action brought by G. against a co. in which he was a shareholder, it was arranged that G. should transfer his shares to S., who was the managing director, & should receive from the co. a sum of money as the price of his shares & in satisfaction of his claim. Accordingly, the money was paid, the shares were transferred, & the transfer registered. Two years afterwards the co. was ordered to be wound up, & the official manager placed G.'s name on the list of contributories, on the ground that the transfer was invalid, S. being a trustee for the co., & the assent of the shareholders to the transaction not having been obtained. The ct., under the circumstances, declined to impute to G. knowledge that S. was a trustee for the co.; but, independently of this:—*Held*: the transaction having been acquiesced in by the shareholders for two years, their consent must be presumed as against the co.

Where an act has been done by a public co., to the legality of which certain formalities are requisite, & the circumstances are such that knowledge & acquiescence may be imputed to every shareholder, the ct. will, as against the co., infer that the necessary formalities have been complied with.—*Re BRITISH PROVIDENT, ETC. ASSURANCE SOCIETY, GRADY'S CASE* (1863), 1 De G. J. & Sm. 488; 1 New Rep. 407; 32 L. J. Ch. 326; 8 L. T. 98; 27 J. P. 516; 9 Jur. N. S. 631; 11 W. R. 385; 46 E. R. 194, L. C.

Annotations:—*Folld. Re British Provident, etc. Assce. Soc., Lane's Case* (1863), 1 De G. J. & Sm. 504. *Consd. Re Agriculturist Cattle Insee., Spackman's Case* (1865), 34 L. J. Ch. 321. *Reid. British Provident Life & Fire Assce. Soc. v. Norton* (1863), 3 New Rep. 147; *Hadley v. Hadley* (1897), 77 L. T. 131.

See, further, Sect. 26, sub-sect. 1, B.; Sect. 27, sub-sect. 4, *post*.

Held: the transfer to pltf., in view of the provisions of sect. 52 of above Act, conferred upon him a mere equitable title which was cut out by the subsequent transfer, & while the co. might have insisted upon production of the certificate, they were not bound to do so, & were not estopped from denying

pltf.'s right to the shares.—*SMITH v. WALKERVILLE MALLEABLE IRON CO.* (1896), 23 A. R. 95.—*CAN.*

t. Discretion of court—Indian Companies Act, 1866, s. 34.]—The power given to the ct. by Indian Cos. Act, 1866, s. 34, is discretionary, & the

ct. will not order a transfer to be registered where alleged transferor is not before the ct., & there is any real doubt as to the validity or *bona fides* of the transaction.—*Re LUCHMEE CHUND, LUCHMEE CHUND v. BENGAL COAL CO.* (1882), 1 L. R. 8 Calc. 317.—*IND.*

C. Imperfect Gifts.

2461. Deed of assignment—To be given to daughter on death of assignor.]—A father executed a deed of assignment of certain East India stock & Globe Insurance shares, to his daughter & her husband, & their children. The deed was retained by him, & found, enclosed in an envelope, on which he had in his own handwriting directed the deed to be given up to his daughter on his death. No transfer according to the prescribed forms was made during the father's lifetime:—*Held*: the stock & shares did not pass by the deed, but constituted part of the father's estate.—*DILLON v. COPPIN* (1839), 4 My. & Cr. 647; 9 L. J. Ch. 87; 4 Jur. 427; 41 E. R. 249, L. C.

Annotations:—*Consd.* *Donaldson v. Donaldson* (1854), Kay, 711. *Refd.* *Barton v. Gainer* (1858), 6 W. R. 624. *Mentd.* *Jefferys v. Jefferys* (1841), Cr. & Ph. 138; *M'Fadden v. Jenkyns* (1842), 1 Hare, 458; *Meek v. Kettlewell* (1842), 1 Hare, 464; *Fletcher v. Fletcher* (1844), 4 Hare, 67; *Hall v. Palmer, Russell v. Palmer* (1844), 13 L. J. Ch. 352; *Kekewich v. Manning* (1851), 1 De G. M. & G. 176; *Parnell v. Hingston* (1856), 3 Sm. & G. 337; *Pearson v. Amicable Assce. Office* (1859), 27 Beav. 229; *Re Roby, Howlett v. Newington* (1907), 77 L. J. Ch. 169.

2462. Voluntary settlement—Shares settled.]—Certain shares in two public cos. were assigned, by a voluntary settlement, to a trustee, for the life of the settlor, & then to his great-nephew. No formalities were used for completing the transfer of the shares. It appeared that both the cos. had rules relating to the transfer of shares for valuable consideration, & to the disposal of shares belonging to deceased persons, but no forms were prescribed for the assignment of shares by a voluntary deed:—*Held*: these shares had not been effectually passed, according to the intention of the deceased settlor, to his grand-nephew, but must be handed over by the trustee to his personal representatives.—*SEARLE v. LAW* (1846), 15 Sim. 95; 15 L. J. Ch. 187; 7 L. T. O. S. 78; 10 Jur. 191; 60 E. R. 553.

Annotations:—*Refd.* *Cheale v. Kenward* (1858), 3 De G. & J. 27. *Mentd.* *Parnell v. Hingston* (1856), 3 Sm. & G. 337; *Rummens v. Hare* (1876), 1 Ex. D. 169; *Re Richardson, Shillito v. Hobson* (1885), 30 Ch. D. 396.

2463. ———.]—T. by deed-poll, dated Mar. 6, 1862, purported to transfer fifty shares in the L. Bank to a trustee for E. At that time the trustee held a general power of attorney from T. for the transfer of the stock of any incorporated co. standing in his name. T. afterwards gave the trustee a special power of attorney to receive the dividends on the shares in the L. Bank, but no actual or other transfer of the fifty shares was ever made. The trustee, however, received the dividends on the shares under the second power, & paid them to E., sometimes directly, & sometimes through the intervention of T.:—*Held*: the gift of the fifty shares was imperfect, & under the circumstances T. could not himself be considered a trustee of them.—*MILROY v. LORD* (1862), 4 De G. F. & J. 264; 31 L. J. Ch. 798; 7 L. T. 178; 8 Jur. N. S. 806; 45 E. R. 1185, L. JJ.

Annotations:—*Consd.* *Heartley v. Nicholson* (1875), L. R. 19 Eq. 233. *Refd.* *Moore v. Moore* (1874), L. R. 18 Eq. 474; *Re Ashcroft, Ex p. Todd* (1887), 19 Q. B. D. 186; *Re Smith, Bull v. Smith* (1901), 84 L. T. 835. *Mentd.* *Warriner v. Rogers* (1873), L. R. 16 Eq. 340; *Richards v. Delbridge* (1874), L. R. 18 Eq. 11; *Bizzey v. Flight* (1876), 45 L. J. Ch. 852; *Bottle v. Knocker* (1876), 46 L. J. Ch. 159; *Re King, Sewell v. King* (1879), 14 Ch. D. 179; *Re Breton's Estate, Breton v. Woollven* (1881), 17 Ch. D. 416; *Re Shield, Pethybridge v. Burrow* (1885), 53 L. T. 5; *Re Patrick, Bills v. Tatham* (1890), 63 L. T. 752; *Johnstone v. Mappin* (1891), 60 L. J. Ch. 241; *Coleman v. North* (1898), 47 W. R. 57; *Re Griffin, Griffin v.*

Griffin, [1899] 1 Ch. 408; *Mallott v. Wilson*, [1903] 2 Ch. 494; *Carter v. Hungerford*, [1917] 1 Ch. 260; *Re Williams, Williams v. Ball*, [1917] 1 Ch. 1; *Macedo v. Stroud* (1922), 91 L. J. P. C. 222.

2464. Donatio mortis causa—Bank manager directed to transfer shares to son.]—A testator *in extremis* gave all his shares in a particular bank to his son, on condition of his paying a debt which the testator owed upon the shares to the bank, & wrote a letter to the manager of the bank, directing that the shares should be transferred into the name of the son. The certificates of some of the shares were delivered to the manager as a preliminary to the preparation of the necessary deed of transfer. Before the deed was prepared, the testator died:—*Held*: the transaction was incomplete, & the shares formed part of his general estate.—*LAMBERT v. OVERTON* (1864), 11 L. T. 503; 13 W. R. 227.

See, also, No. 2645, *post*, & generally, GIFTS; SETTLEMENTS.

*D. Transfers effected by Forgery.**(a) Forged Transfers.*

See Forged Transfers Acts, 1891 (c. 43), & 1892 (c. 36).

Position of original shareholder—In relation to company.]—*See* Nos. 8084, 8085, *post*.

Estoppel of shareholder—Forgery by one of two joint holders—Under Companies Clauses Act, 1845, c. 16.]—*See* Nos. 8063, 8083, *post*.

Providing opportunity for forgery—Deposit of blank transfer.]—*See* No. 1342, *ante*.

2465. ——— Forgery by one of two joint holders.]—T. & B. were partners. Stock was standing in the books of a railway co. in their joint names. B. sold out the stock by a deed which he executed & to which he forged the name of T., but he continued to account to T. for the dividends, & T. died in ignorance of the forgery. T.'s personal representative afterwards filed a bill against the co. for a retransfer of the stock:—*Held*: though by the death of T. the right to an action at law was gone, the right to a suit in equity still remained, & a decree directing the co. to retransfer the stock was sustained.—*MIDLAND RY. CO. v. TAYLOR* (1862), 8 H. L. Cas. 751; 31 L. J. Ch. 336; 6 L. T. 73; 8 Jur. N. S. 419; 10 W. R. 382; 11 E. R. 624, H. L.; *affg.* *S. C. sub nom. TAYLOR v. MIDLAND RY. CO.* (1860), 28 Beav. 287.

Annotations:—*Consd.* *Barton v. North Staffordshire Ry.* (1888), 38 Ch. D. 458. *Refd.* *Swan v. North British Australian Co.* (1862), 10 W. R. 841. *Mentd.* *Sutton v. Wilders* (1871), L. R. 12 Eq. 373; *Barton v. L. & N. W. Ry.* (1888), 38 Ch. D. 144.

Compare Nos. 8063, 8083, *post*.

2466. Rights of transferee—Against company—Transfer registered & certificate issued.]—T. being the registered holder of five shares in a registered joint-stock co., limited, left the share certificates in the hands of her broker. A transfer of the shares to S. & G., purporting to be executed by T., together with the certificates, was left with the secretary for registration. The secretary in the usual course wrote to T., notifying that the transfer had been so left, & receiving no answer after ten days, registered the transfer, & removed the name of T. & placed the names of S. & G. on the register as holders of the five shares, giving them certificates certifying that they were the registered holders of the five specific shares. A. bargained for five shares, through brokers in the usual way of the Stock Exchange, & paid the

PART III. SECT. 23, SUB-SECT. 12.—
D. (a).

a. *Rights of transferee—Against company—Transfer registered.]—*Pltf.,

having bought & paid for fifty shares in deft.'s co., received a transfer therefor, purporting to be executed by the owner of the shares. This transfer was forwarded to the co.'s office & was

registered by them. Afterwards it was discovered that the transfer was a forgery, & the co. removed pltf.'s name from the register, refused to receive a cheque forwarded by him for a call, &

Sect. 23.—Transfer of shares: Sub-sect. 12, D. (a), (b) & (c), E. & F.; sub-sect. 13, A.]

value of five shares, & the specific five shares were transferred to him by S. & G. & the name of A. was registered as the holder of the shares, & share certificates were given to him. It was afterwards discovered that the transfer to S. & G. was a forgery, & the co. was ordered to restore T.'s name to the register by rule of ct. under 1862 Act, s. 35. On a case stated under that sect.:—*Held*: the giving of the certificate by the co. to S. & G. amounted to a statement by the co., intended by the co. to be acted upon by purchasers of shares in the market, & S. & G. were entitled to the shares, & A. having acted upon that statement, the co. were estopped from denying its truth; & A. was therefore entitled to recover from the co. as damages for the loss of the shares, the value of the shares at the time the co. first refused to recognise him as a shareholder, with interest at 4 per cent from that time.

Effect of share certificate considered (*see* No. 1784, *ante*).—*Re* BAHIA & SAN FRANCISCO RY. Co. (1868), L. R. 3 Q. B. 584; 9 B. & S. 844; 37 L. J. Q. B. 176; 18 L. T. 467; 16 W. R. 862.

Annotations:—*Apld.* Hart v. Frontino & Bolivia South American Gold Mining Co. (1870), 39 L. J. Ex. 93. *Distd.* Sunm v. Anglo-American Telegraph Co., Anglo-American Telegraph Co. v. Spurling (1879), 5 Q. B. D. 188. *Consd.* Balkis Consolidated Co. v. Tomkinson, [1893] A. C. 396; *Re* Ottos Kopje Diamond Mines, [1893] 1 Ch. 618; Sheffield Corpn. v. Barclay, [1903] 2 K. B. 580. *Reid.* Webb v. Herne Bay Comrs. (1870), L. R. 5 Q. B. 642; R. v. Shropshire Union Co. (1873), L. R. 8 Q. B. 420; Shaw v. Port Philip Gold Mining Co. (1884), 13 Q. B. D. 103; Soc. Générale de Paris v. Walker (1885), 11 App. Cas. 20; Bishop v. Balkis Consolidated Co. (1890), 25 Q. B. D. 512; Simmons v. London Joint Stock Bank, Little v. London Joint Stock Bank, [1891] 1 Ch. 270; Ruben v. Great Fingall Consolidated, [1904] 2 K. B. 712; Rainford v. Keith & Blackman Co., [1905] 2 Ch. 147. *Mentd.* *Re* Bank of Hindustan, China & Japan, *Ex p.* Kintrea (1869), 5 Ch. App. 95; *Re* Bank of Hindustan, China & Japan, *Ex p.* Campbell, *Ex p.* Hipplisley, *Ex p.* Alison (1873), 22 W. R. 113; Crouch v. Credit Foncier of England (1873), L. R. 8 Q. B. 374; Burkinshaw v. Nicolls (1879), 39 L. T. 308; R. v. Charnwood Forest Ry. (1884), Cab. & El. 419; Low v. Bouverie, [1891] 3 Ch. 82; Whitechurch v. Cavanagh, [1902] A. C. 117.

2467. ————*Re* RECIFE & SAN FRANCISCO & PERNAMBUCO RY. Co., LTD., & TRITTIN, ETC. (1868), 37 L. J. Q. B. 183, n.

Alteration of transfer after execution by vendor—Vendor's initials to alteration forged.]—*See* No. 8088, *post*.

2468. Rights of company—Rectification of register—Whether estopped by issue of certificate.]—On a transfer of stock in a co., incorporated under 1862 Act, the issue of the co.'s stock certificate to the transferee is not a representation that the immediate transfer to him is valid, so as to give him any right of action against the co. if it proves invalid. A buyer, on the Stock Exchange, of stock in a co. incorporated under 1862 Act, received & lodged with the co. for registration, an instrument which purported to be a transfer of the stock from the registered holder to himself. After making inquiries, the co. registered the transfer, & the buyer having transferred the stock to a bank in order to secure advances, the co. registered that transfer also, & issued their stock certificate to the bank as the registered holders. The original transfer to the buyer was discovered to be a forgery, & he thereupon paid off his debt to the bank, &

brought an action, in which he & the bank were plffs., to recover the value of the stock from the co.:—*Held*: the buyer had no right by estoppel against the co. in respect of the stock. The co., by issuing their stock certificate to the bank, as the buyer's transferees, had made no representation to the buyer that the original transfer to him was valid; & therefore, the action was not maintainable.—*SIMM v. ANGLO-AMERICAN TELEGRAPH CO., ANGLO-AMERICAN TELEGRAPH CO. v. SPURLING* (1879), 5 Q. B. D. 188; 49 L. J. Q. B. 392; 42 L. T. 37; 44 J. P. 280; 28 W. R. 290, C. A.

Annotations:—*Apld.* Foster v. Tyne Pontoon & Dry Docks Co. & Renwick (1893), 63 L. J. Q. B. 50. *Consd.* Balkis Consolidated Co. v. Tomkinson, [1893] A. C. 396; Sheffield Corpn. v. Barclay, [1905] A. C. 392. *Reid.* Dixon v. Kennaway, [1900] 1 Ch. 833; Ruben v. Great Fingall Consolidated, [1904] 1 K. B. 650; Bank of England v. Cutler, [1908] 2 K. B. 208; Platt v. Rowe (Trading as Chapman & Rowe) & Mitchell (1909), 26 T. L. R. 49. *Mentd.* Kingston-upon-Hull Corpn. v. Harding, [1892] 2 Q. B. 494; Smith v. Reynolds (1892), 66 L. T. 808.

Compare No. 8089, *post*.

Rectification of register, *see, generally*, Sect. 13, sub-sect. 5, *ante*.

Estoppel by certificate, *see, generally*, Sect. 18, sub-sect. 3, B., *ante*.

2469. ———— **To impeach bonâ fide transferee's title—Forged transfer not registered—Payment of dividends.]**—*FOSTER v. TYNE PONTOON & DRY DOCKS CO. & RENWICK* (1893), 63 L. J. Q. B. 50; 9 T. L. R. 450.

Annotation:—*Reid.* Dixon v. Kennaway, [1900] 1 Ch. 833.

Indemnity—Transfer effected through banker or broker.]—*Compare* BANKERS & BANKING, Vol. III., pp. 125, 276, Nos. 24, 862.

Practice—Action of original shareholder against company.]—*Compare* No. 8090, 8091, *post*.

(b) Forged Power of Attorney.

2470. On whom loss falls—On company.]—A joint-stock co. having permitted a transfer of stock under a forged letter of attorney:—*Held*: the co., & not the fair purchaser, should bear the loss.—*ASHBY v. BLACKWELL* (1765), Amb. 503; 2 Eden, 299; 27 E. R. 326, L. C.

Annotations:—*Reid.* Duncan v. Luntley (1849), 2 H. & Tw. 78; *Simm v. Anglo-American Telegraph Co., Anglo-American Telegraph Co. v. Spurling* (1879), 5 Q. B. D. 188.

See, also, BANKERS & BANKING, Vol. III., pp. 124–126, 178, Nos. 17–25, 329.

(c) Forged Share Certificate.

See Nos. 1793, 1794, *ante*.

E. Transfers to Avoid Liability.

See Sub-sect. 13, *post*.

F. Transfers not Complying with Formalities.

See Sub-sect. 3, *ante*.

SUB-SECT. 13.—TRANSFERS TO AVOID LIABILITY.

A. In General.

2471. Tests of validity.]—Although a shareholder in an abortive co., the shares in which pass by the delivery of scrip certificates, may transfer his shares to an insolvent, for the purpose of getting

refused to restore his name to the register:—*Held*: the co. having registered pltf. & he having acted on the registration by forwarding his cheque, the co. was estopped from denying that he was a shareholder.—*WATT v. CENTRAL ITALY GOLD MINING CO.*, 2 J. R. N. S. 16.—N.Z.

PART III. SECT. 23, SUB-SECT. 13.—A.

b. Purchase under execution—By person of no means—Acting in collusion with defaulting shareholder.]—A shareholder in a co., desirous of avoiding an anticipated call in such co., made an

arrangement under which he was sued in the county ct., judgment obtained against him in default of defence, & seizure made of the shares in the co. held by him. In pursuance of such arrangement the shares were sold by the county ct. bailiff & bought by a person acting in conjunction with the

rid of liability, the transaction must be a real one & not a false or hollow contrivance. *Qu.*: whether a *bonâ fide* transfer made some time after a petition for winding up the co. under the Winding-up Acts has been filed & advertised would be valid.—*Re MEXICAN & SOUTH AMERICAN CO., COSTELLO'S CASE* (1860), 2 De G. F. & J. 302; 30 L. J. Ch. 113; 3 L. T. 421; 6 Jur. N. S. 1270; 9 W. R. 6; 45 E. R. 638, L. JJ.

Annotations:—*Apld.* *Re Esqair Mwyn Mining Co. & Joint Stock Companies Act, 1856-57, Alexander's Case* (1861), 3 L. T. 883. *Foll.* *Re Phoenix Life Assoc., Ex p. Hatton* (1862), 31 L. J. Ch. 340. *Apld.* *Re Discoverers Finance Corp., [1908] 1 Ch. 141.* *Expld.* *Re Discoverers Finance Corp., Lindlar's Case, [1910] 1 Ch. 312.* *Refd.* *Re European Bank, Master's Case* (1871), 7 Ch. App. 292; *R. v. Lambourn Valley Ry.* (1888), 22 Q. B. D. 463.

2472. —.]—A solr., who was a shareholder in an incorporated co., knowing it to be in difficulties, transferred his shares to his farm bailiff, a man without property. The transfer purported to be made for £50, but no such sum was ever paid, nor had the transferee ever agreed to pay any sum. The transferor admitted that he had made the transfer to get rid of his liability, & had asked the transferee to take the shares off his hands. He also stated that he had informed the transferee, who had no other advice, that the co. was in difficulties; that the shares were worthless, & that a liability might attach to the ownership. The transferee stated that he had never looked upon himself as owner; that he had always considered that the shares were merely put into his name to serve some purpose of the transferor's, & that he had always understood that he should be indemnified. The co. having been ordered to be wound up, the transferor, as solr. of the transferee, but without communication with him, made an offer to contribute a sum towards the debts of the co. to escape all further liability. He admitted that this sum was to have come out of his own pocket:—*Held*: the transfer must be held to have been merely colourable, & the transferor was a contributory.

If a person, believing a co. in which he is a shareholder to be insolvent, wishes to get rid of his shares, & before its insolvency is proclaimed *bonâ fide* sells them to a stranger, or even gives a stranger money to take them off his hands, that is a perfectly good transaction, & will be sustained in this ct. It is only where, after the co. has been

manifestly & publicly declared to be insolvent, when in order to get rid of his liability, & to throw his burden on others, the shareholder gives his shares to a pauper or to a person over whom he has peculiar influence, as in *Re Mexican & South American Co., Hyam's Case*, No. 2483, *post*, & the like, that the transaction cannot be supported (*ROMILLY, M.R.*).—*Re ELECTRIC TELEGRAPH CO. OF IRELAND, BUDD'S CASE* (1861), 3 De G. F. & J. 297; 31 L. J. Ch. 4; 5 L. T. 332; 10 W. R. 51; 45 E. R. 892, L. JJ; *affg.* S. C., 30 Beav. 148.

Annotations:—*Foll.* *Re Phoenix Life Assoc., Ex p. Hatton* (1862), 31 L. J. Ch. 340. *Apld.* *Re European Bank, Masters' Case* (1871), 7 Ch. App. 294, n. *Foll.* *Re Discoveries Finance Corp., [1908] 1 Ch. 141.* *Expld.* *Re Discoveries Finance Corp., Lindlar's Case, [1910] 1 Ch. 312.* *Refd.* *R. v. Midland Counties & Shannon Junction Ry.* (1863), 9 L. T. 151; *Re Consols Insee. Assocn., Benham's Case* (1865), 11 Jur. N. S. 381; *Re Overend Gurney, Musgrave & Hart's Case* (1867), L. R. 5 Eq. 193; *Re Financial Insee., Bishop's Case* (1869), 7 Ch. App. 296, n. *Mentd.* *Ilfracombe Ry. v. Nash* (1870), 18 W. R. 431.

2473. —.]—In order to constitute a valid sale of shares, so as to entitle the vendor to have his name excluded from the list of contributories, though it is not necessary that the purchaser should be a person capable of meeting all demands that may be made upon him in respect of the shares, yet the transaction must be *bonâ fide* as between the vendor & purchaser.

A shareholder in a joint-stock co., to avoid payment of a call, procured a person of no means to accept a transfer of his shares for a nominal consideration, & agreed to indemnify him against all liability. The directors refused to register the transfer until the call should have been paid. Afterwards, upon the winding up of the co., the original shareholder's name was placed upon the list of contributories. Upon his application to have it removed:—*Held*: there was no *bonâ fide* transfer of the shares, & the name was retained upon the list.—*Re PHOENIX LIFE ASSURANCE CO., Ex p. HATTON* (1862), 31 L. J. Ch. 340; 6 L. T. 123; 8 Jur. N. S. 380; 10 W. R. 313.

Annotations:—*Consd.* *Re Discoverers Finance Corp., Lindlar's Case, [1910] 1 Ch. 312.* *Mentd.* *British Provident Life & Fire Assoc., Orpen's Case* (1863), 2 New. Rep. 225.

2474. —.]—The holder of ordinary shares, on each of which a liability of 12s. 6d. remained unpaid, transferred his shares in order to escape the liability, under circumstances which, the ct.

shareholder for a nominal sum. The purchaser was a man without means. The directors under the powers contained in the arts. of assocn., refused to register purchaser as a shareholder. Upon an application by purchaser under sect. 36 of Companies Act, 1890, to have the register rectified by placing his name thereon:—*Held*: under the circumstances of the case the ct. was not satisfied of the justice of the case, & the application would be refused.—*Re MCCracken's City Brewery Co., LTD.* (1899), 24 V. L. R. 803.—AUS.

c. *Assignment in insolvency*—*After execution of deed of composition & discharge.*—Deft., director of a railway co., subscribed for stock to the amount of \$1,000, on which he paid, partly in money & partly by certain allowances made for his services as director & otherwise, the sum of \$400. Subsequently to this, he made an assignment under Insolvent Act, 1869. Before doing so, however, he procured the execution by the required majority of his creditors of a deed of composition & discharge, apparently under sect. 94 of the Act. Pltf., as a creditor of the same co., sued out a writ of *sci. fa.* against deft. to compel payment to him of the balance due upon the said stock. Deft. pleaded that he was not a share-

holder in the co., his contention being that the property in the stock had passed to assignee. It did not appear whether or not assignee had accepted or rejected this stock, or had done any act beyond accepting the assignment made to him. Deft. had obtained his discharge in the usual way. The unpaid balance upon the stock, however, not having been scheduled as a liability of deft., & no claim having been proved in respect of it:—*Held*: pltf. was entitled to recover, & the property in the stock had not passed to official assignee.—*DENISON v. SMITH* (1878), 43 U. C. R. 503.—CAN.

d. *Transfer to person of no means*—*By directors acting within prescribed powers.*—When the shareholders of a certain co. brought an action against the co. & certain of its directors, alleging that the latter, being a majority of the directorate, had negotiated a transfer of a number of their own shares to C., who subsequently became manager, knowing him to be a man of no sufficient means to pay calls thereon, but wishing to escape liability for certain impending calls; & claimed that the directors should make good to the co. or to them the amount of calls due upon the shares so transferred to C. & unpaid by him;

& the said directors alleged acquiescence & laches on pltf.' part in respect of the matters complained of; & pltf. proved the transfer as alleged:—*Held*: deft. directors in allowing the transfers complained of, were upon the evidence guilty of no fraud towards the shareholders, & such act was within the scope of the prescribed powers & duties of directors.—*THOMPSON v. CANADA FIRE & MARINE INSURANCE CO.* (1885), 9 O. R. 284.—CAN.

e. *Transfer to infant.*—Where a shareholder, liable for calls, transfers by deed his shares to an infant, the co. will not be compelled to register the transfer, thereby relieving the shareholder from all liability & giving the co. a shareholder whom they could not hold.—*R. (BLACKBORN) v. MIDLAND COUNTIES & SHANNON JUNCTION RY. CO.* (1863), 9 L. T. 155.—IR.

f. *Out & out transfer.*—Absolute transfer of shares, although made to avoid calls, is not necessarily *mala fide*.—*SLEEP v. VIRTUE* (1871), 2 V. P. (Law) 29.—AUS.

g. —.]—A former shareholder & director of a co. in liquidation who, a year & eight months before the liquidation & after paying all calls to date had made an out & out transfer

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held, gave to the transferee the right to repudiate the transaction. The transfer was completed & passed by the board, & the name of the transferee was placed on the register as the owner of the shares. Resolutions for the voluntary winding up of the co. were passed, & the liquidators now sought to rectify the list of contributories by replacing thereon the name of the transferor in respect of the shares:—*Held*: the question whether the transfer was out & out, in the sense that by it both the benefit & the liability on the shares had been transferred, was not the only test to be applied. The ct. was bound to consider the equities between the parties & whether under all the circumstances the transaction was *bonâ fide*. This transfer was a colourable transaction, & the transferor's name must be replaced on the register.—*Re DISCOVERERS FINANCE CORPN., LTD.*, [1908] 1 Ch. 141; 97 L. T. 757; 24 T. L. R. 12; 51 Sol. Jo. 825; *sub nom. Re DISCOVERERS FINANCE CORPN., LTD., COOPER'S CASE* (1907), 77 L. J. Ch. 36; 14 Mans. 333; *on appeal*, [1908] 1 Ch. 334, C. A.

Annotation:—*Overd. Re Discoverers Finance Corp., Lindlar's Case*, [1910] 1 Ch. 312.

2475. —.]—In the absence of restrictions in the arts. of assocn. a shareholder in a co. has by virtue of the Cos. Acts a right to transfer his shares without the consent of anybody to any transferee, even though he be a man of straw, & the transfer is executed for the express purpose of relieving the transferor of liability & the consideration is a nominal sum, & even if that sum is not paid, provided it is a *bonâ fide* transaction in the sense that it is an out & out disposal of the property without retaining any interest in the shares, & the transferor *bonâ fide* divests himself of both the benefit & the burden.—*Re DISCOVERERS FINANCE CORPN., LTD., LINDLAR'S CASE*, [1910] 1 Ch. 312; 79 L. J. Ch. 193; 102 L. T. 150; 26 T. L. R. 291; 54 Sol. Jo. 287; 17 Mans. 46, C. A.

2476. Transfer by shareholder into fictitious name.—*ARTHUR v. MIDLAND RY. CO., ETC.*, No. 2595, *post*.

B. Particular Circumstances affecting Validity.

(a) Conduct or Position of Transferor.

2477. Transfer by shareholder—After conduct leading to postponement of call.—A shareholder, in a co. in which the previous consent of the directors was required to transfers made after the

declaration of a call, attended a board meeting, & by his conduct there induced the postponement of a call, & then immediately transferred his shares to a man of straw. On the transferee moving, under 1862 Act, s. 35, to have his name put on the register in the place of that of the transferor:—*Held*: the ct., taking into its consideration the conduct of the transferor, would refuse to assist him to escape from his liability, by substituting the transferee's name for his upon the register.

Semble: in the absence of a special power to directors of refusing transfers, a transfer is not necessarily vitiated by the fact that it is made to a man of straw avowedly in order to evade liability.—*Re NATIONAL & PROVINCIAL MARINE INSURANCE CO., Ex p. PARKER* (1867), 2 Ch. App. 685; 15 W. R. 1217, L. J.

Annotations:—*Refd. Re Heaton's Steel & Iron Co., Simpson's Case* (1869), 39 L. J. Ch. 41; *Re National Provincial Marine Insce., Gilbert's Case* (1870), 5 Ch. App. 559; *Re Stranton Iron & Steel Co.* (1873), L. R. 16 Eq. 559; *Re Cawley* (1889), 42 Ch. D. 209; *Re Bell, Ex p. Hodgson* (1891), 65 L. T. 245.

2478. Transfer by director—Abuse of position as director—Call postponed to avoid liability.—*Re NATIONAL PROVINCIAL MARINE INSURANCE CO., GILBERT'S CASE*, No. 2037, *ante*.

2479. — — —.]—*Re CAWLEY & CO.*, No. 2401, *ante*.

— **By way of compromise.**—*See* No. 2195, *ante*.

2480. Transfer by mortgagee.—Shares in a co. were, to escape liability, transferred by the direction of a mtgee. into the name of the mtgee.'s servant. The servant afterwards claimed the shares, & contended that as the transaction was fraudulent as against the co., the ct. would not assist the mtgee. by declaring that she was a trustee of the shares for him:—*Held*: the mtgee., not being under any liability to the co., or to the creditors of the co., had a right to direct this transfer to be made, & was entitled to a declaration that the servant held the shares in trust for him.—*COLQUHOUN v. COURTENAY* (1874), 43 L. J. Ch. 338; 29 L. T. 877; 22 W. R. 435.

2481. Transfer by administrator—Being also residuary legatee.—*Re TROUGHTON, RENT & GENERAL COLLECTING & ESTATE CO. v. TROUGHTON*, No. 2596, *post*.

(b) Position of Transferee.

2482. Employee of transferor.—The shares of a co. were transferable by delivery. After the co. was in difficulties, & a few days before an order

of his shares for the purpose of getting rid of his liability thereon:—*Held*: entitled not to be placed on the list of contributories.—*COMMERCIAL LOAN & TRUST CO., LTD. v. MACAW*, [1922] 3 W. W. R. 1129; [1923] 1 D. L. R. 744; 32 Man. L. R. 413.—*CAN.*

h. —.]—A director of a limited co. transferred shares, including part of his qualifying shares, held by him therein, on which there was an uncalled liability of nearly £2,000, to his house-keeper, who was a person of no means; & this he did at a time when the financial position of the co. was known to the directors to be hopeless. Shortly afterwards the co. went into liquidation & the liquidator presented a petition for rectification of the register by the restoration of the director's name. There was no provision in the arts. of assocn. affecting a director's right to transfer his shares:—*Held*: the divestiture of the director having been absolute & unqualified, his name could not be restored to the register.—*M'LINTOCK v. CAMPBELL*, [1916] S. C. 966.—*SCOT.*

PART III. SECT. 23, SUB-SECT. 13.—B. (a).

k. Transfers of shares before first payment made—By directors aware of company's insolvent state—To persons of little or no substance.—On the issue of letters patent under Ontario Cos. Act, 1897, c. 191, incorporating a co., the directors subscribed for stock, making no provision, however, for the payment, nor making any calls thereon, while applications for stock by others were only accepted on their paying 25 per cent on subscription & 25 per cent on allotment. Subsequently, & some time before the co. was declared insolvent, the directors, knowing of the insolvent condition, & desiring to get rid of their stock, on which nothing had been paid, employed the promoter of the co. to procure persons willing to take the stock. He accordingly procured 5 persons, who he knew were of little or no substance, & as to whom he had carefully abstained from any inquiry, to take all of the directors' stock, except one share each on which

they could qualify & make the transfers, informing the transferees that they would become directors, & as to 4 of them, that they would incur no liability on the stock, as he would arrange for its disposal. The purchasers gave their promissory notes for the first 25 per cent, payable to the co., instead of to the directors, the object being that they should be treated as payment of the 25 per cent for which the directors were liable:—*Held*: the transfers were invalid, as being made contrary to sect. 30 of the Act, before all calls had been paid; the liability of the directors for the 25 per cent being substantially the same as a call; & also in that the directors were guilty of a breach of trust in not exercising their powers in the best interests of the co. by taking special care & caution in procuring responsible transferees.

The directors were therefore directed to be placed on the list of contributories for this stock.—*Re PETERBOROUGH COLD STORAGE CO.* (1907), 14 O. L. R. 475; 9 O. W. R. 850.—*CAN.*

was made to wind it up, a shareholder transferred his shares to his foreman. The ct., thinking that the transfer was not *bonâ fide*:—*Held*: it was inoperative, & the transferor was a contributory.—*Re MEXICAN & SOUTH AMERICAN MINING CO., LUND'S CASE* (1859), 27 Beav. 465; 28 L. J. Ch. 628; 33 L. T. O. S. 85; 5 Jur. N. S. 400; 7 W. R. 333; 54 E. R. 184.

Annotations:—*Consd. Re Discoverers Finance Corp., [1908] 1 Ch. 141. Dtd. Re Discoverers Finance Corp., Lindlar's Case, [1910] 1 Ch. 312. Refd. Re European Bank, Masters' Case (1872), 7 Ch. App. 292.*

2483. — Consideration paid by transferor.]—A co. by whose custom the shares passed by delivery of the certificates, was ordered to be wound up on Nov. 24, 1857. On Nov. 10, H., who held shares, sold them through a broker, to A., a person in his employ, but the purchase-money was, in fact, paid out of H.'s money:—*Held*: H. should be on the list of contributories.—*Re MEXICAN & SOUTH AMERICAN CO., HYAM'S CASE* (1859), 1 De G. F. & J. 75; 29 L. J. Ch. 243; 1 L. T. 115; 6 Jur. N. S. 181; 8 W. R. 52; 45 E. R. 287, L. C. & L. JJ.

Annotations:—*Consd. Re Athenæum Life Assce. Soc., Chinnock's Case (1860), Johns. 714; Re Mexican & South American Co., Costello's Case (1860), 2 De G. F. & J. 302; Re Discoverers Finance Corp., Lindlar's Case, [1910] 1 Ch. 312. Refd. Re Electric Telegraph Co. of Ireland, Ex p. Budd (1861), 5 L. T. 332; Re Esgair Mwyn Mining Co., Alexander's Case (1861), 3 L. T. 883; Re Phoenix Life Assce., Ex p. Hatton (1862), 31 L. J. Ch. 340; Re Consols Insee. Asscn., Benham's Case (1865), 11 Jur. N. S. 381; Re East of England Bank, Ex p. Bugg (1865), 13 W. R. 911; Re Bank of Hindustan, China & Japan, Ex p. Kintrea (1869), 5 Ch. App. 95; Re Financial Insee., Bishop's Case (1869), 7 Ch. App. 296, n; Re European Bank, Masters' Case (1872), 20 W. R. 499; R. v. Lambourn Valley Ry. Co. (1888), 22 Q. B. D. 463.*

2484. — Transfer out & out.]—P. held 250 shares in a co., whose shares passed by delivery of the certificates, for which he had paid £1,750. A few days before the winding up order, he, being aware that the co. was in difficulties, handed over the certificates to a clerk of his, there not having been any previous negotiation for the sale of them, & the clerk gave him £1 for them. It was not disputed that P. made this transfer in order to escape liability, but the ct. was satisfied, on the evidence, that it was an absolute & *bonâ fide* transfer out & out, without any trust or reservation:—*Held*: P. was not a contributory.—*Re MEXICAN & SOUTH AMERICAN CO., GRISEWOOD & SMITH'S CASE, DE PASS'S CASE* (1859), 4 De G. & J. 544; 28 L. J. Ch. 769; 33 L. T. O. S. 322; 5 Jur. N. S. 1191; 7 W. R. 681; 45 E. R. 211, L. JJ.

Annotations:—*Consd. Re Mexican & South American Co., Costello's Case (1860), 2 De G. F. & J. 302; Re Phoenix Life Assce., Ex p. Hatton (1862), 31 L. J. Ch. 340; Re Discoverers Finance Corp., Lindlar's Case, [1910] 1 Ch. 312. Refd. Re Athenæum Life Assce. Soc., Chinnock's Case (1860), Johns. 714; Re Esgair Mwyn Mining Co., Alexander's Case (1861), 3 L. T. 883; Re Consols Insee. Asscn., Benham's Case (1865), 11 Jur. N. S. 381; Re National & Provincial Marine Insee., Ex p. Parker (1867), 2 Ch. App. 685; Re Smith, Knight, Weston's Case (1868), L. R. 6 Eq. 238; Spackman v. Evans (1868), 19 L. T. 151; Re Asiatic Banking Co., Ex p. Collum (1869), 21 L. T. 350; Re Bank of Hindustan, China & Japan, Ex p. Kintrea (1869), 5 Ch. App. 95; Re Consols Insee. Asscn., Glanville's Case (1870), L. R. 10 Eq. 479; Re Smith, Knight, Battle's Case (1870), 39 L. J. Ch. 391; Re European Bank, Masters' Case (1871), 7 Ch. App. 294, n; Re Great Wheal Busy Mining Co., King's Case (1871), 40 L. J. Ch. 361; R. v. Lambourn Valley Ry. Co. (1888), 22 Q. B. D. 463; Re Discoverers Finance Corp., [1908] 1 Ch. 141. Mtd. Re Royal British Bank, Mixer's Case (1859), 4 De G. & J. 575.*

2485. — Consideration not paid.]—*Re ELECTRIC TELEGRAPH CO. OF IRELAND, BUDD'S CASE, No. 2472, ante.*

2486. — Nominal consideration—Transfer approved by directors, subject to condition.]—H., a shareholder in a co., being desirous of getting

rid of his shares, transferred them out & out for a nominal consideration to his clerk. The directors, who had power to refuse to register transfers, declined to register the transfer, unless H. guaranteed the payment of a call which they were about to make, & also all future calls. H. accordingly gave the guarantee, & the transfer was passed & the transferee registered as a shareholder. H. paid the call when made, & the co. was afterwards wound up:—*Held*: the bargain with the directors was good, & the transfer valid: & even on the assumption that H. had guaranteed all future calls, he was not liable to be placed on the list as a contributory.—*Re BANK OF HINDUSTAN, CHINA & JAPAN, HARRISON'S CASE* (1871), 6 Ch. App. 286; 40 L. J. Ch. 333; 24 L. T. 691; 19 W. R. 572, L. JJ.

—*Transfer by mortgagee.]—See No. 2480, ante.*

2487. Shares purchased in name of employee.]—W. purchased on the Stock Exchange shares in a joint-stock co. On discovering that the vendor was a director of the co., W. gave as the name of the transferee that of a foreman in his employment at weekly wages of two guineas; & in the transfer the foreman was described as a gentleman, & his address was given at the works where W. carried on business. According to the arts. of assocn. a transfer could not be made without the approval of the board; & the transfer to the foreman was laid before the board & approved. Within two months of the approval being given, the co. was ordered to be wound up. The foreman was at first placed upon the list of contributories, but the official liquidator, on discovering the facts, applied to have his name removed & W. settled as a contributory:—*Held*: W. could not be placed on the list of contributories.—*Re HUMBER IRONWORKS & SHIP-BUILDING CO., WILLIAMS' CASE* (1875), 1 Ch. D. 576; 45 L. J. Ch. 48.

Annotations:—*Refd. Re London, Bombay & Mediterranean Bank (1881), 18 Ch. D. 581; Re Britannia Fire Asscn., Coventry's Case, [1891] 1 Ch. 202.*

2488. Man of straw—Insolvent.]—*Re MEXICAN & SOUTH AMERICAN CO., COSTELLO'S CASE, No. 2471, ante.*

2489. — Attorney's clerk.]—A holder of shares in a joint-stock co. transferred them to a person who was an attorney's clerk, for an alleged consideration of £97 10s. On examination before the V.-C. in chambers, the transferor declared he had given the shares to the transferee. No consideration money was in fact paid for them. The transferee swore that at the time he accepted the transfer he was not even aware in what co. the shares were; that he was in the habit of signing transfers for the transferor without making inquiries about them. The certificates of transfer were left with the transferor:—*Held*: the transfers were not *bonâ fide*, & the name of the transferor ordered to be put upon the list of contributories.—*Re ESGAIR MWYN MINING CO., ALEXANDER'S CASE* (1861), 3 L. T. 883; 9 W. R. 410.

Annotation:—*Refd. R. v. Midland Counties & Shannon Junction Ry. (1862), 9 L. T. 151.*

2490. —.]—*Re PHOENIX LIFE ASSURANCE CO., Ex p. HATTON, No. 2473, ante.*

2491. — Ship's steward.]—K., a shareholder in a co. which was in difficulties, but whose shares had still a market price, transferred them to L. by a deed, in consideration of a sum expressed to be paid by L., being about the market price. No sum was, in fact, paid, nor had there been any contract of sale, K. having brought the transfer to L., & asked him to execute it, saying, it was a transfer of shares to him, but saying nothing more.

Sect. 23.—Transfer of shares: Sub-sect. 13, B. (b) & (c); sub-sect. 14, A.]

L. was a ship's steward, whose wages were £1 a week. The transfer was duly registered, the directors who had a power of declining to receive any transfer, not objecting, & L. was entered on the register. A few weeks afterwards an order was made to wind up the co. On an application made under 1862 Act, s. 35:—*Held*: K.'s name should be restored to the register of members.—*Re* BANK OF HINDUSTAN, CHINA & JAPAN, *Ex p.* KINTREA (1869), 5 Ch. App. 95; 39 L. J. Ch. 193; 21 L. T. 688; 18 W. R. 197, L. J.

Annotations:—*Re* Imperial Mercantile Credit Asscn., *Payne's Case* (1869), L. R. 9 Eq. 223; *Re* Bank of Hindustan, China & Japan, *Harrison's Case* (1871), 6 Ch. App. 286; *Re* Bank of Hindustan, China & Japan, *Rogers' Case* (1871), 25 L. T. 406. *Mentd.* *Re* Diamond Rock Boring Co., *Ex p.* Shaw (1877), 2 Q. B. D. 463; *Re* Pyle Works (1890), 44 Ch. D. 534.

2492. — Messenger in a broker's office.]—*Re* IMPERIAL MERCANTILE CREDIT ASSOCN., WILKINSON'S CASE, [1869] W. N. 211.

2493. ——Shares were transferred, in order to escape liability, to a man of straw, by a deed giving false description & address of transferee, & purporting to be made for valuable consideration, whereas, in fact, no consideration passed; & the transfer was registered. The co., being one in which the directors had no power to disallow a transfer:—*Held*: although the circumstances were suspicious, yet, as the parties deposed that no trust was reserved in favour of the transferor, he could not be put upon the list of contributories.—*Re* SMITH, KNIGHT & CO., BATTIE'S CASE (1870), 39 L. J. Ch. 391; 22 L. T. 464; 18 W. R. 620.

2494. — Journeyman butcher—Transferor's son-in-law.]—Twelve days before a banking co. stopped payment, one of the shareholders in the co. transferred to his son-in-law, a journeyman butcher, 280 shares, on which £15 a share had been paid, & £35 was payable, & which were then saleable at £8 to £6 a share. In the transfer deed the transferee was described as "gentleman." The transfer was duly registered by the co. Upon an application, nearly five years after the transfer, to have the name of the transferor substituted for that of the transferee on the list of contributories:—*Held*: under the circumstances, the transfer was a *bonâ fide* gift to the son-in-law, the misdescription of the transferee was not material, & the transaction could not be disturbed.—*Re* EUROPEAN BANK, MASTERS' CASE (1872), 7 Ch. App. 292; 41 L. J. Ch. 501; 26 L. T. 269; 20 W. R. 499, L. J.

Annotation:—*Mentd.* *Re* Taurine Co. (1883), 25 Ch. D. 118.

2495. ——*Re* DISCOVERERS FINANCE CORPN., LTD., LINDLAR'S CASE, No. 2475, *ante*.

Nominee of company—Company not authorised to hold own shares.]—*See* No. 2451, *ante*.

(c) Conditions of Transfer.

2496. Consideration paid by transferor.]—*Re* MEXICAN & SOUTH AMERICAN CO., HYAM'S CASE, No. 2483, *ante*.

2497. Consideration falsely stated in transfer—No consideration paid.]—*Re* ELECTRIC TELEGRAPH CO. OF IRELAND, BUDD'S CASE, No. 2472, *ante*.

2498. ——*Re* ESGAIR MWYN MINING CO., ALEXANDER'S CASE, No. 2489, *ante*.

2499. ——*Re* A transfer, made from a desire on the part of the transferor to escape from liability, is not bad where the directors have no veto, even though money should have been paid to the transferee for taking the shares, & the transfer falsely states money to have been paid to

the transferor.—*Re* HAFOD LEAD MINING CO., SLATER'S CASE (1866), 35 Beav. 391; 35 L. J. Ch. 304; 14 L. T. 95; 12 Jur. N. S. 242; 14 W. R. 446; 55 E. R. 947.

Annotations:—*Re* Discoverers Finance Corpn., *Lindlar's Case*, [1910] 1 Ch. 207. *Mentd.* *Re* Discoverers Finance Corpn., [1908] 1 Ch. 141.

2500. ——*Re* BANK OF HINDUSTAN, CHINA & JAPAN, *Ex p.* KINTREA, No. 2491, *ante*.

2501. ——*Re* SMITH, KNIGHT & CO., BATTIE'S CASE, No. 2493, *ante*.

2502. ——*Re* DISCOVERERS FINANCE CORPN., LTD., LINDLAR'S CASE, No. 2475, *ante*.

2503. Nominal consideration.]—*Re* MEXICAN & SOUTH AMERICAN CO., GRISEWOOD & SMITH'S CASE, DE PASS'S CASE, No. 2484, *ante*.

2504. ——*Re* IMPERIAL MERCANTILE CREDIT ASSOCN., WILKINSON'S CASE, No. 2492, *ante*.

2505. ——*Re* DISCOVERERS FINANCE CORPN., LTD., LINDLAR'S CASE, No. 2475, *ante*.

2506. — Transfer approved by board.]—*Re* BANK OF HINDUSTAN, CHINA & JAPAN, HARRISON'S CASE, No. 2486, *ante*.

2507. Consideration paid to transferee.]—*Re* HAFOD LEAD MINING CO., SLATER'S CASE, No. 2499, *ante*.

2508. ——An unregistered co. was in 1882 incorporated by a special Act of Parliament for the purpose of establishing a fish market. At a meeting of the directors, the directors allotted to themselves the forty qualification shares required by the Act to be held by each. A call of £5 or one fifth per share was paid on the following day, but one of the directors paid up the full amount of his shares, £1,000 in cash. Another directors' meeting was held, at which the secretary reported that £2,400 had been received for calls, & a resolution was thereupon passed that this sum should be paid by the co. on account of the preliminary costs, charges, & expenses. On the same day that sum was handed to P., who had paid or was liable for such costs, charges, & expenses; & he & four other of the directors transferred their shares to a nominal transferee, P.'s shares being transferred to L., who was a clerk of his, & also one of the directors named in the Act, in consideration of £4 paid by P. to L. No other shares in the co., beyond the directors' qualification share, were ever allotted or subscribed for. A judgment debtor presented a winding-up petition under 1862 & 1867 Acts. It was contended by the co. that no winding-up order could be made under those acts, inasmuch as there were now only three registered shareholders of the co., the other five having transferred their shares & ceased to be shareholders or directors:—*Held*: the transfers were invalid.—*Re* SOUTH LONDON FISH MARKET CO. (1888), 39 Ch. D. 324; 60 L. T. 68; 37 W. R. 3; *sub nom.* *Re* SOUTH LONDON FISH MARKET CO., *Ex p.* ST. MARY, NEWINGTON, VESTRY, 4 T. L. R. 764; *sub nom.* *Re* SOUTH LONDON FISH MARKET CO., PLIMSOLL'S CASE, 1 Meg. 92, C. A.

Annotation:—*Mentd.* *Re* Bowling & Welby's Contract, [1895] 1 Ch. 663.

2509. Transfer not out & out—Benefit of shares reserved to transferor.]—A shareholder in a co. *in extremis* is entitled to transfer his shares to any one out & out, but a duly registered transfer to a trustee for the transferor, executed with the intention of getting rid of liability, & reserving the benefit of the shares, does not relieve the transferor from his liability, even where the deed of settlement declares that trusts shall not be recognised, & that the person on the register shall be deemed the beneficial owner of the shares.—

Re ATHENÆUM LIFE ASSURANCE SOCIETY, CHIN-
NOCK'S CASE (1860), John. 714; 1 L. T. 435;
8 W. R. 255; 70 E. R. 607.

Annotation :—*Re* Esqair Mwyn Mining Co., Alexander's
Case (1861), 3 L. T. 883.

2510. ———.]—*Re* DISCOVERERS FINANCE
CORPN., LTD., No. 2474, *ante*.

See, also, Nos. 2475, 2493, *ante*.

2511. ———. Transferee indemnified by transferor.]
—*Re* ELECTRIC TELEGRAPH CO. OF IRELAND,
BUDD'S CASE, No. 2472, *ante*.

2512. ———.]—*Re* DISCOVERERS FINANCE CORPN.
LTD., No. 2474, *ante*.

2513. ———.]—*Re* DISCOVERERS FINANCE
CORPN., LTD., LINDLAR'S CASE, No. 2475, *ante*.

2514. Misdescription of transferee.]—*Re* EURO-
PEAN BANK, MASTERS' CASE, No. 2494, *ante*.

2515. ———.]—*Re* HUMBER IRONWORKS & SHIP-
BUILDING CO., WILLIAMS' CASE, No. 2487, *ante*.

SUB-SECT. 14.—EFFECT OF WINDING UP.

A. In General.

2516. General rule.]—Where by a co.'s deed it
was provided that when shares should have been
transferred the responsibility of the former pro-
prietor should cease, the ct. refused to place the
name of a former proprietor of shares upon the
list of contributories, there being no liability
between him & the present members, whatever
his liability to creditors of the co. might be.—*Re*
ROYAL BANK OF AUSTRALIA, SUTTON'S CASE
(1850), 3 De G. & Sm. 262; 15 L. T. O. S. 391;
14 Jur. 966; 64 E. R. 471.

Annotations :—*Consd.* Tipperary Joint-Stock Bank, *Ex p.*
Stirling & Kennedy (1857), 29 L. T. O. S. 403. *Re*fd.
Re Pennant & Craigwen Consolidated Lead Mining Co.,
Fenn's Case (1854), 4 De G. M. & G. 285; *Re* Times Fire
Assce. (1861), 30 Beav. 596. *Mentd.* *Re* London &
Mediterranean Bank, Wright's Case (1868), L. R. 12
Eq. 334, n.

2517. ———. Application of rule in Clayton's
Case.]—The principle of appropriation of pay-
ments laid down in *Clayton's Case* (1 Mer. 572)
applies to dealings between a co. & its bankers,
so that a former shareholder who has transferred
his shares is exonerated from contributing to the
co.'s debt to its bankers if before the winding up
sufficient money had been paid to the bank to

cancel what was due to the bank when such share-
holder ceased to be a member.—*Re* DEVONPORT &
SOUTH DEVON STEAM FLOUR MILL CO., BATEMAN'S
CASE (1873), 42 L. J. Ch. 577.

2518. ———.]—*Re* BRITISH & AMERICAN TELE-
GRAPH CO., COLQUHOUN'S CASE, [1874] W. N. 49.

2519. Contract for sale of shares—Before pre-
sentation of petition—Transfer not executed.]—It
is the duty of a transferor of shares in a public
co., in order to relieve himself from further
liability, to see that the name of the transferee is
duly registered, & if he neglects to do so, it is his
own laches for which he will be held responsible.

Where a party's name appears on the co.'s
register as the holder of shares, & he has trans-
ferred those shares but the transferee has not
executed the transfer, the transferor remains
liable as a contributory.—*Re* WEST HAM DISTIL-
LERY CO., LTD. (1858), 31 L. T. O. S. 44.

2520. ———. Transfer completed after wind-
ing up begun.]—On May 2, 1866, R. instructed his
brokers to buy shares in the bank for him. The
brokers accordingly contracted to buy the number
of shares from M., & on the same day forwarded
to R. a bought note, in which May 15 was named
as the time for completing the contract. On
May 10, however, the bank stopped payment, &
on May 12, a petition was presented for winding
it up. R. had paid the money to his brokers under
protest, & the question now raised was whether he
or M., the transferor, ought to be on the list in
respect of these shares :—*Held* : there had been no
acceptance of the transferee by the board, & no
opportunity of considering whether they would do
so or not. R.'s name could not, therefore, under
1862 Act, s. 35, be placed on the register.—*Re*
ENGLISH JOINT STOCK BANK, MARZETTI'S CASE
(1866), 15 W. R. 220.

Annotation :—*Mentd.* *Chapman v. Shepherd, Whitehead v.*
Izod (1867), 15 L. T. 477.

2521. ———. Whether void.]—A contract
for the purchase of shares in a joint-stock co.,
entered into but not completed by transfer before
the presentation of a petition for winding up the
co. under 1862 Act, is not rendered void by sect.
153 of that Act. A broker who has bought shares
for a customer under such circumstances, & who
has in accordance with the rules & regulations of
the Stock Exchange been compelled to pay the

PART III. SECT. 23, SUB-SECT. 14.— A.

2516 i. General rule.]—After a wind-
ing-up order has been made, it is too
late for holders of shares, entered as
such in the books of the bank, to
escape liability by showing irregu-
larities in transfers to more or less
remote predecessors in title.—*Re* CEN-
TRAL BANK OF CANADA, HOME
SAVINGS & LOAN CO.'S CASE (1891),
18 A. R. 489.—CAN.

2516 ii. ———.]—*Opinion* : after de-
clared insolvency a bank is not
entitled to alter the position in which
any of its shareholders stand.—*SHAW*
v. CITY OF GLASGOW BANK (LIQUIDATORS) (1878), 6 R. (Ct. of Sess.) 332.
—SCOT.

2516 iii. ———.]—A joint-stock bank-
ing co. registered under 1862 Act stopped
payment on Oct. 2, 1878. The bank
being hopelessly insolvent, on Oct. 22
the co. resolved to go into liquidation.
On Oct. 21 a shareholder raised an
action for reduction of certain transfers
by which he had acquired stock of the
bank five years before the stoppage.
He stated that it had been held in
trust by the sellers for the bank; that
he had been induced to purchase by
false representations made by the
directors; & that at the time he

bought the stock the whole capital of
the bank was lost & stock worthless.
Afterwards he petitioned in the liquida-
tion of the bank to have his name
removed from the list of contribu-
tories :—*Held* : as a consequence of the
stoppage of the bank & steps taken
thereafter by the directors, for which
the shareholders, including petitioner,
were responsible, it became impossible
to make any change in the status of
shareholders either by repudiation or
transfer of shares.—*TENNENT v. CITY*
OF GLASGOW BANK (1879), 4 App. Cas.
615; 6 R. (Ct. of Sess.), 69; 16
Sc. L. R. 509.—SCOT.

2516 iv. ———.]—A joint-stock bank-
ing co., registered under 1862 Act, in the
exercise of powers given in the contract
of co-partnery, bought shares of its
own stock on Sept. 28, 1878, for settle-
ment Oct. 16. On Oct. 2 the bank
stopped payment. On Oct. 5 the
directors issued a circular calling a
meeting of shareholders to consider
a resolution to wind up voluntarily on
the ground that the bank could not
continue its business by reason of its
liabilities. On Oct. 22 resolution to
this effect was passed. On Oct. 16
the seller executed a transfer which he
tendered to the bank but which the
directors refused to accept or register :
—*Held* : the directors were precluded

by the stoppage of the bank & their
subsequent actings on the behalf of
shareholders from accepting or regis-
tering the transfer.—*MITCHELL v.*
CITY OF GLASGOW BANK (1879), 4
App. Cas. 624; 6 R. (Ct. of Sess.) 66;
16 Sc. L. R. 511.—SCOT.

1. Transfer—Eleven years before
winding up—Approved, but not regis-
tered, by company.]—In 1893 B. was
the registered holder of 600 shares in
a co., which shares he held as trustee
for S. On Sept. 11, 1893, B. trans-
ferred the shares to S., & the transfer
was lodged for registration the same
day, & was approved at the meeting
of directors. S. was chairman of the
meeting & informed B. that the
transfer had been approved by the
Board & that it was "all right." No
alteration in the register of share-
holders was, however, made. In 1900
B. learnt for the first time, from a
letter from the manager of the co.,
that his name was still on the co.'s
register, & he wrote protesting. No
other action was taken by him, & no
action was taken by the co. until 1904,
when the co. went into voluntary
liquidation, & the liquidator placed B.
on the list of contributories. The
letter from the manager referred to
stated as a reason for the transfer not
having been registered that no transfer

Sect. 23.—Transfer of shares: Sub-sect. 14, A.]

price of them to the person from whom he bought, is entitled to recover back from his principal the money so paid.—**CHAPMAN v. SHEPHERD, WHITEHEAD v. IZOD** (1867), L. R. 2 C. P. 228; 36 L. J. C. P. 113; 15 L. T. 477; 15 W. R. 314.

*Annotations:—***Consd.** *Coles v. Bristowe* (1868), L. R. 6 Eq. 149. *Reid.* *Biederman v. Stone* (1867), 36 L. J. C. P. 198. *Mentd.* *Sheppard v. Murphy* (1868), 16 W. R. 948.

2522. ——— Recovery of money paid.]—

Pltf. bought from defts. 600 shares in a limited co., which were to be delivered on a certain date, but on his paying defts. a certain sum the contract was by arrangement carried over to a later date. Meanwhile the co. went into liquidation, & the liquidator refused to recognise transfers. When delivery of the shares became due, defts., as they could not give pltf. registered share certificates, offered him bearer certificates, & pltf. replied that owing to the liquidation the contract should be cancelled. In a subsequent action by pltf. to recover back from defts. the sum which he had paid them in respect of the shares:—*Held*: the contract was for the sale of registered shares, & defts. were not entitled to rely on the fact of pltf. having considered the contract cancelled, & therefore pltf. was entitled to recover.—**IREDELL v. GENERAL SECURITIES CORPN., LTD.** (1916), 33 T. L. R. 67, C. A.

See, also, No. 2227, ante.

2523. ——— After presentation of petition—Ignorance of parties.]—Under 1862 Act, the ct. has a discretion to make valid any dealings with shares between the presentation of a petition for winding up & the order made upon it, but an agreement for the sale of shares in a co. entered into in ignorance that a petition for winding up the co. has been presented, is not enforceable or valid, so as to make the purchaser a contributory. The ct. will not compel a purchaser to complete the sale & register the shares in his name if the transaction be incomplete.—*Re LONDON, HAMBURG & CONTINENTAL EXCHANGE BANK, EMMERSON'S CASE* (1866), 1 Ch. App. 433; 36 L. J. Ch. 177; 14 L. T. 746; 12 Jur. N. S. 592; 14 W. R. 905, L. JJ.

*Annotations:—***Consd.** *Chapman v. Shepherd, Whitehead v. Izod* (1867), L. R. 2 C. P. 228. **Distd.** *Paine v. Hutchinson* (1868), 3 Ch. App. 388. *Mentd.* *Re Overend, Gurney, Musgrave & Hart's Case* (1867), L. R. 5 Eq. 193; *Re Overend, Gurney, Ex p. Ward* (1867), 16 L. T. 148; *Re Imperial Steam & Household Coal Co.* (1868), 18 L. T. 390; *Re London & Manchester Industrial Assn.* (1875), 1 Ch. D. 466; *Re Oriental Bank Corpn., Ex p. Guillemin* (1884), 28 Ch. D. 634; *Fryer v. Ewart*, [1902] A. C. 187.

2524. ———.]—Sect. 153 of 1862 Act, which enacts that, when a co. is being wound up subject to the supervision of the ct., every transfer of shares, made between the commencement of the winding up & the order for winding up, shall, unless the ct. otherwise orders, be void, does not invalidate a contract for the sale of shares made in the interval, nor prevent a transfer being made after the order for winding up.—**RUDGE v. BOWMAN** (1868), L. R. 3 Q. B. 689; 9 B. & S. 864; 37 L. J. Q. B. 193.

*Annotations:—***Consd.** *Re Onward Bldg. Soc.*, [1891] 2 Q. B. 463. *Reid.* *Davis v. Haycock* (1869), L. R. 4 Exch. 373; *Re National Bank of Wales, Taylor, Phillips & Rickards' Case*, [1896] 2 Ch. 851. *Mentd.* *Re National Bank of Wales, Taylor, Phillips & Rickards' Cases*, [1897] 1 Ch. 298.

ad or could have been registered since 1897, because of a scheme of arrangement sanctioned at that date:—*Held*: B.'s name should have been moved from the register on Sept. 11, 1893, & must now be removed from the list of contributories & from the

register as from that date; B. was not precluded from this relief by reason of the scheme of arrangement or by any delay on his part.—*Re COLONIAL FINANCE, ETC. CORPN.* (1905), 5 S. J. R. N. S. W. 506.—**AUS.**

m. ——— *After presentation of peti-*

2525. ——— At future date—Prior winding up of company.]—Agreement in 1892 between A. & B., that A. would take 1,000 shares in a co. on condition that B. would, if called upon by A., in 1895 buy from him 500 shares at par value. The co. was wound up & dissolved in 1894:—*Held*: A. was entitled to call upon B. to buy the shares as there was no implied condition that the co. should be in existence at the time of the request.—**NICHOLL v. CAREY** (1895), 11 T. L. R. 526.

—— **Liability for calls—As between vendor & purchaser.]—***See* Sect. 21, sub-sect. 4, B. (b), *ante*.

2526. Transfer—Before winding up—Registered within year of winding up.]—*Re* **ANGLO-INDIAN & COLONIAL INDUSTRIAL & COMMERCIAL INSTITUTION, LTD., MONTAGU'S (LORD ROBERT) CASE, GREY'S CASE** (1888), 4 T. L. R. 580.

2527. ——— Not registered until after winding up.]—Where a transfer of shares had been executed, but had not been registered before the winding up of a co. the transferor is not, in the absence of any contrary provision in the co.'s arts. of assocn., liable to be placed upon the list of contributories in respect of the shares thus transferred.—*Re FREEN & Co., LTD., ELLIOT'S CASE* (1866), 15 L. T. 406; 15 W. R. 166.

*Annotation:—***Mentd.** *Re Crooke's Mining & Smelting Co., Gilman's Case* (1886), 31 Ch. D. 420.

See, further, Sub-sect. 2, C. (c), ante.

2528. ——— Accidental delay by transferee.]

(1) A. sold to N., a stock-jobber, & B. purchased from N., five shares in a joint-stock co. According to the practice of the Stock Exchange, N. gave to A. the name of B. as the purchaser, & a transfer of the shares from A. to B. was executed by A. & B., & the purchase-money was paid to B. by A.; but B. was prevented by accidental absence from home from sending the transfer for registration until after the co. had stopped payment. The co. was wound up, & the liquidators registered all transfers left at the office before the co. stopped payment, but refused to register the transfer from A. to B., & A. was made a contributory, & paid a call on the shares:—*Held*: A. was entitled to a decree against B. for repayment of the call, & indemnity against future liability in respect of the shares.

(2) Where directors of a co. had a discretionary power of refusing to register transfers if they disapproved of the transferee, & a transfer, executed before, was not left for registration until after the commencement of the winding up of the co.:—*Held*: in the absence of evidence that the transferee was objectionable, it would be presumed that the directors would have registered the transfer.—**EVANS v. WOOD** (1867), L. R. 5 Eq. 9; 37 L. J. Ch. 159; 17 L. T. 190; 15 W. R. 476; 16 W. R. 67.

*Annotations:—**As to* (1) **Consd.** *Paine v. Hutchinson* (1868), 3 Ch. App. 388. *Reid.* *Coles v. Bristowe* (1868), L. R. 6 Eq. 149; *Cruse v. Paine* (1868), L. R. 6 Eq. 641; *Grissell v. Bristowe* (1868), L. R. 3 C. P. 112; *Hodgkinson v. Kelly* (1868), L. R. 6 Eq. 496; *Sheppard v. Murphy* (1868), 16 W. R. 948; *London Founders' Assn. & Palmer v. Clarke* (1887), 3 T. L. R. 709; *British Union & National Insce. v. Rawson*, [1916] 2 Ch. 476. *Generally, Mentd.* *Torrington v. Lowe* (1868), 17 W. R. 78.

2529. ——— Presumption as to approval of directors.]—**EVANS v. WOOD**, No. 2528, *ante*.

2530. ——— Never registered—No steps taken by transferor.]—A registered owner of shares

*tion—Consent of liquidator.]—*On the application of the co., the shares in which were all fully paid-up, the ct. authorised the co., on the application of a transferee of the shares, with consent of the provisional liquidator, to register transfers of shares in the

sold them two years before the order to wind up the co., but took no steps to have the transfer registered & completed as between himself & the co.; & the co., consequently, never assented to the transfer:—*Held*: whatever might be the equity as between the vendor & purchaser, the vendor must remain on the list of contributories as between himself & the other shareholders.—*Re CONTRACT CORPN., HEAD'S CASE, WHITE'S CASE* (1866), L. R. 3 Eq. 84; 36 L. J. Ch. 121; 15 L. T. 262; 15 W. R. 142; *sub nom. Re CONTRACT CORPN. CO., LTD., Ex p. HOLMES & WHITE*, 15 L. T. 309; 15 W. R. 143.

Annotations:—*Reid. Re London, Hamburg, & Continental Exchange Bank, Ward & Henry's Case* (1867), 2 Ch. App. 431. *Mentd. Re Bamed's Banking Co., Ex p. Official Liquidators* (1867), 15 L. T. 597; *Re Overend, Gurney, Musgrave & Hart's Case* (1867), L. R. 5 Eq. 193; *Re Peruvian Rys., Ex p. Wallis* (1868), 18 L. T. 676; *Re Cawley, Ex p. Hallett* (1889), 58 L. J. Ch. 633.

2531. — — — — —.]—Although there may have been unnecessary delay on the part of a co. in registering a transfer of shares, no order for the rectification of the register can be made under 1862 Act, s. 35, on the application of a transferor who is also in default, after the co. has been ordered to be wound up.—*Re ANGLO-DANUBIAN STEAM NAVIGATION & COLLIERY CO., WALKER'S CASE* (1868), L. R. 6 Eq. 30; 37 L. J. Ch. 651; 16 W. R. 749.

2532. — — — — — **Disputes between purchasers.**—A shareholder in a limited co. sold his shares, & the purchaser sold them to a sub-purchaser. The vendor executed transfers, first, to the purchaser, & secondly, to a nominee of the sub-purchaser; but, owing to disputes between the purchaser & the sub-purchaser, neither transfer was registered; & at the date of a winding-up order subsequently made against the co., the name of the original vendor remained on the register as the holder of the shares, & he was placed on the list of contributories. An order made by the Master of the Rolls, on summons, removing the name of the original vendor, & substituting that of the sub-purchaser, was discharged on appeal (1) (by TURNER, L.J.) on the ground that the jurisdiction to rectify the register depended on 1862 Act, s. 35, & being discretionary, ought, under the circumstances, not to be exercised; (2) (by CAIRNS, L.J.) on the ground that, the co. being in no default in the matter, the jurisdiction under the act could not be exercised.—*Re LONDON, HAMBURG & CONTINENTAL EXCHANGE BANK, WARD & HENRY'S CASE* (1867), 2 Ch. App. 431; 36 L. J. Ch. 462; 16 L. T. 254; 15 W. R. 569, L. JJ.; *revsq.* (1866), L. R. 2 Eq. 226.

Annotations:—*Distd. Re Bank of Hindustan, China & Japan, Kintrea's Case* (1869), 39 L. J. Ch. 193. *Reid. Re Shaw* (1876), 36 L. T. 59. *Mentd. Re Contract Corp., Head's Case, White's Case* (1866), L. R. 3 Eq. 84; *Re London, Hamburg & Continental Exchange Bank, Emmerson's Case* (1866), L. R. 2 Eq. 231; *Re Joint Stock Discount Co., Sichell's Case* (1867), 3 Ch. App. 119; *Re National & Provincial Marine Insee., Ex p. Parker* (1867), 2 Ch. App. 685; *Re Overend, Gurney, Musgrave & Hart's Case* (1867), L. R. 5 Eq. 193; *Overend, Gurney, Re Oakes's Case, Re Peek's Case* (1867), 36 L. J. Ch. 233; *Re Hydraulic Tube-Drawing & Steel Ordnance Co.* (1868), 16 W. R. 572; *Re Heaton Steel & Iron Co., Simpson's Case* (1869), L. R. 9 Eq. 91; *Re Tahiti Cotton Co., Ex p. Sargent* (1874), 22 W. R. 815; *Skinner v. City of London*

Marine Insee. Corp. (1885), 54 L. J. Q. B. 437; *Re Sussex Brick Co.* (1904), 90 L. T. 426.

2533. — — — — — **Bill for specific performance before winding-up order.**—*PAINE v. HUTCHINSON*, No. 2263, *ante*.

— — — — — **Default of company.**—*See, generally, Sect. 13, sub-sect. 5, B. (d) iii., ante.*

2534. — — — — — **Before presentation of petition—Registration after presentation of petition.**—Where shares in a co. have been transferred before the presentation of a petition for winding up the co. under Joint Stock Companies Acts, 1848 (c. 45), 1849 (c. 108), & 1857 (c. 14), but the transfer is not registered until after the presentation of the petition, the transferee cannot be settled on the list of contributories.—*Re CONSOLS INSURANCE ASSOCN., FEIGAN'S CASE* (1873), 21 W. R. 285.

2535. — — — — — **After presentation of petition—Before order.**—A winding-up petition, after several adjournments, was dismissed on payment of costs, but a small balance of the costs was left unpaid. Some months afterwards another petition was presented, & an order was made on both petitions, that the co. should be wound up & dissolved as from the day on which the order was made. These proceedings took place before 1862 Act:—*Held*: a shareholder who had transferred his shares after the presentation of the first petition & before that of the second, was liable as a contributory.—*Re CONSOLS INSURANCE ASSOCN., GLANVILLE'S CASE* (1870), L. R. 10 Eq. 479; 40 L. J. Ch. 35.

Annotation:—*Fold. Re Consols Insee. Assocn., Feigan's Case* (1873), 21 W. R. 285.

— — — — — **Default of transferor.**—*See Nos. 2530, 2531, ante.*

— — — — — **Failure of company before transfer approved.**—*See No. 1330, ante.*

2536. — — — — — **After resolution for winding up—Before confirmatory resolution.**—A voluntary winding up under 1862 Act, is to be deemed to commence only at the time of the passing of a special resolution, as defined by sect. 51 of the Act authorising such winding up, *i.e.* not before the passing of the subsequent resolution confirming the preliminary resolution for winding up. Therefore, where, after the passing of such a preliminary resolution, but before confirmation, a shareholder transferred all his shares in the co.:—*Held*: his name must be taken off the list of contributories.—*Re OTTOMAN CO., LTD., HORNBY'S CASE* (1868), 37 L. J. Ch. 929; 19 L. T. 237; 16 W. R. 1164.

Annotation:—*Mentd. Re Imperial Land Co. of Marseilles, Ex p. Colborne & Strawbridge* (1871), L. R. 11 Eq. 478.

2537. — — — — — **Company restrained from acting on resolution.**—A transferee of shares under transfers executed before the date of the confirmatory resolution for voluntary liquidation is not entitled to insist on the registration of such transfers after the date of the confirmatory resolution merely because an action has been brought to declare the resolution invalid, & an interlocutory order has been made to restrain the co. from acting upon the resolution.—*Re VIOLET CONSOLIDATED GOLD-MINING CO.* (1899), 68

register of shareholders.—*BENHAR COAL CO. v. REID* (1879), 6 R. (Ct. of Sess.) 706.—*SCOT.*

n. — — — — —.]—Circumstances in which the ct. at the appointment of a liquidator in the winding up of a co. by the ct. authorised the registration, with the consent of the liquidator, of a transfer of shares made after the commencement of the winding

up.—*SURMA VALLEY SAW MILLS, PETITIONERS*, [1917] S. C. 105.—*SCOT.*

o. *When transferee unable to be traced—No presumption that he is a fictitious person.*—A shareholder transferred his shares & procured registration of a transfer to J. S., L. Street, Melbourne, which purported to be accepted & signed by him. On the winding up of the co., J. S. could not be

found or heard of in L. Street:—*Held*: it was not to be presumed he was a fictitious person.—*SIMPSON v. MUL-LABY* (1871), 2 V. R. (Law) 56.—*AUS.*

p. *Liability of pledgee of shares.*—A loan co. which advances money on the security of shares which are transferred to it, & accepted by it in the ordinary absolute form, cannot escape liability in a winding up on the ground

Sect. 23.—Transfer of shares: Sub sect. 14, A. & B.; sub-sect. 15, A. (a) & (b) i.]

L. J. Ch. 535; 80 L. T. 684; 43 Sol. Jo. 476; 7 Mans. 102.

Right to transfer—Where winding up impending.]

—See Nos. 2203, 2391, *ante*.

See, further, Sect. 13, sub-sect. 5, B., *ante*.

B. Statutory Provisions.

See, now, 1908 Act, s. 205.

2538. Voluntary winding up—Consent of liquidator not obtained—Refusal of transferor to execute transfer.]—Sect. 131 of 1862 Act, provides that whenever a co. is wound up voluntarily, the co. shall from the date of the commencement of such winding up cease to carry on its business, & that all transfers of shares, except transfers made to, or with the sanction of, the liquidators, taking place after the commencement of such winding up, shall be void. Pltf., a member of the Stock Exchange, sold for deft. thirty shares in "Overend, Gurney & Co.," after that co. had commenced winding up voluntarily. The sanction of the liquidators to the transfer of the shares had not been obtained, & deft. on that account refused to execute a transfer, & pltf. was in consequence compelled, by the rules of the Stock Exchange, to furnish to the buyer other shares, for which he paid an advanced price:—*Held*: as the statute made the execution of a transfer, without the sanction of the liquidators, only void, but not illegal, deft. was liable to an action for refusing to execute the transfer, & that whether it was the duty of the buyer or of the seller to obtain the required sanction.—*BIEDERMAN v. STONE* (1867), L. R. 2 C. P. 504; 36 L. J. C. P. 198; 16 L. T. 415; 15 W. R. 811.

Annotation:—*Reid*. Sheppard v. Murphy (1868), 13 W. R. 948.

2539. ——— Jurisdiction of court to order purchase of shares.]—Under the wording of 1862 Act, s. 131, a decree made after the commencement of a voluntary winding up cannot be impeached on the ground of its ordering deft. to procure, as far as possible, certain shares to be transferred & registered in his own name. The liquidator might have the power of refusing, & might refuse to sanction the transfer; but that was no reason why the ct. might not order the thing to be done if it were possible. If the transfer could not be made, pltf. would be entitled to the amount of the calls which they had paid & to an indemnity against future liabilities.—*ROBINS v. EDWARDS* (1867), 17 L. T. 90; 15 W. R. 1065, L. C.

Annotation:—*Reid*. Coles v. Bristowe (1868), L. R. 6 Eq. 149.

2540. ——— Where liquidator consents—Power to impose conditions.]—In May, 1865, resolutions were passed for amalgamating the F. Co. with the O. Bank, & to wind up the F. Co. voluntarily for enabling the amalgamation to be carried out. The two pltf., who had recently purchased shares in the F. Co., the one the day before the resolutions for amalgamation were confirmed, the other shortly after, in the same month of May contracted to sell their shares & executed transfers thereof. On June 2, following, & before the transfers were sent in for registration, the liquidators under the voluntary winding up passed a resolution

that they would not register any more transfers, except upon the terms of the transferors executing a deed by which they should guarantee the payment of all calls by their transferees. Pltf. not being able to obtain transfers otherwise executed the deeds in April, 1866. In 1866 the voluntary winding up was superseded by a compulsory winding up. In July, 1868, actions were commenced against pltf. on their deeds to recover the amounts due from them for calls & for damages, & thereupon pltf. filed bills, alleging that the liquidation was invalid, & that the deeds were obtained from them without consideration, by misrepresentation & concealment, & praying that they might be cancelled, & the actions stayed. In another suit against the same co. it had been decided, & confirmed on appeal, that the amalgamation was *ultra vires* & void:—*Held*: (1) the liquidation proceedings were valid & could not be set aside, because the amalgamation, for which they had been instituted, had been declared void. (2) The liquidators were justified in refusing to sanction the transfers except upon such terms as they thought were for the benefit of the co.—*CLEVE v. FINANCIAL CORPN., WILLIAMS v. FINANCIAL CORPN.* (1873), L. R. 16 Eq. 363; 43 L. J. Ch. 54; 29 L. T. 89; 21 W. R. 839.

Annotations:—*As to* (1) *Reid*. Thomas v. Patent Lionite Co. (1881), 17 Ch. D. 250; Thomson v. Henderson's Transvaal Estates, [1908] 1 Ch. 765.

2541. ——— Position of transferor.]—(1) The power of a voluntary liquidator under 1862 Act, s. 131, to sanction a transfer of shares made after the commencement of the winding up, involves the power to alter the register of members; & the transferor is thereupon released from the liability which he was under at the commencement of the winding up to contribute as a present member, & the transferee alone is the person to be placed on the A. list of contributories.

(2) Where successive transfers are sanctioned by the liquidator under sect. 131, the ultimate transferee only is liable to contribute as a present member, the transferor & prior transferees being liable as past members.—*Re NATIONAL BANK OF WALES, TAYLOR, PHILLIPS & RICKARDS' CASES*, [1897] 1 Ch. 298; 66 L. J. Ch. 222; 76 L. T. 1; 45 W. R. 401; 13 T. L. R. 179; 4 Mans. 59, C. A.

Annotation:—*As to* (2) *Reid*. *Re National Bank of Wales, Massey & Giffin's Case*, [1907] 1 Ch. 582.

2542. ——— "Alteration of status."]—*Re NATIONAL BANK OF WALES, TAYLOR, PHILLIPS & RICKARDS' CASES*, No. 2541, *ante*.

2543. Compulsory winding up—Power of court to rectify register—Exercise of power.]—After an order had been made for the compulsory winding up of a co., B. purchased some shares in it. An application by him to the county ct. judge &, on appeal, to the Q. B. Div., asking that the liquidator might be ordered to place his name on the register of members of the co., was refused on the ground that the ct. had no jurisdiction to make the order:—*Held*: the ct. has jurisdiction to make the order, but the granting of such an order is a matter for the discretion of the ct., & it should not be made except on strong reasons.—*Re ONWARD BUILDING SOCIETY*, [1891] 2 Q. B. 463; 60 L. J. Q. B. 752; 65 L. T. 516; 56 J. P. 260; 40 W. R. 26; 7 T. L. R. 601, C. A.

Annotation:—*Reid*. *Re National Bank of Wales, Taylor, Phillips, & Rickards' Cases*, [1897] 1 Ch. 298.

that it is merely a trustee for the borrower.—*Re CENTRAL BANK OF CANADA, HOME SAVINGS & LOAN CO.'S CASE* (1891), 18 A. R. 489.—CAN.

PART III. SECT. 23, SUB-SECT. 14.—B.

q. Voluntary winding up — Trans-

fer opposed by liquidator.]—After a voluntary winding up of a co., incorporated under Cos. Statute, 1864, No. 190, the ct. will, under sect. 114 of the Act, refuse an application to rectify the register of the co. by registering a

transfer of shares to appct., where the application is opposed by the liquidator.—*Re BUZOLICH PATENT DAMP-RESISTING & ANTI-FOULING PAINT CO., LTD., Ex p. BARNARD* (1886), 12 V. L. R. 215.—AUS.

SUB-SECT. 15.—TRANSFERS BY AND TO PERSONS UNDER INCAPACITY.

A. Infants.

(a) Transfers by Infants.

2544. Resale by infant transferee—Transfer not registered.]—*Re* IMPERIAL MERCANTILE CREDIT ASSOCN., CURTIS'S CASE, No. 2566, *post*.

2545. — To adult—Effect on liability of transferor to infant.]—*Re* CONTRACT CORPN., GOOCH'S CASE, No. 2567, *post*.

See, also, No. 2561, *post*.

Right of transferee—Indemnity against infant's brokers.]—*See* STOCK EXCHANGE.

— Effect of representation by infant as to age.]—*See* INFANTS & CHILDREN.

(b) Transfers to Infants.

i. Position of Infant Transferee.

2546. Whether void or voidable.]—*Re* JOINT STOCK DISCOUNT CO., MANN'S CASE (1867), 3 Ch. App. 459, n.; 15 W. R. 1124, L. J.

Annotations:—Expld. Re Blakely Ordnance Co., Lumsden's Case (1868), 4 Ch. App. 31. *Consd. Re* Crenver & Wheal Abraham United Mining Co. (1872), 27 L. T. 597. *Refd. Re* China Steamship & Labuan Coal Co., Capper's Case (1868), 3 Ch. App. 458; *Re* Imperial Mercantile Credit Assocn., Curtis's Case (1868), L. R. 6 Eq. 455; *Re* Imperial Mercantile Credit Assocn., Richardson's Case (1875), 23 W. R. 467.

2547. —.]—(1) L. transferred fifty shares in a co. into the name of H., an infant, not known by him to be such, who was also the transferee of a large number of other shares in the same co. H. was registered as the holder. H. attained twenty-one more than five months before the winding-up order, & in the interval transferred some of the other shares. He was settled on the list of contributories for the remaining shares, & did not at first raise the defence of his having been an infant, but four months afterwards took out a summons to have his name taken off the list on that ground. The official liquidator then applied to have the name of L. placed on the list instead of that of H., in respect of the fifty shares:—*Held*: H. must be held to have affirmed the transaction after he came of age, & the application must be refused.

(2) A transfer to an infant is not void but only voidable.—*Re* BLAKELY ORDNANCE CO., LUMSDEN'S CASE (1868), 4 Ch. App. 31; 19 L. T. 437; 17 W. R. 65, L. JJ.

Annotations:—As to (2) *Refd. Re* Crenver & Wheal Abraham United Mining Co. (1872), 27 L. T. 597; *Martin v. Gale* (1876), 4 Ch. D. 428. *Generally, Mentd. Re* European Central Ry., Parsons & Spong's Case (1869), 39 L. J. Ch. 64.

Right of adoption—Where liquidator opposes.]—*See* Nos. 2559, 2560, *post*.

2548. What amounts to adoption—Acts amounting to complete acquiescence after attaining majority—Solicitor appearing on behalf of infants & others to defend call.]—A transferee of shares in a co., who at the date of the winding-up order was still an infant, is entitled to treat the transfer to him as a nullity, unless & until he has since attaining twenty-one done acts amounting to complete acquiescence. Such acquiescence was held not to have arisen, from the fact that the solrs. consulted by him appeared for him & many

other clients at the same time to resist a summons for a call.—*Re* COMMERCIAL BANK CORPN. OF INDIA AND THE EAST, WILSON'S CASE (1869), L. R. 8 Eq. 240; 38 L. J. Ch. 526; 21 L. T. 164; 17 W. R. 979.

2549. — Shares sold after attaining majority.]—*Re* BLAKELY ORDNANCE CO., LUMSDEN'S CASE, No. 2547, *ante*.

— Delay in raising defence.]—*See* No. 2547, *ante*.

— Retraction of repudiation.]—*See* No. 2556, *post*.

2550. Right of repudiation—By infant—Within reasonable time of attaining majority.]—(1) A person to whom shares in a co. had been transferred while he was an infant, became adult nearly two years before the co. commenced to be wound up; & during that time took no steps to repudiate the shares, though proceedings had been taken to enforce calls:—*Held*: he was a contributory.

(2) An infant transferee of shares can only repudiate them within a reasonable time after coming of age if the co. is a going concern.—*Re* NORWEGIAN CHARCOAL IRON CO., MITCHELL'S CASE (1870), L. R. 9 Eq. 363; 39 L. J. Ch. 199; 21 L. T. 811; 18 W. R. 331.

2551. — Full age attained before winding-up order—Delay in raising defence.]—*Re* BLAKELY ORDNANCE CO., LUMSDEN'S CASE, No. 2547, *ante*.

2552. — — — —.]—*Re* NORWEGIAN CHARCOAL IRON CO., MITCHELL'S CASE, No. 2550, *ante*.

2553. — Full age attained after winding-up order—Delay in raising defence.]—An infant shareholder who attains majority after having been placed on the list of contributories is entitled to have his name removed from the list of contributories, notwithstanding some delay.—*Re* ALEXANDRA PARK CO., HART'S CASE (1868), L. R. 6 Eq. 512; 16 W. R. 1033; *sub nom. Re* ALEXANDRA PARK CO., *Ex p. HART*, *Re* BARNED'S BANKING CO., *Ex p. DELMAR*, 38 L. J. Ch. 85; 19 L. T. 304; 17 W. R. 21.

2554. — — — —.]—S., who held a large number of shares in a co., transferred them to F., in whose name they were then registered. At this time F. was an infant, though neither S. nor the co. were aware of it. More than a year afterwards the co. was ordered to be wound up, & nearly two years after that F. attained twenty-one. F. was settled on the list of contributories, but he took no step to repudiate his liability until a balance order was served upon him, which was ten months after he had attained twenty-one. He then applied to have his name removed from the list of contributories, & the official liquidator thereupon applied to have F.'s name removed, & the names of the exors. of S., who was then dead, substituted:—*Held*: F.'s name must be removed from the list of contributories, & the names of the exors. of S. must be substituted.—*Re* FINANCIAL CORPN., LTD., SASSOON'S CASE (1869), 20 L. T. 424, L. JJ.

2555. — — — — Where company going concern.]—*Re* NORWEGIAN CHARCOAL IRON CO., MITCHELL'S CASE, No. 2550, *ante*.

PART III. SECT. 23, SUB-SECT. 15.—A. (b) (i).

r. Liability as nominee — Of age at time of winding up.]—During 1888 & 1889 B. deposited with deft. co. scrip for shares in pltf. co., together with transfers signed by him in blank, in consideration of loan & renewal of promissory notes. The shares had at

these times uncalled liability of 10s. per share. In May, 1889, the transfers, which stated they were for valuable consideration, were filled up by inserting name of deft., L., as transferee. L. was not 20 years of age & was employed by deft. co. at £1 per week. The directors knew he was in no position to pay uncalled liability on shares. L. gave no consideration &

was acting only for his employers. Pltf. & deft. co. went into liquidation. The former brought action against the latter & L., who had come of age & had not repudiated the shares, for calls made in winding up. The arts. of assocn. of pltf. co. provided that the directors might decline to register a transfer of shares unless approved by them, & the directors would have so

Sect. 23.—Transfer of shares: Sub-sect. 15, A. (b) i., ii. & iii.]

2556. Retraction of repudiation—What amounts to—Authority given to liquidator to sue in name of infant.]—In Oct. 1865, C. purchased shares in a co., & had them transferred to B. as a trustee for him, & B.'s name was put on the register. In Mar. 1866, the co. was ordered to be wound up. At the time of the transfer B. was an infant, & he did not come of age till Sept. 1867. In Dec. 1867, B.'s name was settled on the list of contributories; & in Jan. 1868, a call was made, notice of which was sent to B. On receipt of the notice B. repudiated the shares, & the official liquidator took out a summons to remove his name from the list, but afterwards abandoned the summons. In Apr. 1871, B., at the request of the official liquidator, wrote a letter authorising him, in consideration of his not proceeding against B. under the call, to use B.'s name in taking proceedings against C., the real owner of the shares. Afterwards B. took out a summons to have his name removed from the list of contributories:—*Held*: the letter of Apr. 1871, did not operate as a retraction of B.'s repudiation of the shares, & his name must be removed from the list of contributories.—*Re CONTRACT CORPN., BAKER'S CASE* (1871), 7 Ch. App. 115; 41 L. J. Ch. 275; 25 L. T. 726; 20 W. R. 169, L. JJ.

2557. Right of avoidance—By liquidator—Infant attaining full age after resolution for voluntary winding up.]—*Re OTTOMAN FINANCIAL ASSOCN., CHEETHAM'S CASE*, [1869] W. N. 201.

2558. ——— Knowledge of company before winding up.]—A co. in 1865 had notice that a transferee was an infant, but they took no steps to remove his name from the register, nor communicated the fact of his infancy to the transferor. In Jan. 1868, a winding-up order was made. In Oct. 1868, S. attained twenty-one. On an application by the official liquidator to substitute the name of the transferor of the shares for that of the infant:—*Held*: the co. were precluded by their laches from so doing, & the application must be refused.—*Re EUROPEAN CENTRAL RY. CO., PARSONS' CASE* (1869), L. R. 8 Eq. 656; 39 L. J. Ch. 64.

2559. ——— Infant willing to retain shares.]—A transfer of shares in a co. before a resolution to wind up voluntarily made to an infant who did not attain twenty-one till after the resolution:—*Held*: void, at the instance of the liquidator, under 1862 Act, s. 131, though the infant, after attaining twenty-one, expressed a desire to retain the shares.—*Re CONTINENTAL BANK CORPN., CASTELLO'S CASE* (1869), L. R. 8 Eq. 504.

Annotation:—Refd. Re Asiatic Banking Corpn., Symons' Case (1870), 5 Ch. App. 298.

2560. ———.]—Where shares have been transferred to an infant, & his name has been placed on the register, the co. being ignorant of the fact of his infancy, & he does not come of age till after the commencement of the winding up:—*Held*: the official liquidator may refuse to accept him as a shareholder, although after coming of age he is willing to confirm the transfer.—*Re ASIATIC BANKING CORPN., SYMONS' CASE* (1870), 5 Ch. App. 298; 18 W. R. 366;

sub nom. Re ASIATIC BANKING CORPN., Ex p. NASSERWANJEE, SYMONS' CASE, 39 L. J. Ch. 461; *sub nom. Re ASIATIC BANKING CORPN., Ex p. NUSSEWANJEE*, 22 L. T. 217, L. J.

2561. ——— Effect of delay.]—At the commencement of the voluntary winding up of a co., in 1893, S. was the registered holder of twenty shares therein, which in Apr. 1894, he transferred to L. The liquidator, in pursuance of the power given to him by 1862 Act, s. 131, sanctioned the transfer & entered the name of L. as holder of the shares in the register of members. In May, 1894, L. transferred the shares, with the sanction of the liquidator, to D., who after a time was registered as holder of the shares. The shares were part of a batch of shares purchased from S. by M. & G., stockbrokers, on the market with a view to a resale, & L., who was their nominee, was a clerk in their employment, & was an infant at the times of the transfers to & by him. D. was also an infant when he became transferee, & this fact was known to the liquidator in 1896, if not earlier:—*Semble*: any equity which the liquidator might have had against L., by reason of the transfer by him to an infant, was abrogated by the laches of the liquidator.—*Re NATIONAL BANK OF WALES, LTD., MASSEY & GIFFIN'S CASE*, [1907] 1 Ch. 582; 76 L. J. Ch. 290; 96 L. T. 493; 51 Sol. Jo. 266; 14 Mans. 67.

ii. Position of Transferor.

2562. Shares sold to adult—Transfer taken in name of infant—Notice of liability given to transferor—No action taken.]—In June, 1865, S., having bought in the market shares belonging to C., gave the name of A. as the transferee, & C. accordingly transferred them to A., who was registered as owner. A. was a clerk of S., & was an infant. In Nov. 1865, C. received a letter from the solrs. to the co., informing him that A. was an infant, & applying to him for payment of a call. C. having found upon inquiry that his share certificates had been cancelled & new certificates issued to A., took no further notice of the matter, & no further notice was taken on either side till Jan. 1867, when the application for the call was renewed, after a resolution for winding up the co. had been passed:—*Held*: C. must be on the list of contributories.—*Re CHINA STEAMSHIP & LABUAN COAL CO., CAPPER'S CASE* (1868), 3 Ch. App. 458; 16 W. R. 1002, L. JJ.

Annotations:—Distd. Re European Central Ry., Pearsons' Case (1869), L. R. 8 Eq. 656. *Refd. Re Blakely Ordnance Co., Lumsden's Case* (1868), 4 Ch. App. 31; *Imperial Mercantile Credit Assocn., Richardson's Case* (1875), 23 W. R. 467; *Nickalls v. Merry* (1875), L. R. 7 H. L. 530. *Mentd. Re Crenver & Wheal Abraham United Mining Co.* (1872), 27 L. T. 597.

2563. ——— Transfer taken in name of infant son.]—A father purchased shares in a co., & had the transfer made to his son, who was then an infant, & at sea. From the father's evidence it appeared that he, or another of his sons, also an infant, had signed the transfer in the name of his son. The co. had since been ordered to be wound up, & on an application by the liquidator to take the son's name off the list of contributories, & to put thereon in its stead either the name of the

declined had they known the true facts regarding L. B. the time of hearing of the action was in a very unsatisfactory financial position:—*Held*: pltf. co. was entitled to have L.'s name removed from the register & that of deft. co. substituted; but as neither deft. asked to have his name

removed, L.'s might remain & pltf. co. must look first to him for payment of calls & was entitled to judgment for calls then due & to an indemnity by deft. co. against any loss that might arise from L.'s inability to satisfy such judgment or to pay future calls.—*VICTORIAN MORTGAGE & DEPOSIT*

BANK, LTD. v. AUSTRALIAN FINANCIAL AGENCY & GUARANTEE CO., LTD. & LUCAS (1893), 19 V. L. R. 680.—*AUS.*

PART III. SECT. 23, SUB-SECT. 15.—A. (b) (ii).

*s. Right of company to refuse registration.]—*Where transferee was at

father or those of the vendors, the latter were ordered to be put on the list.—*Re NATIONAL PROVINCIAL MARINE INSURANCE CO., LTD., MAITLAND'S CASE* (1869), 38 L. J. Ch. 554, L. JJ.

Annotation.—*Reid. Heritage v. Payne* (1876), 45 L. J. Ch. 295.

2564. ——— Right of indemnity against parent.]—NICKALLS v. FURNEAUX, [1869] W. N. 118.

——— **Misrepresentation by father—Transfer signed in son's name.]—See No. 2572, post.**

2565. Purchase in name of infant—Instructions for purchase given by parent.]—Re IMPERIAL MERCANTILE CREDIT ASSOCN., EDWARDS' CASE, [1869] W. N. 211.

2566. Shares resold by infant—Second transfer not registered.]—Where the liquidators of a co. seek to place on the list of contributories a person as the holder of shares, & he objects on the ground of his having transferred the shares, it is incumbent on him to show that at some time or other there was on the register a transferee of his who could be made liable at law in respect of the shares. Hence, where ten shares were standing on the register of a co. in the name of an infant, upon the co. being wound up, the ct., on the application of the liquidators, removed the name of the infant from the register in respect of the shares, & substituted that of the transferor; although the ten shares originally formed part of a batch of eighty shares which had been purchased on behalf of the infant, all of which eighty shares had, prior to the winding up, been sold by the infant, the purchase-money received, & the transfers executed by all the purchasers, & the transferees of all, except the ten shares in question, entered on the register of shareholders.—*Re IMPERIAL MERCANTILE CREDIT ASSOCN., CURTIS'S CASE* (1868), L. R. 6 Eq. 455; 37 L. J. Ch. 629.

Annotations.—*Fold. Re Financial Corpn., Sassoon's Case* (1869), 20 L. T. 161; *Re Asiatic Banking Corpn., Symons' Case* (1870), 15 Ch. App. 298. *Reid. Re Blakely Ordnance Co., Lumsden's Case* (1868), 19 L. T. 437. *Mentd. Re Albion Life Assco. Soc., Brown's Case* (1881), 18 Ch. D. 639.

2567. ——— To adult—Sale to infant more than a year before winding up.]—A shareholder in a co. transferred shares to an infant, who transferred them to another infant, who transferred them to an adult, & all the transfers were registered. The co. was ordered to be wound up more than a year after the first transfer, but less than a year after the last transfer:—*Held*: after the co. had once obtained an adult shareholder, the intermediate transfers could not be avoided; the shareholder ceased to be such at the date of the first transfer; & he could not be put on the list of past members.—*Re CONTRACT CORPN., GOOCH'S CASE* (1872), 8 Ch. App. 266; 42 L. J. Ch. 381; 28 L. T. 148; 21 W. R. 181, L. C. & L. JJ.

2568. Transfer by way of gift—To infant son.]—By the rules of a steam-packet co. shareholders were entitled to a free passage by the co.'s vessels, & there were some provisions in the deed of settlement for the event of infants being shareholders. A shareholder in the co. transferred shares to a son who was not of age:—*Held*: entries in the co.'s books, on the occasion of the son obtaining tickets as a proprietor, for a free passage, describing him as "Master," did not affect the co. with notice of his minority so as to discharge the father in respect of the transferred shares; on winding up the co., the father's name was properly placed on the list of contributories in respect of the shares.

—*Re ST. GEORGE'S STEAM PACKET CO., LITCHFIELD'S CASE* (1850), 3 De G. & Sm. 141; 19 L. J. Ch. 124; 14 L. T. O. S. 368; 14 Jur. 541; 64 E. R. 417.

Annotations.—*Reid. Re Blakely Ordnance Co., Lumsden's Case* (1868), 4 Ch. App. 31; *Re China Steamship & Labuan Coal Co., Capper's Case* (1868), 3 Ch. App. 458.

2569. ———.]—A father voluntarily transferred shares in an incorporated co. to his infant son. The co. was afterwards wound up, the son being still an infant:—*Held*: the father was a contributory.—*Re ELECTRIC TELEGRAPH CO. OF IRELAND, REID'S CASE* (1857), 24 Beav. 318; 3 Jur. N. S. 1015; 5 W. R. 854; 53 E. R. 381.

Annotations.—*Apld. Re China Steamship & Labuan Coal Co., Capper's Case* (1868), 3 Ch. App. 453. *Reid. Re Blakely Ordnance Co., Lumsden's Case* (1868), 4 Ch. App. 31.

2570. ——— Purchase of further shares in son's name.]—A holder of shares in a scrip co., which was afterwards reconstituted as a registered one, the then holders having new shares representing a larger amount of capital allotted to them, at the time of the alteration transferred his scrip shares to his son, a minor, who applied for new ones, & was registered as owner. The father afterwards instructed his broker to buy more shares in his son's name. On calls on the shares not being paid, the directors of the co. insisted upon the father's liability, but retained the son's name on the register. The co. was afterwards wound up, & the father put on the list of contributories:—*Held*: the transaction was not a *bonâ fide* handing over of the shares, but a device to escape liability, & the father was liable as a contributory in respect of the whole number of these shares.—*Re COBRE COPPER MINING CO., WESTON'S CASE* (1870), 5 Ch. App. 614; 23 L. T. 287; 18 W. R. 937; *sub nom. Re ROYAL COPPER MINES OF COBRE CO. OF PROPRIETORS, LTD., WESTON'S CASE*, 39 L. J. Ch. 753, L. C.

Delay by company in avoiding transfer.]—See No. 2558, ante.

Delay by liquidator in avoiding transfer.]—See No. 2561, ante.

Right of indemnity—Against Stock Exchange jobber or broker—Passing name of infant transferee.]—See STOCK EXCHANGE.

2570a. ——— Infant transferee a trustee for real purchasers.]—Pltf. sold on the Stock Exchange fifteen shares in a limited co. They were bought by a broker as agent for a firm of Scottish brokers, whose names appeared as purchasers in the bought & sold notes. The broker furnished the name of K. as transferee, & he was registered as owner. On an order being made to wind up the co., K. being an infant, pltf.'s name was restored to the register. It appeared that the shares had been purchased by the brokers along with seventy-five others, in consequence of separate instructions from D., J., & S. respectively, to purchase for them respectively thirty shares, & that all the ninety shares had been transferred to K., & had not been appropriated between the purchasers.—*Held*: pltf. was entitled to indemnity by D., J., & S. severally, each for one third of the liability on pltf.'s shares.—*BROWN v. BLACK* (1873), 8 Ch. App. 939; 42 L. J. Ch. 814; 29 L. T. 362; 21 W. R. 892, L. JJ.

iii. Liability of Parent.

2571. Covenant by father for payment & indemnity of sums payable by son.]—Where shares in a banking co. had been transferred into the name

the date of the transfer an infant & still continued to be so & application was made to compel the registration

of the assignment, not on his behalf but on behalf of transferor, *mandamus* to compel the registration was refused.

—*R. v. MIDLAND COUNTIES & SHANNON JUNCTION RY. CO.* (1862), 15 Ir. Jur. 250.—IR.

Sect. 23.—Transfer of shares: Sub-sect. 15, A. (b) iii., B. & C.; sub-sect. 16.]

of a minor by his grandmother, but the dividends had been paid to his father, & he had covenanted with the co. for the payment, by the son, of all instalments in respect of those shares, & to indemnify the co. against any loss which might be occasioned to them by reason of the son's minority or of the payment of the dividends:—*Held*: the name of the father was properly included, in respect of those shares, in the list of contributories.—*Re NORTH OF ENGLAND JOINT STOCK BANK, Ex p. REAVELY* (1849), 1 H. & Tw. 118; 18 L. J. Ch. 110; 12 L. T. O. S. 328; 13 Jur. 158; 47 E. R. 1350, L. C.

Annotations:—*Consd. Re North of England Joint Stock Banking Co., Straffon's Exors.' Case* (1852), 1 De G. M. & G. 576. *Distd. Maxwell's Case, Re Electric Telegraph Co. of Ireland* (1857), 24 Beav. 321. *Reid. Re North of England Joint Stock Banking Co., Ex p. Sadler* (1849), 13 L. T. O. S. 320; *Re Imperial Mercantile Credit Assn.* (1868), 16 W. R. 559. *Mentd. Re North of England Joint Stock Banking Co., Ex p. Fenwick* (1849), 13 Jur. 204.

2572. Transfer signed by father in name of son.]

—W. purchased shares in a co., & paid for them, but took a receipt & signed the transfer deed as transferee in the name of F., his son; & the shares were registered in the name of F., who was then & still was a minor. Upon the co. being wound up, & the name of F. being placed on the list of contributories:—*Held*: the register of members & list of contributories must be rectified by substituting the name of W. for that of F. on both.—*Re IMPERIAL MERCANTILE CREDIT ASSOCN., RICHARDSON'S CASE* (1875), L. R. 19 Eq. 588; 44 L. J. Ch. 252; 32 L. T. 18; 23 W. R. 467.

Annotation:—*Distd. Re National Bank of Wales, Massey & Giffin's Case*, [1907] 1 Ch. 582.

See, also, Nos. 2563–2565, 2568, 2569, *ante*.

B. Married Woman.

2573. Transfer by married woman—Agreement excluding community of goods—Refusal by husband to concur—Registration enforced.]—VANHESEN v. SHIPPENBECK (COUNT) (1749), Dick. 140; 21 E. R. 222.

2574. Transfer to married woman—Application for registration to separate use—Duty of company to investigate title—Married Women's Property Act, 1870 (c. 93), sect. 4.]—The registered owner of stock in deft.'s railways, assigned it to trustees for the separate use of his wife, & a reassignment to her was endorsed thereon, but executed only by one trustee. The husband then executed a transfer of the stock to his wife, & it was registered in her name, she being described in the register as his wife. Defts. refused to transfer this stock to a purchaser from the wife without her husband's assent. Upon *mandamus* to register this stock in the name of the wife, as a married woman entitled to her separate use:—*Held*: the above sect. imposes upon cos. the duty to investigate the title of married women to the shares & stock they apply to have registered in their name; but this deed of assignment & endorsement thereon without

any legal transfer did not affect appct.'s right to the stock under her husband's transfer to her.—*R. v. CARNATIC RY. CO.* (1873), L. R. 8 Q. B. 299; 42 L. J. Q. B. 169; 28 L. T. 413; 21 W. R. 621.

Annotation:—*Reid. R. v. Charnwood Forest Ry.* (1884), 1 T. L. R. 161.

2575. Transfer by husband—Of registered proprietor—Regulation providing for sale within limited period if unwilling to become shareholder—Shares acquired by company before expiration of period.]—By the provisions of the deed of settlement of a co., the husband of a female proprietor might, with the approbation of the directors, become a proprietor; but if he did not intend to become such, he was to sell within six months after his title accrued, or in default the shares were to be forfeited; but in case he should not obtain the approbation of the directors to become a proprietor within the six months, the directors were empowered & required, on the application of the husband, to purchase the shares at the market price for the benefit of the co. The husband of a female shareholder attended a meeting of the co., & proposed certain resolutions thereat, & afterwards applied to the directors to purchase his wife's shares upon certain terms. The transaction was completed within six months after the title of the husband accrued:—*Held*: the transaction was valid within the terms of the deed, & the husband's liability, as a contributory, was properly qualified by restricting it to the period preceding the sale.—*Re VALE OF NEATH & SOUTH WALES BREWERY CO., WHITE'S CASE* (1850), 3 De G. & Sm. 157; 19 L. J. Ch. 497; 14 L. T. O. S. 436; 14 Jur. 454; 64 E. R. 424.

2576. — To wife—Previous assignment by deed to trustees—Incomplete assignment by trustees to wife.]—R. v. CARNATIC RY. CO., No. 2574, *ante*. See, generally, HUSBAND & WIFE.

C. Vesting Orders in Lunacy.

See LUNATICS AND PERSONS OF UNSOUND MIND.

SUB-SECT. 16.—UNDER SPECIAL PROVISIONS IN ARTICLES OF ASSOCIATION.

2577. Power to compel transfer of shares at particular price—Validity of article.]—BORLAND'S TRUSTEE v. STEEL BROTHERS & CO., LTD., No. 1433, *ante*.

See, also, No. 2721, *post*.

2578. — Introduction of new article.]—A co. was in great need of further capital. The majority, representing 98 per cent. of the shares, were willing to provide this capital, if they could buy up the 2 per cent. minority. Having failed to effect this by agreement, they proposed to pass an art. enabling them to purchase the minority shares compulsorily on certain terms therein mentioned, but were willing to adopt any other mode of ascertaining the value that the ct. thought fit:—*Held*: in the circumstances the proposed

PART III. SECT. 23, SUB-SECT. 15.—B.

t. Transfer by husband—To wife—Effect of 1862 Act, s. 35.]—A shareholder transferred 50 shares in a co., the stock in which was then unsaleable, to his wife, whose sole separate estate consisted of an alimentary annuity of £150 a year. The transfer was intimated to the co. in Dec. 1883. The transfer was not considered at the first meeting of the directors which took place in Jan., but at the next meeting which took place in Apr., the directors,

in exercise of the power given to them by the arts. of assocn. declined to register the transfer. In an action for payment of subsequent calls against the original shareholder, defender maintained that in consequence of the unnecessary delay of the directors in dealing with the transfer he was no longer liable for calls:—*Held*: there had been "unnecessary delay" within 1862 Act, s. 35, in the directors not disposing of the transfer at their first meeting, but this did not of itself entitle defender to have the transfer registered; defender might have been

entitled to have the register rectified if he could have shown that he had been prejudiced through the delay of the directors in dealing with the transfer; he had failed to show this for the shares were unsaleable during the whole time.—*PROPERTY INVESTMENT CO. OF SCOTLAND, LTD. v. DUNCAN* (1887), 14 R. (Ct. of Sess.) 299; 24 Sc. L. R. 221.—SCOT.

PART III. SECT. 23, SUB-SECT. 16.

a. Company purchasing own shares—True value of shares concealed by office bearers—Responsibility of com-

art. was not just or equitable or for the benefit of the co. as a whole, but was simply for the benefit of the majority. It was not therefore an art. that the majority could force on the minority under 1908 Act, s. 13.—**BROWN v. BRITISH ABRASIVE WHEEL CO.**, [1919] 1 Ch. 290; 88 L. J. Ch. 143; 120 L. T. 529; 35 T. L. R. 268; 63 Sol. Jo. 373.

Annotations :—**Consd.** *Sidebottom v. Kershaw, Leese*, [1920] 1 Ch. 154. **Refd.** *Dafen Tinplate Co. v. Llanelly Steel Co.*, [1920] 2 Ch. 124.

2579. ——— **Purchase at full value.**—**SIDEBOTTOM v. KERSHAW, LEESE & CO.**, No. 433, *ante*.

2580. ——— **Purchase at fair value.**—Deft. co., not having power under its original arts. of assocn. to acquire compulsorily the shares of members, passed special resolutions altering its arts. & introducing a power enabling the majority of the shareholders to determine that the shares of any member, other than a certain named co., should be offered for sale by the directors to such person or persons, whether a member or members or not, as they should think fit at the fair value to be fixed from time to time at stated intervals by the directors. The shareholders in deft. co. were principally cos. & persons manufacturing tinsplates who were originally invited to become shareholders on the understanding that, although under no legal obligation to do so, they were to take the steel bars required for their tinsplates from deft. co. which was formed as a private co., with the object of providing such supply. Pltf. co., which was an original shareholder of deft. co., subsequently withdrew its custom & transferred it to a new rival steel co. which pltf. co. had been instrumental in forming. Being unable to acquire pltf. co.'s shares by agreement, deft. co. passed the resolutions in question with the object of acquiring pltf. co.'s shares & of protecting deft. co. against conduct on the part of its shareholders detrimental to the interests of the co. :—**Held** : the resolutions in conferring an unrestricted & unlimited power on the majority of the shareholders to expropriate any shareholder they might think proper at their will & pleasure, went much further than was necessary for the protection of the co. from the conduct of shareholders detrimental to the co.'s interests, & the power thereby conferred could not be *bond fide* or genuinely for the benefit of the co. as a whole & was not such a power as could be assumed by the majority.—**DAFEN TINPLATE CO. v. LLANELLY STEEL CO.**, [1920] 2 Ch. 124; 89 L. J. Ch. 346; 123 L. T. 225; 36 T. L. R. 428; 64 Sol. Jo. 446.

Alteration of articles generally, *see* Sect. 30, sub-sect. 2, C., *post*.

2581. ——— **Minimum price fixed by article—Market price exceeding minimum price—Resolution for transfer at minimum price—Whether valid.**—Deft. co.'s arts. empowered the co. to determine that the shares of any member should be offered for sale to the other members at not less than 1s. a share. Pltf. was a director & shareholder, & in Aug., 1914, the co. resolved, in spite of pltf.'s protest, to increase the price of certain articles to the Admty. & the hospitals. The resolution was afterwards modified, but pltf. resigned his membership, & was removed from the directorate, & the co. resolved to sell at 1s. a share pltf.'s £1 shares, although their market value was £1 each :—**Held** : pltf. was entitled to an injunction to restrain deft. co. from acting in pursuance of the resolution.—**PHILLIPS v. MANU-**

FACTURERS' SECURITIES, LTD. (1915), 31 T. L. R. 451.

2582. ——— **Deft. co.** was incorporated in 1912 with the object of furthering the interests of a federation of bedstead manufacturers, & of forming a convenient means for the investment of the funds of the federation. The rules of the federation provided for the payment by each member of 1 per cent. of each month's sales to form a reserve fund, which was to be invested & the income paid to the members in due proportion. The practice followed was that sums so paid by members were paid to deft. co., & shares in that co. issued to the members in respect of their respective payments. Pltf. in this way became the holder of shares in trust for pltf. co., which was a member of the federation. Art. 96 of deft. co.'s arts. of assocn. provided that the co. in general meeting might, by resolution passed by a three-fourths majority, "determine that the shares of any member shall be offered for sale by the co. to other members & any such resolution may fix the price to be paid" at any price not being less than 1s. per share, "& in case no such price shall be so fixed the price shall be 1s. per share." Pltf. co. having left the federation, deft. co. passed a resolution by the requisite majority for the sale of pltf.'s shares at 1s. a share. It was admitted that in so doing deft. co. had directed a sale at a gross undervalue with the intention of punishing pltf. co. for leaving the federation & thereby assisting to keep the federation together :—**Held** : on the construction of the art., it was open to the requisite majority of the shareholders in general meeting to direct a sale of a member's shares at less than their real value, & the fact that their resolution provided for a sale at a gross undervalue was no evidence that they acted oppressively or fraudulently, or that they acted otherwise than in *bond fide* exercise of the power conferred by the art.—**PHILLIPS v. MANUFACTURERS' SECURITIES, LTD.** (1917), 86 L. J. Ch. 305; 116 L. T. 290, C. A.

Annotation :—**Appld.** *Sidebottom v. Kershaw, Leese*, [1920] 1 Ch. 154.

2583. ——— **Price to be calculated on profits of last three years—How profits ascertained—Deduction of excess profits duty.**—Under the arts. of assocn. of a private co. there was to be no free market in respect of the ordinary shares of the co. so long as a purchaser selected by the board was willing to purchase the same at a fixed value, which was to be determined in manner defined by the arts., being based upon a three years' aggregate of the sums which would have been paid as dividend upon such ordinary shares if in respect of each of such three years there had been distributed among the members the entire profits of such year available for distribution as dividend :—**Held** : in ascertaining the fixed value of a share, excess profits duty payable under Finance (No. 2) Act, 1915 (c. 89), pt. 3, must be deducted before the entire profits of any year available for distribution as dividend among the shareholders could be ascertained. For this purpose excess profits duty is not analogous to income tax.—**COLLINS v. SEDGWICK**, [1917] 1 Ch. 179; 86 L. J. Ch. 156; 115 L. T. 763; 32 T. L. R. 554.

Annotations :—**Folld.** *Patent Castings Syndicate v. Etherington*, [1919] 2 Ch. 254. **Mentd.** *Re Condron, Condron v. Stark*, [1917] 1 Ch. 639.

Calculation of profits, generally, *see* Sect. 30, sub-sect. 8, A., *post*.

pany.—The trustees of a shareholder of a co., the contract of which gave the right of pre-emption of any shares

to the co., being desirous of selling his shares, offered them in virtue of this provision to the co., which accepted

of them, & the purchase was completed. The trustees having brought a reduction of the sale on the ground that the

Sect. 23.—Transfer of shares: Sub-sects. 16 & 17.
Sect. 24: Sub-sect. 1, A. (a).]

2584. — Price based on value of assets—Allowance for depreciation.]—The arts. of assocn. of a co. provided that whenever any member of the co. ceased to be employed by the co., then that member should transfer any ordinary shares in the co. held by him to a person named by the directors on notice, & further provided that "The fair value of any ordinary shares within the meaning of" the clause above referred to "shall be a sum equal to the proportion of the value of the assets of the co., exclusive of goodwill, appearing on the books of the co. to which the shares shall be entitled on winding up," & that the certificate of the directors as to such amount should be binding & conclusive:—*Held*: in arriving at the value of shares belonging to applt., which he was transferring under the arts., the directors were entitled to write off from the value of the whole assets, exclusive of goodwill, as they appeared in the last balance-sheet of the co., a sum by way of depreciation.—*JACOBSEN v. JAMAICA TIMES, LTD.* (1921), 90 L. J. P. C. 100, P. C.

2585. Transfer restrained for period of years—Transfer approved by company within period.]—A provision in arts. of assocn. that fully paid-up shares issued to an officer of the co. should be retained by him & not dealt with by him for a period of seven years:—*Held*: to be a provision for the protection of the co., & not to entitle a shareholder to invalidate a call made at a meeting of directors at which a transferee of such shares was necessarily present to form quorum, such transfer having been made by the consent of the co. within the seven years.—*LONDON & WESTMINSTER SUPPLY ASSOCN., LTD. v. GRIFFITHS* (1883), 1 Cab. & El. 15.

Compulsory purchase of shares by company—Where transferee disapproved.]—See Sub-sect. 5, B. (d) iv., *ante*.

Transfer by husband of registered proprietor.]—See No. 2575, *ante*.

SUB-SECT. 17.—STAMP DUTIES.

2586. Ad valorem duty—Whether sufficient—Matter incident to the sale or conveyance of the property sold.]—By the deed of settlement of a joint-stock co., the shares were made transferable, & the directors were empowered to regulate the transfer, & to require, in respect of such transfer, a covenant from the transferee to observe the co.'s regulations, etc. as to holders of shares. The directors prescribed a form of transfer under seal, by which the shareholder conveyed his shares to the transferee, to hold subject to the regulations & covenants contained in & resolved upon pursuant to the deed of settlement, & the transferee covenanted with the party conveying, & also separately with trustees on behalf of the co., to abide by & perform all the said regulations, etc.:—*Held*: such transfer required an *ad valorem* stamp only, & not an additional stamp under Stamp Act, 1815 (c. 184), as containing matter besides that which was "incident to the sale & conveyance of the property sold."—*WOLSELEY v. COX* (1841), 2 Q. B. 321; 11 L. J. Q. B. 9; 6 Jur. 599; 114 E. R. 126.

Compare, now, Finance Act, 1900 (c. 7), s. 10.

2587. — Right of directors to go behind

alleged consideration.] — MAYNARD v. CONSOLIDATED KENT COLLIERIES CORPN., No. 2356, *ante*.

2588. — How calculated—Joint conveyance of separate interests.]—An indenture, whereby several persons jointly convey their separate interests in certain shares in an incorporated co. does not require several stamps, but one *ad valorem* stamp is sufficient.—*WILLS v. BRIDGE* (1849), 4 Exch. 193; 18 L. J. Ex. 384; 154 E. R. 1179.

Annotations:—Reid. Freeman v. I. R. Comrs. (1871), L. R. 6 Exch. 101. Mentd. Croft v. Tidbury (1854), 2 C. L. R. 347.

2589. — Whether chargeable—"Conveyance on sale"—Transfer of shares to company in exchange for others.]—By an instrument entered into in pursuance of an agreement, a shareholder in one co. transferred his shares to another co., in exchange for certain shares in the latter co.:—*Held*: the transaction was a conveyance on sale of the shares within Stamp Act, 1891 (c. 39), ss. 54 & 55, & the instrument was therefore chargeable with an *ad valorem* stamp.—*COATS v. INLAND REVENUE COMRS.*, [1897] 2 Q. B. 423; 66 L. J. Q. B. 732; 77 L. T. 270; 61 J. P. 693; 46 W. R. 1; 13 T. L. R. 548, C. A.

Annotation:—Mentd. G. N. Ry. v. I. R. Comrs., [1899] 2 Q. B. 652.

2590. Transfer insufficiently stamped—Consideration not truly stated—Right of directors to refuse registration.]—*MAYNARD v. CONSOLIDATED KENT COLLIERIES CORPN., No. 2356, ante.*

Whether ground for rectification of register.]—See No. 1303, *ante*.

See, generally, REVENUE.

SECT. 24.—TRANSMISSION OF SHARES.

SUB-SECT. 1.—ON DEATH.

A. On Death of Sole Member.

(a) In General.

2591. Position of executor.]—A declaration by the public officer of a joint-stock co. against the extrix. of a shareholder for calls, stated that, by the deed of settlement, it was provided that the shareholders while holding shares, should be partners in the co.; & that in addition to £5 required to be paid by each shareholder before the execution of the deed, the directors should have power to call for the further payment by each shareholder, or his exors. of £45 on every share held by him. It then averred that, after testator's death, & whilst deft. was a shareholder as such extrix., the directors made a call. Breach, non-payment by deft. as such extrix. Pleas, *non est factum*, & a denial that the call was made, whilst deft. was a shareholder as extrix.:—*Held*: (1) the covenant by the shareholders to pay calls bound their exors., in case a call was made on them, although the covenant did not contain the words "or their exors.," & consequently there was no variance in the statement of the contract; (2) pltf. was entitled to succeed on the other issue, inasmuch as deft. was in one sense a shareholder as extrix., notwithstanding the deed provided that no exor. should become a shareholder without the consent of the directors, & until he had done certain specified acts, which requisites were not in this case complied with.—*WILLS v. MURRAY* (1850), 4 Exch. 843; 19 L. J. Ex. 209; 154 E. R. 1458.

Annotation:—Generally, Reid. James v. Buena Ventura Nitrate Grounds Syndicate (1896), 65 L. J. Ch. 284.

price was inadequate, & that the true value of the shares had been fraudulently concealed by the office bearers of

the co.:—*Held*: the fraud of the office bearers was the fraud of the co., & the action was therefore relevantly directed

against the co.—*JARDINE'S TRUSTEES v. CARRON CO.* (1864), 2 Macph. (Ct. of Sess.) 1101; 36 Sc. Jur. 316.—*SCOT.*

2592. —.]—In a suit for the administration of the estate of a deceased shareholder in a joint-stock banking co., the registered public officer presented a petition praying leave to prove as a creditor for the amount of a call made since the death of the shareholder in respect of the shares:—*Held*: the deceased shareholder, having covenanted to pay all calls, & the shares having vested in his exors., as part of his estate, they by law became entitled to the benefit of the deed, & were liable for the calls, there being nothing in the deed of settlement of the co. overruling the rule of law.—*HEWARD v. WHEATLEY* (1853), 3 De G. M. & G. 628; 22 L. J. Ch. 435; 21 L. T. O. S. 121; 17 Jur. 403; 1 W. R. 216; 43 E. R. 247, L. J. J. *Annotation*:—*Reid*. James v. Buena Ventura Nitrate Grounds Syndicate (1896), 65 L. J. Ch. 284.

2593. —.]—In a joint-stock co. the presumption is, that the exors. of a deceased shareholder succeed to the full liability, as well as to the rights of their testator; the deed of settlement is to be looked at, not to see whether it imposes such liability on the exors., but whether it takes it away or limits it. The fact that by the deed of settlement exors. are not entitled to the full privileges of shareholders until they or their nominees have been registered as shareholders, is no proof of an intention to limit their liability in their representative character.

In the case of a joint-stock co. formed in 1845, where, in the opinion of the ct., nothing appeared in the deed of settlement to limit the liability of the exors. of a deceased shareholder:—*Held*: their liability was not limited to debts incurred before the death of testator.—*Re AGRICULTURIST CATTLE INSURANCE CO., BAIRD'S CASE* (1870), 5 Ch. App. 725; 23 L. T. 424; 18 W. R. 1094, L. J. *Annotation*:—*Reid*. James v. Buena Ventura Nitrate Grounds Syndicate, [1896] 1 Ch. 456.

2594. — Before registration.]—Exors. of a deceased member of a co. who have not had his shares registered in their own names have the same right to dissent from a reconstruction scheme adopted under 1908 Act, s. 192, & to restrain the liquidator from carrying out the scheme without purchasing the shares as the deceased member would have had if living.

Arts. of assocn. forbidding exors. to exercise the rights of a member until they have been registered:—*Held*: to refer to the exercise of rights on their own behalf & not on behalf of testator's estate.—*LLEWELLYN v. KASINTOE RUBBER ESTATES, LTD.*, [1914] 2 Ch. 670; 84 L. J. Ch. 70; 112 L. T. 676; 30 T. L. R. 683; 58 Sol. Jo. 808; 21 Mans. 349, C. A.

— As contributory.]—See Sub-sect. 1, A. (c) i., *post*.

2595. Right of personal representative to registration—Shares held by deceased in fictitious name.]—Where an intestate had executed transfers of railway shares & stock to a fictitious person, the ct., on a bill filed by his administrator, declared that the intestate used the fictitious name as another designation of himself, & that pltf., as his administrator, was entitled to transfer the shares & stock, & to receive the dividends thereof.—*ARTHUR v. MIDLAND RY. CO., ETC.* (1857), 3 K. & J. 204; 69 E. R. 1082; *sub nom.* *ARTHUR v. LONDON & NORTH WESTERN RY. CO.*, 5 W. R. 385.

— Form of entry.]—See No. 1283, *ante*.

2596. Assignment of assets by personal representative to avoid liability.]—T., the widow & residuary legatee of testator, in Nov., 1889, took out letters of administration with the will annexed, & possessed herself of the personal property of testator, but did not have 500 shares in pltf. co.

transferred into her name. On Apr. 10, 1893, pltf. gave T. notice of a call of £1 per share. On Apr. 17 three deeds were executed, whereby T. assigned the whole of the personal estate, except the shares, to L., upon consideration of covenants entered into by L. to indemnify T. against all liabilities, & to provide her with board, lodging, & wearing apparel, & amenities suitable to her position, & on T.'s death to provide her with a decent funeral:—*Held*: (1) as legal personal representative, T. was bound to administer her husband's estate according to law, & as residuary legatee, she took only what was left after due administration, that is to say, after payment of the debts, including the calls that might be made on the shares; (2) the deeds of assignment must be declared void as against pltf., & there must be the ordinary accounts in a creditor's action; (3) pltf. were entitled to be paid the call & interest, & the costs of the action, & the surplus of the estate would go according to the provisions of the deeds of assignment.—*Re TROUGHTON, RENT & GENERAL COLLECTING & ESTATE CO. v. TROUGHTON* (1894), 71 L. T. 427; 10 T. L. R. 611; 13 R. 140.

2597. Appointment of Scottish executor—Subsequent sequestration—No English legal personal representative.]—At the commencement of the winding up of a co., certain shares stood in the register in the name of A., a domiciled Scotsman, who was then dead. The shares were held by him as trustee. He had appointed exors. in Scotland, one of whom had accepted the office; but he had no legal personal representative in England. After A.'s death his estates were sequestrated in Scotland. The effect of this, according to Scottish law, was to vest in the sequestrator, as from the date of the sequestration, the whole of A.'s estate, including trust estates, & to divest the exor. entirely. The beneficial interest in the shares belonged to the sequestrator & another person jointly. There were surplus assets of the co. to be returned to the shareholders. The sequestrator was willing to give the joint receipt of himself & the other beneficiary upon payment to him of the proportion of the assets payable in respect of A.'s shares:—*Held*: the legal title to the shares was vested in the sequestrator, & the money might be paid to him upon the joint receipt offered.—*Re TUTICORIN COTTON PRESS CO., LTD.* (1894), 64 L. J. Ch. 198; 71 L. T. 723; 43 W. R. 190; 39 Sol. Jo. 61; 1 Mans. 464; 13 R. 225.

2598. Company without notice of death.]—*NEW ZEALAND GOLD EXTRACTION CO. (NEWBERRY-VAUTIN PROCESS) v. PEACOCK*, No. 2039, *ante*.

2599. Company becoming executor *de son tort*.]—Upon the death of testator, a foreign subject domiciled in America, shares & debentures in an English co., of which he was the registered holder in the books of the co. in London, passed by his will to his exors. in America, according to the law of his domicil. At their request the co. paid to them the dividends & interest payable upon testator's shares & debentures & transferred into their names in the co.'s books in London, two shares & a debenture. The exors., to the knowledge of the co., had not obtained & did not intend to obtain probate in England:—*Held*: the co. had made themselves executors *de son tort*; they had taken possession of & administered part of the testator's estate, & were liable to penalties & to deliver an account & pay such duty as would have been payable if probate had been obtained in England.—*NEW YORK BREWERIES CO. v. A.-G.*, [1899] A. C. 62; 68 L. J. Q. B. 135; 79 L. T. 568;

Sect. 24.—Transmission of shares: Sub-sect. 1, A.
(a), (b) & (c) i.]

63 J. P. 179; 48 W. R. 32; 15 T. L. R. 93; 43 Sol. Jo. 111, H. L.; *affg.* S. C. *sub nom.* A.-G. v. NEW YORK BREWERIES CO., [1898] 1 Q. B. 205, C. A.

Annotation:—*Refd.* Winans v. A.-G., [1910] A. C. 27.

See, generally, EXECUTORS & ADMINISTRATORS.

Option to take shares—Right to exercise.—*See* No. 1491, *ante*.

Effect of exercise.—*See* No. 1563, *ante*.

Right to vote.—*See* No. 3806, *post*.

Right to dissent—On voluntary winding up & reconstruction—Executors not registered.—*See* No. 7137, *post*.

(b) *On Whom Liabilities Devolve.*

2600. As between executor & legatee—After assent by executor—Non-compliance with formalities of membership.—A waiver of the stipulations of a co.'s deed by the directors is not sufficient unless it is shown that the body at large made the directors their agents for that purpose. Where, therefore, a shareholder bequeathed his shares & the exor. assented to the bequest, & the secretary placed the name of the legatee & her husband opposite the shares in the books of the co., but the provisions of the deed of settlement had not been complied with as to the transfer of the shares, nor was it shown that all the shareholders of the co. had concurred in dispensing with such compliance:—*Held*: the exor. was the proper person to be placed on the list of contributories under the Winding-up Act, without qualification.—*Re* VALE OF NEATH & SOUTH WALES BREWERY CO., KEENE'S EXECUTORS' CASE (1853), 3 De G. M. & G. 272; 43 E. R. 107; *sub nom.* *Re* VALE OF NEATH & SOUTH WALES JOINT-STOCK CO., *Ex p.* WOOD, 22 L. J. Ch. 365; 20 L. T. O. S. 196; 17 Jur. 813; 1 W. R. 105, L. JJ.

2601. — Executor not registered.—A co. was wound up nine years & a half after the death of A., in whose name shares were allowed to stand, his executor being beneficially entitled to the shares:—*Held*: A.'s estate was liable, in the hands of specific devisees & legatees, to pay the calls on the shares.—*TURQUAND v. KIRBY* (1867), L. R. 4 Eq. 123; 36 L. J. Ch. 570; 16 L. T. 260; 15 W. R. 730.

Annotations:—*Appld.* *Re* Agriculturist Cattle Insee., Baird's Case (1870), 5 Ch. App. 725. *Mentd.* *Ogilvie v. Currie* (1867), 16 L. T. 309.

2602. — After legacies paid—Liability accruing after payment.—Testator, who had been a shareholder in a co., but had before his death been released from all liability in respect of his shares in consideration of a certain payment, by his will gave certain legacies, which his exors. duly paid. The co. afterwards endeavoured to set aside the release, & they failed in the first instance, but on appeal succeeded in setting aside the release:—*Held*: the exors. were personally liable to refund

the amount paid to the legatees, to meet the calls made upon testator's estate in respect of the shares.

—*Re* BEWLEY'S ESTATES, *JEFFERYS v. JEFFERYS* (1871), 24 L. T. 177; 19 W. R. 464.

2603. As between executor & assignee of residuary legatee—Call after distribution of residue.

—(1) A residuary legatee assigned the residue to his wife, Mrs. K. for her separate use. The residue comprised some shares not fully paid up in a joint stock co. The exors. handed over to Mrs. K. the certificates of the shares, but did not transfer them, & they paid over to her the cash balance of the residue. After this a call was made on the shares which the exors. were compelled to pay. Mrs. K. refused to indemnify them, & they brought this action against her to enforce indemnity:—*Held*: if Mrs. K. had been a *feme sole*, she would have been liable to refund at the suit of the exors., for the liability on the shares did not constitute a debt at the time of paying away the residue, & though the exors. would have had no right to call on the residuary legatees to refund for payment of a debt of which they had notice when they paid away the residue, they did not lose the right to refunding by paying it away with notice of a liability which had not become a debt.

(2) Subject to 1862 Act, s. 75, the liability of a shareholder for future calls is not a debt.—*WHITTAKER v. KERSHAW* (1890), 45 Ch. D. 320; *sub nom.* *Re* KERSHAW, *WHITTAKER v. KERSHAW*, 60 L. J. Ch. 9; 63 L. T. 203; 39 W. R. 22, C. A.

Annotations:—*As to* (1) *Consd.* *Hood Barrs v. Cathcart*, [1894] 2 Q. B. 559. *Refd.* *Hosegood v. Pedler* (1896), 66 L. J. Q. B. 18. *Generally, Mentd.* *Braumstein v. Lewis* (1891), 7 T. L. R. 246; *Hoare v. Niblett*, [1891] 1 Q. B. 781; *Hood Barrs v. Heriot* (1896), 65 L. J. Q. B. 624.

2604. As between legatee & residuary estate—Where payments necessary to make deceased a complete member.—Where testator takes shares in a co., any payments remaining due at, or becoming due after, his death, which are necessary to constitute him a complete shareholder, must be paid by his general personal estate; but if he was a complete shareholder, payment of calls made after testator's death must be made by the specific legatee of the shares.—*DAY v. DAY* (1860), 1 Drew. & Sm. 261; 29 L. J. Ch. 466; 2 L. T. 167; 6 Jur. N. S. 365; 8 W. R. 288; 62 E. R. 378.

Annotations:—*Distd.* *Re* Box (1863), 1 Hem. & M. 552. *Mentd.* *Re* Betty, *Betty v. A.-G.*, [1899] 1 Ch. 821.

2605. — Calls after testator's death.—*DAY v. DAY*, No. 2604, *ante*.

2606. — —.—*TURQUAND v. KIRBY*, No. 2601, *ante*.

2607. — — During life of tenant for life—Test of liability.—The rule that a specific legatee of shares liable to calls must take them, *cum onere*, does not apply to calls made in the lifetime of a person who is tenant for life of the whole residuary estate, including the shares, as an entire fund. The true test is whether the shares have or not been separated from the general residue at the date of the call.—*Re* Box (1863), 1 Hem. & M.

PART III. SECT. 24, SUB-SECT. 1.— A. (b).

2605 i. As between legatee & residuary estate—Calls after testator's death.—The owner of certain shares in pltf. co. shortly before his death assigned by deed all his property, including his shares to his son, deft., subject to payment of his debts. Deft. admitted receiving dividend-warrants the first of which he endorsed as "J. C., assignee of J. C. (Sen.)," but alleged he had devoted proceeds in payment of his father's debts. He also admitted he had attended a meeting & moved a

resolution. After the meeting he showed the deed of assignment to one of the directors & asked to be registered as a shareholder, but was refused as the deed did not comply with the arts. of assocn. The co. made calls on the shares, which deft. refused to pay:—*Held*: the co. were aware that deft. was not the registered owner of the shares; deft. was not estopped by any conduct on his part from denying that he was a registered holder, & he could not be personally liable for payment of the calls & an *Exor. de son tort*. Deft. was not liable for such payment *de bonis propriis* but was liable for

administration in due course of the assets that actually came to his hands.—*BLACKSTAFF FLAX SPINNING & WEAVING CO. v. CAMERON*, [1899] 1 I. R. 252.—IR.

b. Calls after testator's death—Position of legatee.—Where shares in a joint-stock co. are bequeathed, & after testator's death calls are made on the shares, legatee is put to his election either to pay the amount of the calls or to take nothing under the will.—*MANSON v. ROSS* (1884), 1 B. C. R., Pt. II., 49.—CAN.

552; 3 New Rep. 65; 33 L. J. Ch. 42; 9 L. T. 372; 12 W. R. 67; 71 E. R. 242.

See, generally, EXECUTORS & ADMINISTRATORS.

(c) *Personal Representatives and Others as Contributories.*

i. *Executor.*

2608. Executors incapable of becoming shareholders.]—By a deed of settlement of a joint-stock co., exors. were not to be proprietors:—*Held*: nevertheless, they were contributories & might maintain a petition to wind up.—*Re NORWICH YARN Co.* (1850), 12 Beav. 366; 14 L. T. O. S. 345; 50 E. R. 1101.

2609. Whether in representative capacity—Formalities as to membership not complied with.]—The deed of settlement of a banking co. provided that the exor. of a deceased shareholder should not be entitled to be a shareholder until he had gone through certain formalities set out in such deed. A. died possessed of some shares in this co. B., who was A.'s exor., took no steps whatever in respect of the shares:—*Held*: B. was properly put on the list of contributories in the character of the exor. of A.—*Re NORTH OF ENGLAND BANKING Co., THOMAS'S CASE* (1849), 1 De G. & Sm. 579; 18 L. J. Ch. 249; 12 L. T. O. S. 531; 13 Jur. 274; 63 E. R. 1203.

2610. ———.]—By the deed of settlement of a banking co. exors. of deceased shareholders had the option of becoming shareholders on giving certain notice, or of selling the shares; &, until the option was exercised, the dividends might be retained by the co. as a guarantee fund. In default of any person executing the deed in respect of such shares, after six months' notice, the shares were liable to forfeiture. A shareholder in the co. bequeathed his shares to his exor., in trust to convert them into money. The exor. sold some of the shares, but did not give the proper notice to make himself a shareholder as to the rest, & was, nevertheless, permitted to receive the dividends on them for five years, signing the receipts as exor. only:—*Held*: he was not a contributory without qualification.—*Re NORTH OF ENGLAND BANKING Co., ARMSTRONG'S CASE* (1849), 1 De G. & Sm. 565; 12 L. T. O. S. 347; 13 Jur. 75; 63 E. R. 1197.

Annotations:—*Reid. Re City of Glasgow Bank, Buchan's Case* (1879), 4 App. Cas. 549. *Mentd. Re St. George's Steam Packet Co., Maguire's Case* (1849), 18 L. J. Ch. 256.

2611. ———.]—A. & B. were the exors. of a deceased proprietor of shares in a joint-stock co. The co.'s deed required certain acts to be done by exors. before becoming proprietors or receiving dividends. A. alone received dividends on the shares as exor., signing the dividend warrants in that character; but the shares were not transferred, nor was any act beyond the receipt of dividends by A. done by either A. or B.:—*Held*: A. & B. were to be placed on the list of

contributories as exors.—*Re ST. GEORGE'S STEAM PACKET Co., Ex p. DOYLE* (1850), 2 H. & Tw. 221; 47 E. R. 1664, L. C.

Annotation:—*Reid. Re St. George's Steam Packet Co.*, (1852), 2 De G. M. & G. 366.

2612. ———.]—B., the proprietor of the shares in a joint-stock banking co., died: his extrix. produced the probate of his will, & for more than three years received the dividends which accrued on the shares, giving receipts for the same as extrix. By the deed of settlement of the co. it was provided, that until certain acts were done constituting the exor. of a deceased member, or purchaser of the deceased member's shares, a partner in the co., the estate of the deceased member should remain liable:—*Held*: on winding up the co., in the absence of any proof that the extrix. had done any acts constituting her a member of the co., the estate of the deceased partner was liable to contribute, & the name of the extrix. ought to be placed on the list of contributories in her representative character.

The master having struck out the name of the extrix. from the list of contributories, on the ground that Country Bankers Act, 1826 (c. 46), s. 13, applied to the case, the Vice-Chancellor, being of a different opinion, made an order referring it back to the master to review his decision, with a declaration of opinion that the extrix. ought to be included in the list, either in her own right or in her representative character:—*Held*: on appeal, the alternative form of this order was correct.—*Re NORTH OF ENGLAND JOINT STOCK BANKING Co., Ex p. GOUTHWAITE* (1851), 3 Mac. & G. 187; 20 L. J. Ch. 188; 16 L. T. O. S. 337; 15 Jur. 137; 42 E. R. 232, L. C.

Annotations:—*Consd. Re Agriculturist Cattle Insee., Baird's Case* (1870), 5 Ch. App. 727, n. *Reid. Heward v. Wheatley* (1853), 3 De G. M. & G. 628. *Mentd. Re Royal Bank of Australia* (1855), 3 Sm. & G. 272; *Houldsworth v. Evans* (1868), L. R. 3 H. L. 263.

2613. ———.]—By the provisions of a joint-stock co.'s deed of settlement it was in effect provided that no proprietor of shares should ever be discharged from his liability to the co. until some other proprietor should have been substituted under the same liability as attached to the original proprietor. The deed also provided that the exor. of a deceased proprietor should not be deemed a proprietor until he should be duly admitted as such. The co. being wound up under the Joint-Stock Cos. Winding-up Acts:—*Held*: the exors. of a deceased proprietor were liable in that capacity to be placed on the list of contributories in respect of partnership debts incurred subsequently to the death of their testator, although they had not complied with the formalities of the deed so as to be entitled to the profits of the co.—*Re NORTHERN COAL MINING Co., Ex p. BLAKELEY'S EXECUTORS* (1852), 3 Mac. & G. 726; 18 L. T. O. S. 311; 16 Jur. 299; 42 E. R. 439, L. C.

Annotations:—*Consd. Re Agriculturist Cattle Insee., Baird's*

PART III. SECT. 24, SUB-SECT. 1.—
A. (c) i.

2609 i. Whether in representative capacity—Formalities as to membership not complied with.]—Exors. nominate, on accepting office, gave their law-agent, who was one of their number, general instructions to do what was necessary. The law-agent on Sept. 17, 1878, sent the confirmation of deceased's estate, which included £400 stock of a joint-stock banking co., registered under 1862 Act, to the bank with a request to transfer the stock from the name of deceased to the names of exors. An entry was then made by the bank in the register of transfers, but not in the

"stock ledger," which was the register of members. On Oct. 2, 1878, the bank stopped payment, & on Oct. 5 its hopeless insolvency was made public. Some time after Oct. 11, a clerk of the bank entered exors. in the register of members. In the liquidation of the bank exors. were entered in the first part of the list of contributories as contributories in their own right. Exors. having presented a petition to the ct. to have their names removed from the first part of the list of contributories & entered in the second part as "representatives of others":—*Held*: (1) entry on the register after Oct. 5 was of no effect; (2) before Sept. 17 exors. were under

no obligation to register their names as partners in the bank & the letter was not of the nature of an agreement conferring any title or interest on the bank or its creditors to demand implement, but was of the nature of a gratuitous mandate which must be held to have been recalled; (3) exors. were entitled to have their names removed from the first part of the list of contributories.—*MACDONALD v. CITY OF GLASGOW BANK* (1879), 6 R. (Ct. of Sess.) 621.—SCOT.

c. — *Wife "in community" as executrix—Liability de bonis propriis.]*—It is not safe or proper for a surviving spouse, as executrix of the estate of her deceased husband, to

Sect. 24.—Transmission of shares: Sub-sect. 1, A.
(c) *i. & ii.*]

Case (1870), 5 Ch. App. 725, 727, n. *Reid. Re City of Glasgow Bank*, Buchan's Case (1879), 4 App. Cas. 549. *Mentd. Houldsworth v. Evans* (1868), L. R. 3 H. L. 263.

2614. — Assent by executor to legacy.]—*Re VALE OF NEATH & SOUTH WALES BREWERY CO., KEENE'S EXECUTORS CASE*, No. 2600, *ante*.

2615. — Executors not registered as members.]—Eighty shares in A. co. stood in the names of K. & J. K. died & his will was proved, but his exors. took no steps for having their names placed on the register. On the winding up of the co. an application was made to have the names of K.'s exors. placed on the list of contributories in their representative capacity jointly with J.:—*Held*: K., having executed the deed of settlement of the co., which contemplated more persons than one as owners of a share, & which contained a covenant whereby each owner covenanted severally for himself, his heirs, exors. & administrators to perform & satisfy all the engagements & obligations attaching to any shares, held by him, K. must be considered liable on all engagements & obligations up to the time of his death. But K. & J. having been joint tenants & not tenants in common, K. was not liable on any contract entered into after his death. Consequently the exors. were placed on the list of contributories in their representative capacity, but only in respect of the engagements & liabilities up to the time of K.'s death.—*Re ALBERT LIFE ASSURANCE CO., KIRBY'S EXECUTORS' CASE* (1871), 15 Sol. Jo. 922.

2616. — One only of two executors acting as member of company.]—Testatrix was the owner of shares in a joint-stock co., & appointed H. & C. her exors.; H. was the acting exor., & the estate was wound up with the exception of the shares; the probate of the will was entered in the books of the co.; H. sold some of the shares & received the dividends on those which remained unsold, but C. never in any way communicated with the co., or interfered in the matter. More than nine years after the death of testatrix the co. failed, & on being wound up under Winding-up Act, 1848 (c. 45), the master placed the name H. alone on the list of contributories as personally liable; he subsequently, & after the passing of the Winding-up Amendment Act, 1849 (c. 108), reviewed his decision, & placed the names of both H. & C. on the list as liable in the character of exors. & C. applied to have his name taken off the list:—*Held*: there was nothing in the facts of the case in reference to the dealings between the co. & H., or in the provisions of the deed of settlement of the co., that varied the rights of the co. in respect to the liability of C. to contribute in his character of exor.—*Re NORTH OF ENGLAND JOINT STOCK BANKING CO., CROSFIELD'S CASE* (1852), 2 De G. H. & G. 128; 22 L. J. Ch. 208; 19 L. T. O. S. 236; 16 Jur. 731; 42 E. R. 819, L. C.

2617. — Executrix also devisee.]—Testator devised & bequeathed all his real & personal estate, the latter consisting of, among other things, shares in a joint-stock co., to his widow for life,

& after her death to his daughter absolutely, & he appointed them extrixes. The widow & daughter, as extrixes., received the dividends on the shares for several years. After the death of the widow the co. was wound up under the Winding-up Acts:—*Held*: the daughter was rightly placed on the list of contributories in respect of her being devisee.—*Re ST. GEORGE'S STEAM PACKET CO., HAMER'S DEVISEES' CASE* (1852), 2 De G. M. & G. 366; 21 L. J. Ch. 832; 19 L. T. O. S. 223; 16 Jur. 555; 42 E. R. 913, L. C.

Annotations:—*Mentd. Kinderley v. Jervis* (1856), 22 Beav. 1; *Price v. Price* (1887), 35 Ch. D. 297.

2618. — —.]—An extrix. who was also residuary legatee, was held not to be personally liable as contributory in respect of shares belonging to her testatrix, though she had received dividends for six years, had signed two receipts, without the qualification "as extrix.," & had passed her residuary account, treating the shares as part of the clear residue, it appearing that formalities required by the deed of settlement for making her a shareholder had not been complied with.—*HEREFORDSHIRE BANKING CO., BULMER'S CASE* (1864), 33 Beav. 435; 33 L. J. Ch. 609; 10 L. T. 151; 10 Jur. N. S. 462; 12 W. R. 564; 55 E. R. 436.

2619. — Shares acquired after testator's death—Purchase.]—Exors., after the death of their testator, had purchased further shares:—*Held*: as to the latter, they were contributories without qualification, though they had been treated as exors. in regard to such further shares.—*Re NEWCASTLE, ETC. BANKING CO., SPENCE'S CASE* (1853), 17 Beav. 203; 51 E. R. 1011.

2620. — —.]—The directors of a joint-stock co. offered their reserved shares to shareholders & the exors. of deceased shareholders, in proportion to the amount of their original shares:—*Held*: exors. who accepted shares must be put upon the list of contributories in their own right, & not in their representative character. The fact that the new shares were offered to, & accepted by, the exors. in their representative character, & that the directors had no power to offer the shares to them in any other character, did not preclude the exors. from being personally liable as between them & the other contributories.—*Re LEEDS BANKING CO., FEARNSIDE & DEAN'S CASE, DOBSON'S CASE* (1866), 1 Ch. App. 231; 35 L. J. Ch. 307; 13 L. T. 694; 12 Jur. N. S. 60; 14 W. R. 255, L. JJ.

Annotations:—*Distd. Re Leeds Banking Co., Mallorie's Case* (1866), 2 Ch. App. 181. *Appld. Re Leeds Banking Co., Ex p. Matthewman* (1866), 36 L. J. Ch. 90. *Apprvd. Jackson v. Turquand* (1869), L. R. 4 H. L. 305.

2621. — — Exercise of option to purchase.]—*JACKSON v. TURQUAND*, No. 1563, *ante*.

2622. — — Exercise of option to exchange.]—*Re CHESHIRE BANKING CO., DUFF'S EXECUTORS' CASE*, No. 1624, *ante*.

— **Banking company.]**—*See, also*, Part IV., *post*.

2623. Inquiry of company by executors—As to liability of testator—Estoppel.]—M., a director in a co., took 500 shares, & gave a promissory note for £5,000. M. died, & before proving his will,

whom she has been married in community, to pay to herself as surviving spouse any portion of the common estate until her husband's shares in an unlimited banking corporation have been transferred or the liability entailed by their retention has been ascertained.

A. & B. married in community of property by their mutual will, appointed the survivor & their

daughter C. heirs of the first dying. A., the husband, died first, & B., as extrix., framed an account by which she awarded one moiety of the realised assets to herself as surviving spouse & divided the other moiety between herself & C. as heirs. Among the assets of the common estate were 30 bank shares registered in A.'s name, which B., as extrix., took no steps to realise. Nine years after A.'s death the bank was

placed in liquidation, & the estate, as represented by B., the extrix., was placed upon the list of contributories:—*Held*: neither B. nor C. could be placed upon the list of contributories in their individual capacity, but there were sufficient grounds for a rule calling upon B. to show cause why, falling sufficient assets in the estate, she should not be ordered to pay, *de bonis propriis*, the sums awarded & paid to herself as

his exors., upon inquiry, were informed by the surviving directors that their testator had only twenty shares upon which the whole capital had been paid. There was no entry of his ever having received any dividends in respect of the 500 shares. On the faith of the representation of the directors, who had cancelled the 500 shares, the exors. distributed M.'s assets. On the winding-up of the co., the master ordered M.'s exors. to be placed on the list of contributories in respect of the 500 shares, but, on appeal, the order was discharged.

If, upon the representations of directors, the assets of a deceased shareholder are administered, it will require a very strong case to induce the ct. to relieve the shareholders, even should such representations be false.—*Re ROYAL BANK OF AUSTRALIA, MEUX'S EXECUTORS' CASE* (1852), 2 De G. M. & G. 522; 20 L. T. O. S. 11; 42 E. R. 975, L. C.

Annotations:—*Consd. Re Athenæum Life Assce. Soc., Richmond's Case & Painter's Case* (1858), 4 K. & J. 305. *Refd. Re Devala Provident Gold Mining Co.* (1883), 22 Ch. D. 593.

2624. Shares not standing in name of deceased.]

—Forty shares, called "new shares," were purchased by B.'s father, & were by his direction transferred into the names of A. & B., without their knowledge. B., after his father's decease, & on becoming his exor., found the certificates of the shares among his father's papers, & upon the request of the managing director of the co., sent the certificates to him to be exchanged. Instead of being exchanged they were cancelled, & other shares, being old shares, were transferred, in the co.'s books, to A. & B., as upon a sale:—*Held*: as to the forty shares, B. was properly excluded from the list of contributories, both in his individual character, & also as representative of his deceased father.—*Re ST. GEORGE'S STEAM PACKET CO., PIM'S CASE* (1849), 3 De G. & Sm. 11; 18 L. J. Ch. 258, 259; 13 L. T. O. S. 254, 342; 13 Jur. 530, 672; 64 E. R. 358; *subsequent proceedings*, 1 Mac. & G. 291, L. C.

2625. In respect of what liabilities—Whether liabilities incurred after date of death.]—*Re AGRICULTURIST CATTLE INSURANCE CO., BAIRD'S CASE*, No. 2593, *ante*.

2626. Extent of liability.]—One of defts. held shares as the legal personal representative of the original owner of the shares:—*Held*: he was only liable to the extent of the assets of the person he represented.—*EVANS v. COVENTRY* (1856), 25 L. J. Ch. 489; 27 L. T. O. S. 85; 20 J. P. 691; 2 Jur. N. S. 557; 4 W. R. 466; *on appeal* (1857), 8 De G. M. & G. 835, L. JJ.

Annotations:—*Mentd. Re Athenæum Soc. & Prince of Wales Soc., Durham's Case* (1858), 4 K. & J. 517; *Re English & Irish Church & University Assce. Soc., Hunt's Annuity Case* (1862), 1 Hem. & M. 79; *Re State Fire Insce.* (1863), 1 De G. J. & Sm. 634; *Kearns v. Leaf, Aldebert v. Kearns* (1864), 1 Hem. & M. 681; *Re Mercantile Trading Co., Stringer's Case* (1869), 4 Ch. App. 475; *Re Albert Life Assce., Bell's Case, Kerr's & Stubbs' Cases, Bleackley's Case, Craig's Exors.' Case, Wilson's Case* (1870), L. R. 9 Eq. 706; *Salisbury v. Met. Ry.* (1870), 22 L. T. 839; *Re Montrotier Asphalt Co., Perry's Case* (1876), 34 L. T. 716; *Re National Funds Assce.* (1878), 10 Ch. D. 118; *Re Exchange Banking Co., Flitcroft's Case* (1882), 21 Ch. D. 519; *Re Oxford Benefit Bldg. & Investment Soc.* (1886), 35 Ch. D. 502; *Cullerne v. London & Suburban General Permanent Bldg. Soc.* (1890), 25 Q. B. D. 485; *Coxon v. Gorst*, [1891] 2 Ch. 73; *Re Sharpe, Re Bennett, Masonic & General Life Assce. v. Sharpe*, [1892] 1 Ch. 154.

2627. After distribution of assets.]—The exors. of a shareholder in a joint-stock co., which was a

going concern at the time of testator's death, paid a legacy under his will without providing for any contingent liability in respect of the shares which they retained unsold. The co. was subsequently wound up, & the exors. were placed on the list of contributories:—*Held*: they were liable to pay the amount of the legacy in satisfaction of calls.—*TAYLOR v. TAYLOR* (1870), L. R. 10 Eq. 477; 39 L. J. Ch. 676; 23 L. T. 134; 18 W. R. 1102.

Annotations:—*Folld. Re Bowley's Estate, Jefferys v. Jefferys* (1871), 24 L. T. 177. *Refd. Jervis v. Wolferstan* (1874), L. R. 18 Eq. 18.

2628. —.]—Where the exors. of a shareholder has distributed the assets of testator under 13 & 14 Vict. c. 35, without making any provision for the contingent liability with respect to certain shares in a co., on the winding up of the co. the exors. must be placed on the list of contributories, with a view to proceedings being taken for the administration of testator's estate.—*Re FAMILY ENDOWMENT LIFE ASSURANCE & ANNUITY SOCIETY, COLE'S EXECUTORS' CASE* (1871), 15 Sol. Jo. 711.

2629. — No knowledge that shares formed part of estate.]—Where the exors. of a shareholder, having distributed the assets of the testator under Law of Property Amendment Act, 1859 (c. 35), s. 29, on the winding up of the co., they are liable to be placed on the list of contributories in their capacity of exors., even though they never knew testator was possessed of the shares.—*Re MEDICAL, INVALID & GENERAL LIFE ASSURANCE SOCIETY, RUSSELL'S EXECUTORS' CASE* (1871), 15 Sol. Jo. 790.

See, further, EXECUTORS & ADMINISTRATORS.

Liability as between executor & legatee.]—*See Sub-sect. 1, A. (b), ante.*

ii. *Administrator.*

2630. Whether personally liable.]—An order was made for winding up the affairs of a co., & a call of £10 per share was made on all the shareholders. A claim for the amount due on the call was carried in & proved in a suit for the administration of the estate of a deceased shareholder, & subsequently a balance order was issued charging L. as administrator of the estate simply with the amount of the calls & interest thereon. This order was discharged, on the ground that it was made personally against L. as administrator, & because interest was charged thereon. On motion to vary or discharge the order discharging the master's order:—*Held*: the master's order must remain discharged, but the order discharging it must be varied so as to allow the official manager to prove for the calls in the suit for administration against the assets without prejudice to any claim for interest to be made in that suit.—*Re NORTHERN COAL MINING CO., Ex p. LAKE* (1852), 19 L. T. O. S. 323.

2631. Assets distributed—Without making provision for liabilities.]—Where an administratrix had distributed the whole of the intestate's assets without making provision for calls on shares made by a liquidator in a winding up:—*Held*: there ought to be a decree for payment, & in default, for administration.—*PRICE v. MAYO* (1874), 43 L. J. Ch. 402; 22 W. R. 401.

See, generally, EXECUTORS & ADMINISTRATORS.

surviving spouse & to herself & C. as testamentary heirs.—*UNION BANK (IN LIQUIDATION) v. HOFMEYER'S EXECUTRIX* (1901), 8 S. C. 146; 1 C. T. R. 64.—S. AF.

d. *Where deceased was actually a subscriber for shares.]—*If it is sought to make exor. of an alleged shareholder in a co. liable for payments of the price of the shares, it is necessary to show

that the alleged shareholder was himself actually a subscriber for such shares.—*Re INTERNATIONAL ELECTRIC CO., McMAHAN'S CASE* (1914), 31 O. L. R. 348.—CAN.

Sect. 24. Transmission of shares: Sub-sect. 1, A. (c) iii. & B.; sub-sects. 2, 3, 4 & 5. Sect. 25: Sub-sect. 1.]

iii. *Other Persons.*

2632. Person receiving dividends—Brother of deceased shareholder.]—Where a person who had received the dividends on the bank shares of a deceased shareholder was, on the winding up of the affairs of the banking co. under 1848 Act, placed by the official manager on the list of contributories as the exor. of the deceased shareholder, & on his appearance before the master, he showed that he was not such exor., the master placed him on the list of contributories as a person primarily liable:—*Held*: the master's decision was contrary to the express terms of that Act, & must be reviewed by him.

G. was served with a notice as representative of his deceased brother. He attended in compliance with that notice, complained of being described in a false character, & disclosed the real nature of his position. The master then, in defiance of the notice under which G. appeared, placed him in the list of persons personally & primarily liable. That was not a correct proceeding, nor one justified by the Act. The master might as well charge him as personally liable for 100 shares instead of ten, as charge him in a character totally different from that in which he was summoned to appear. The necessity of a new notice has been arbitrarily dispensed with, & G., without further question, has been made liable as a primary shareholder. That course is contrary to the express provisions of the Act (*LORD COTTENHAM, C.*).—*Re NORTH OF ENGLAND JOINT STOCK BANKING CO., Ex p. GLAHOLM* (1849), 1 H. & Tw. 121; 1 De G. & Sm. 583; 18 L. J. Ch. 147; 12 L. T. O. S. 366; 47 E. R. 1351, L. C.

B. On Death of Joint Shareholder.

2633. Joint tenancy—Survivor absolutely entitled.]—G., out of her own money, purchased fifty shares in a banking co., & caused them to be transferred into the names of herself & L. The dividends were, upon an authority signed by G. & L., paid to the separate account of G. at the bank; G. also sold some of the shares, & G. & L. joined in the transfer to the purchaser. G. died, leaving L. surviving:—*Held*: (1) the transfer passed a complete legal title; (2) it created a joint tenancy; & (3) L. by survivorship, was absolutely entitled to the shares & to payment of the dividends which had accrued since the death of G.—*GARRICK v. TAYLOR* (1861), 4 De G. F. & J. 159; 31 L. J. Ch. 68; 5 L. T. 404; 7 Jur. N. S. 1174; 10 W. R. 49; 45 E. R. 1144, L. JJ.

Annotation:—*Generally, Rejd. Re Policy No. 6402, Scottish Equitable Life Assce. Soc., [1902] 1 Ch. 282.*

2634. — Survivor solely liable from date of death.]—*Re ALBERT LIFE ASSURANCE CO., KIRBY'S EXECUTORS' CASE*, No. 2615, *ante*.

2635. — —.]—Shares registered in the joint names of two persons are their joint property, & on the death of one of them the whole liability in respect of the shares accrues to the survivor, & the exors. of the deceased joint tenant are discharged.—*Re MARIA ANNA & STEINBANK COAL & COKE CO., MAXWELL'S CASE, HILL'S CASE* (1875), L. R. 20 Eq. 585, 595; 44 L. J. Ch. 423; 32 L. T. 747; 23 W. R. 646.

SUB-SECT. 2.—ON BANKRUPTCY.

Right of trustee in bankruptcy to registration.]—*See BANKRUPTCY & INSOLVENCY, Vol. V., pp. 965, 966, Nos. 7903–7906.*

— Loss of right by laches.]—*See BANKRUPTCY & INSOLVENCY, Vol. V., p. 634, No. 5709.*

Whether shares in reputed ownership of bankrupt.]—*See, generally, BANKRUPTCY & INSOLVENCY, Vol. V., pp. 748, 749, 771 et seq., Nos. 6456–6466, 6630 et seq.*

— Shares held as trustee.]—*See BANKRUPTCY & INSOLVENCY, Vol. V., p. 761, No. 6549.*

2636. — Shares sold but transfer not registered.]—*MORRIS v. CANNAN*, No. 2341, *ante*.

2637. Right of trustee to disclaim.]—Although the transferee of shares in a co. formed under 1862 Act, who takes the beneficial ownership, is bound to indemnify the transferor against all liabilities in respect of them subsequent to the date of the transfer; yet in the case of such transferee taking such shares as assignee in bkpcy., taking the bkpt.'s whole estate by operation of law, he has the option of accepting or rejecting the same. Acceptance of the shares in the absence of any special act done in relation thereto, is not constituted by the execution of the deed of transfer, the acceptance of the trusts, & general action under them.—*LEVI v. AYERS* (1878), 3 App. Cas. 842; 47 L. J. P. C. 83; 38 L. T. 725; 27 W. R. 79, P. C.

2638. — Shares subject to equitable charge.]—The registered owner of fully-paid shares in a private co. charged them in favour of W., & handed him the certificates & a blank transfer. He subsequently gave other equitable charges to other mtgees. On the owner's bkpcy. his trustee disclaimed "all my interest" in the shares under Bkpcy. Act, 1914 (c. 59), s. 54, but, as the blank transfer was not completed & lodged & none of the mtgees. applied for a vesting order, the bkpt.'s name remained on the register:—*Held*: (1) as between himself & the co., the bkpt., so long as his name remained on the register, was entitled to vote in respect of the shares, though, as between himself & the mtgees., he could only vote as they dictated; (2) the trustee could not have disclaimed more than the equity of redemption in the shares. *Qu.*: whether a trustee can disclaim unincumbered fully-paid shares.

I do not quite follow how a trustee in bkpcy. can disclaim an incumbered share in such a way as to destroy the share (*ASTBURY, J.*).—*WISE v. LANSDELL*, [1921] 1 Ch. 420; 90 L. J. Ch. 178; 124 L. T. 502; 37 T. L. R. 167; [1920] B. & C. R. 145.

2639. — Fully-paid shares.]—*WISE v. LANSDELL*, No. 2638, *ante*.

—.]—*See, generally, BANKRUPTCY & INSOLVENCY, Vol. V., pp. 938 et seq.*

— Proof by company for calls.]—*See BANKRUPTCY & INSOLVENCY, Vol. IV., pp. 302 et seq.*

2640. Effect of disclaimer—Liability of shareholder.]—A., a shareholder in a joint-stock co., was made a bkpt. in Oct. 1848. In Nov. 1850, the co. ceased to carry on business, & was shortly afterwards ordered to be wound up. The assignees disclaimed the shares. The master put on the list of contributories the assignees of A., in respect of losses incurred before the bkpcy., & A., in respect of losses incurred after the bkpcy. The ct. ordered the name of A. to be erased from the list

PART III. SECT. 24, SUB-SECT. 1.—B.

a. Joint tenancy—Accrued calls—Survivor solely liable.]—The estate of

a deceased person who was a joint-holder of shares in a co. is not liable for calls which accrued during his lifetime; such liability survives to the surviving

holder.—*NATIONAL TRUSTEES, EXECUTORS & AGENCY CO., LTD. v. WALSH* (1895), 21 V. L. R. 75.—*AUS.*

of contributories.—*Re LIVERPOOL MARINE ASSURANCE Co., GREENSHIELD'S CASE* (1852), 5 De G. & Sm. 599; 21 L. J. Ch. 773; 19 L. T. O. S. 162; 16 Jur. 517; 64 E. R. 1260.

Annotations:—*Reid. Re Warwick & Worcester Ry., Parbury's Case* (1861), 3 De G. F. & J. 80; *Re General Estates Co., Hastie's Case* (1869), 4 Ch. App. 274.

2641. ———.]—When a shareholder in a co. has, before a winding-up order has been made, or after such order & before a call has been made, become bkpt., & his trustee in bkpcy. has disclaimed under Bkpcy. Act, 1869 (c. 71), s. 23, neither the shareholder nor the trustee can be placed on the list of contributories.

Semble: if a call had been made between the winding up & the bkpcy., the name of the trustee ought to have been on the list of contributories.—*Re WEST OF ENGLAND BANK, Ex p. BUDDEN & ROBERTS* (1879), 12 Ch. D. 288; 48 L. J. Ch. 764; 41 L. T. 179; *sub nom. Re WEST OF ENGLAND & SOUTH WALES DISTRICT BANK, Ex p. BUDDEN, Re WEST OF ENGLAND & SOUTH WALES DISTRICT BANK, Ex p. ROBERTS*, 27 W. R. 906.

2642. What amounts to adoption.]—*LEVI v. AYERS*, No. 2637, *ante*.

———.]—*See, generally, BANKRUPTCY & INSOLVENCY*, Vol. V., pp. 935 *et seq.*

2643. Position of trustee—How entered on list of contributories.]—A bkpt., at the time of his bkpcy., held shares in a co. afterwards ordered to be wound up. The master placed his assignees in the list of contributories, in respect of these shares, with the addition of the words "as assignees":—*Held*: the master had rightly so placed them.—*Re KOLLMANN'S RAILWAY LOCOMOTIVE & CARRIAGE IMPROVEMENT Co., KUPER'S ASSIGNEES' CASE* (1849), 3 De G. & Sm. 113; 19 L. J. Ch. 165; 14 L. T. O. S. 172; 14 Jur. 285; 64 E. R. 404.

———.]—*See, generally, BANKRUPTCY & INSOLVENCY*, Vol. IV., pp. 205 *et seq.*

Bankruptcy of trustee—Vesting order.]—*See TRUSTS & TRUSTEES.*

SUB-SECT. 3.—ON MARRIAGE.

See Sect. 21, sub-sect. 4, B. (d); Sect. 23, sub-sect. 15, B., *ante*.

SUB-SECT. 4.—BY WILL.

2644. What amounts to acceptance—*Distringas*.]—Service of a notice under R. S. C. Ord. 46, r. 4, as to stock or shares comprised in a legacy by the legatee or his solr., is not an acceptance of the legacy so as to bring the legatee under the liabilities attaching to the stock or shares, or estop him from subsequently disclaiming the legacy.—*HOBBS v. WAYET* (1887), 36 Ch. D. 256; 56 L. J. Ch. 819; 57 L. T. 225; 36 W. R. 73.

Annotations:—*Mentd. Wolmershausen v. Gullick*, [1893] 2 Ch. 514; *St. Thomas's Hospital v. Richardson*, [1910] 1 K. B. 271.

What words operate to pass interest in shares.]—*See WILLS.*

SUB-SECT. 5.—BY GIFT.

2645. Whether gift complete.]—Testator, a few days before his death, bought through a broker on the Stock Exchange, certain stocks & shares. On the day before his death, this being also "name day" on the Stock Exchange, in accordance with testator's instructions his wife's name was passed as the transferee of the stocks & shares. He died

before the transfers were executed:—*Held*: the gift of the stocks & shares was complete.—*Re SMITH, BULL v. SMITH* (1901), 84 L. T. 835; 17 T. L. R. 588; 45 Sol. Jo. 596.

See, generally, GIFTS.

SECT. 25.—MORTGAGE OF SHARES.

SUB-SECT. 1.—IN GENERAL.

2646. By deposit of certificate—*Effect of*.]—The deposit of a certificate of shares to secure the repayment of money amounts to an agreement to transfer the shares by way of mtge., & the deposit is entitled to a decree for foreclosure, & is not restricted to a remedy by sale.—*HARROLD v. PLENTY*, [1901] 2 Ch. 314; 70 L. J. Ch. 562; 85 L. T. 45; 49 W. R. 646; 17 T. L. R. 545; 8 Mans. 304.

Annotations:—*Folld. Stubbs v. Slater*, [1910] 1 Ch. 632. *Mentd. London County & Westminster Bank v. Tompkins*, [1918] 1 K. B. 515.

2647. ——— Certificates transferable by delivery—*Fraudulent deposit by brokers*.]—Scrip certificates, by which it was certified that, after the payment of certain instalments, the bearer thereof would be entitled to be registered as the holder of shares in a banking co., were issued to pltf., & by him deposited with a stockbroker for the purpose of paying the instalments remaining due, & dealing with such certificates as pltf. should direct. The broker, in fraud of pltf., & without his authority, deposited the scrip with defts. as security for an amount due from him, the broker, to defts. Defts. were not aware of the fraud:—*Held*: defts. were entitled to the scrip certificates as against pltf., on the ground that pltf., by depositing with his broker instruments purporting to be transferable by delivery to a *bona fide* holder for value, was estopped from denying that they were so transferable.—*RUMBALL v. METROPOLITAN BANK* (1877), 2 Q. B. D. 194; 46 L. J. Q. B. 346; 36 L. T. 240; 25 W. R. 366.

Annotations:—*Folld. Bechuanaland Exploration Co. v. London Trading Bank*, [1898] 2 Q. B. 658; *Webb, Hale v. Alexandria Water Co.* (1905), 93 L. T. 339. *Reid. Simmons v. London Joint Stock Bank, Little v. London Joint Stock Bank*, [1891] 1 Ch. 270.

Certificates & debentures transferable by delivery, *see* *BILLS OF EXCHANGE*, Vol. VI., pp. 448–453.

2648. ——— Right of subsequent transferee for value to charging order—*Under Judgments Act, 1838* (c. 110), s. 14.]—Deft., a registered owner of shares in a joint-stock co., deposited the certificate with E. as a security for money advanced. Deft. afterwards borrowed a further sum from an insurance office, & executed to C., one of his sureties on that occasion, with the consent of E., who was the other surety, a transfer of the shares, accompanied by a declaration of the terms of the transfer, & delivered both instruments to C. The money not having been paid to the insurance office, they claimed it from E. & C., when C. requested the insurance office to transfer the shares into his name, which they refused to do, on the ground that they had been previously served with a judge's order *nisi* to charge the shares:—*Held*: the shares were properly charged as shares standing in deft.'s name "in his own right" within the meaning of the above Act.—*FULLER v. EARLE* (1852), 7 Exch. 796; 21 L. J. Ex. 314; 155 E. R. 1172.

Annotations:—*Reid. Nicholls v. Rosewarne* (1859), 28 L. J. C. P. 273; *Gill v. Continental Gas Union* (1872), 41 L. J. Ex. 176.

——— Whether shares in possession, order,

Sect. 25.—Mortgage of shares: Sub-sects. 1, 2 & 3, A. & B.]

or disposition of bankrupt—Deposit to secure current account.]—See BANKRUPTCY & INSOLVENCY, Vol. V., p. 773, No. 6641.

————— **“In his trade or business.”]**—

See BANKRUPTCY & INSOLVENCY, Vol. V., p. 787, Nos. 6743, 6745.

2649. ——— Accompanied by blank transfer.]
—**STUBBS v. SLATER, No. 2690, post.**

2650. ——— Whether mortgagee affected with notice—Of transferor's interest in equity of redemption.]—ROFFE v. ROSCOE (1879), cited 26 Ch. D. at pp. 260, 265.

Annotation:—Distd. France v. Clark (1884), 26 Ch. D. 257.

2651. ——— Of sub-mortgagor's title.]—SHEFFIELD (EARL) v. LONDON JOINT STOCK BANK, No. 2671, post.

See, generally, Sect. 23, sub-sect. 3, D., ante, & compare No. 8096, post.

Execution of transfer—Refusal of directors to register.]—See No. 2388 ante.

SUB-SECT. 2.—NOTICE OF MORTGAGE.

See, now, 1908 Act, s. 27.

2652. Right to give—Effect of 1856 Act, s. 19.]
—The object of the above sect. enacting that “no notice of any trust, express or implied or constructive, shall be entered on the register or receivable by the co.” was that the co. itself should not be bound by any notice of any trust, but the sect. does not prevent an equitable mtge. by deposit of shares from being so far completed by notice as to be valid as against the assignees in bkpcy. of the mtgor., claiming them under the reputed ownership clause of the Bkpcy. Act, 1849 (c. 106).

The directors & secretary of a joint-stock co. joined in depositing the certificates of shares belonging to them with a banking co., as a security for money advanced:—**Held:** this transaction amounted to a sufficient notice to the co. of an equitable assignment of the shares belonging to the secretary, so as to support the title of the equitable mtgees. against his assignees in bkpcy.—**Re SHELLEY, Ex p. STEWART (1864), 4 De G. J. & Sm. 543; 5 New Rep. 200; 34 L. J. Bey. 6; 11 L. T. 554; 11 Jur. N. S. 25; 13 W. R. 356; 46 E. R. 1029, L. C.**

Annotations:—Consd. Re Jackson, Ex p. Union Bank of Manchester (1871), L. R. 12 Eq. 354; Soc. Générale de Paris v. Tramways Union Co. (1884), 14 Q. B. D. 424. Refd. Re Worcester, Ex p. Agra Bank (1868), 3 Ch. App. 555; Colonial Bank v. Whinney (1886), 11 App. Cas. 426. Mentd. Re Crouch, Ex p. Smith (1901), 83 L. T. 746.

2653. ——— Effect of 1862 Act, s. 30—Notice of deposit of certificate accompanied by blank transfer.]
—**SOCIÉTÉ GÉNÉRALE DE PARIS v. WALKER, No. 2704, post.**

2654. ———.]—BRADFORD BANKING CO. v. BRIGGS, No. 2179, ante.

2655. Necessity for—To preserve rights against subsequent transferee for value.]—(1) A mtgee. of shares in a co. must give notice of his incumbrance to the secretary, or his lien will be lost, as against a subsequent purchaser for valuable consideration without notice.

(2) Where the qualification of a party to act as

a director of a co. consists in his being the proprietor of a certain number of shares, the qualification will not be lost by a mtge. of those shares.—**CUMMING v. PRESCOTT (1837), 2 Y. & C. Ex. 488; 160 E. R. 488.**

Annotation:—As to (1) Refd. Soc. Générale de Paris v. Tramways Union Co. (1884), 14 Q. B. D. 424.

2656. ——— To preserve right to certificate—Subsequent assignment by shareholder for benefit of creditors.]—A. deposited with B. certain share certificates in a gas co. as security for a loan, & afterwards by deed assigned all his personal estate to C. & D., in trust for the benefit of his creditors. The assignees gave notice of the assignment to the co.; but B. omitted to give notice of his equitable lien:—Held:** notwithstanding the omission of such notice, C. & D. could not maintain trover against B. for the share certificate.—**BROADBENT v. VARLEY (1862), 12 C. B. N. S. 214; 142 E. R. 1125.****

Annotation:—Mentd. Green v. Ingham (1867), L. R. 2 C. P. 525.

———— **To take shares out of reputed ownership of bankrupt shareholder.]—See BANKRUPTCY & INSOLVENCY, Vol. V., pp. 771–773, Nos. 6630–6642.**

2657. Sufficiency of—Notice to member—Whether notice to company.]—MARTIN v. SEDGWICK, No. 2697, post.

———— **To take shares out of reputed ownership of bankrupt shareholder.]—See BANKRUPTCY & INSOLVENCY, Vol. V., pp. 777–778, Nos. 6674–6681.**

————.]—**See, generally, Sect. 31, sub-sect. 6, A., post.**

Effect of—On priorities.]—See Sub-sect. 4, C., post.

SUB-SECT. 3.—RIGHTS OF MORTGAGOR.

A. In General.

2658. Redemption—After twenty years.]—The representative of C. prayed to redeem £2,500 East India stock, transferred to debt. on Apr. 1, 1708, for securing £2,000 & interest at £6 per cent. to be retransferred on payment of principal & interest on July 3 following. C. died in 1709, the son brought this bill in 1729. The ct. refused to decree a redemption.

It is not necessary to bring a bill of foreclosure on a mtge. of stock.—**LOCKWOOD v. EWER (1742), 2 Atk. 303; 9 Mod. Rep. 275; 26 E. R. 585, L. C.**

2659. ——— Retransfer of identical stock pledged.]
—A. & B., stockbrokers, borrowed, on behalf of pltf., a sum of money, for a term of three months, from defts., who were also stockbrokers, upon the security of certain railway stock, which was transferred by pltf. into the name of one of defts.' firm. At the expiration of the term the loan was repaid with interest, & defts., who, pending the loan, had sold pltf.'s stock, purchased other stock, & retransferred a similar amount to pltf. Pltf. claimed to be entitled to the amount of profit which defts. had realised:—**Held:** (1) pltf. was entitled to sue as principal in the transaction; (2) defts. were not justified, either by law or by the custom of the Stock Exchange, in parting with the security during the currency of the loan, but were bound to return the identical stock pledged; (3) pltf. was entitled to recover from defts. the amount of profit realised by their dealings with

PART III. SECT. 25, SUB-SECT. 3.—A.

2659 i. Redemption—Re-transfer of identical stock pledged.]—D., mtgor. of shares, conveyed them to W. in satisfaction of a debt due from D. to W. on conditions that W. should prosecute

suits pending for redemption of the shares & that D. might re-purchase at a fixed price. D. alone executed this indenture. W. prosecuted the redemption suits successfully, & paid the original mtges. D. became insolvent & S., his official assignee, sued for specific

performance by W. of the contract for re-sale:—Held: the deed *prima facie* expressed the intention of the parties; & decree for pltf. on payment of the fixed sum.—**SHAW v. WRIGHT (1863), 2 W. & W. 57.—AUS.**

the stock.—*LANGTON v. WAITE* (1868), L. R. 6 Eq. 165; 37 L. J. Ch. 345; 18 L. T. 80; 16 W. R. 508; *on appeal* (1869), 4 Ch. App. 402, L. JJ.

2660. — Free of clog on the equity.]—A holder of shares in a tea co. mortgaged the shares to secure a loan & agreed to use his best endeavours to secure that “always thereafter” the mtgee. should have the sale of all the co.’s teas as broker, & in the event of any of the co.’s teas being sold otherwise than through the mtgee. to pay him the amount of the commission he would have earned if the teas had been sold through him. The mtge. was paid off & the co. afterwards changed their broker. The quondam mtgee. having brought an action against the shareholder for breach of the above agreement:—*Held*: the agreement was not binding & the action could not be maintained.

An agreement in a mtge. of shares under which the mtgor. undertakes to use his best endeavours to secure that the mtgee. shall “always hereafter” be employed as broker for the co. is invalid as constituting a clog on the equity of redemption.—*BRADLEY v. CARRITT*, [1903] A. C. 253; 72 L. J. K. B. 471; 88 L. T. 633; 51 W. R. 636; 19 T. L. R. 466; 47 Sol. Jo. 534, H. L.; *reversing*. S. C. *sub nom.* *CARRITT v. BRADLEY*, [1901] 2 K. B. 550, C. A.

Annotations:—*Consd.* *Samuel v. Jarrah Timber & Wood Paving Corp.*, [1904] A. C. 323; *British South Africa v. De Beers Consolidated Mines*, [1910] 1 Ch. 354; *Kreglinger v. New Patagonia Meat & Cold Storage Co.*, [1914] A. C. 25. *Refd.* *Bouchard v. Prince’s-Hall Restaurant* (1904), 20 T. L. R. 574; *Davies v. Chamberlain* (1909), 25 T. L. R. 766; *Re Rainbow Syndicate*, *Owen v. Rainbow Syndicate*, [1916] W. N. 178. *Mentd.* *Morgan v. Jeffreys*, [1910] 1 Ch. 620.

Compare No. 2168, *ante*, Sect. 34, sub-sect. 3, L. (a) ii., *post*, & *see, generally*, MORTGAGE.

2661. — Mortgagee unregistered money-lender — On terms of repayment of debt — Action in equity.]—In an equitable action by a borrower to recover securities mortgaged to an unregistered money-lender the mtgee. will not be ordered to give up to the mtgor. the securities the subject of the mtge. except upon the terms that the mtgor. shall repay the money which has been advanced to him.

Qu.: what would be the result of an action at common law for this purpose.—*LODGE v. NATIONAL UNION INVESTMENT CO., LTD.*, [1907] 1 Ch. 300; 76 L. J. Ch. 187; 96 L. T. 301; 23 T. L. R. 187.

Annotations:—*Refd.* *Chapman v. Michaelson*, [1909] 1 Ch. 238. *Mentd.* *Sinclair v. Brougham*, [1914] A. C. 398; *Re Jubilee Cotton Mills*, [1922] 1 Ch. 100.

See, generally, MONEY & MONEY-LENDING.

— **Against sub-mortgagee.]**—*See* Sub-sect. 3, C., *post*.

2662. To proceed against company in name of mortgagee — To enforce retransfer — Necessary parties to action.]—Shares in a banking co. were transferred by way of mtge. The mtgor. afterwards paid off the debt & applied for a retransfer of the shares, but the directors of the bank did not permit the retransfer to be made. In the meantime a creditor recovered judgment against their public officer, & threatened execution against the mtgee. as one of the shareholders:—*Held*: (1) where the mtge. was made simply as an absolute transfer, subject to redemption & nothing had passed binding the mtgor. to take a retransfer of the shares, the mtgor. was not liable to indemnify the mtgee. against debts incurred after the transfer made on the mtge., & before the mtge. debt. was paid off; (2) the mtgor. having elected to take a retransfer of the shares, the mtgee. became a trustee of the shares for the mtgor., & the mtgor. was bound to indemnify him against the whole expenses or liabilities which he had properly incurred by holding & maintaining the shares;

(3) the mtgor., indemnifying the mtgee. in respect of the costs, was entitled to take proceedings in the name of the mtgee., to compel a retransfer of the shares, & (4) to resist the proceedings against the shareholders under the judgment.

Semble: the mtgee. has not, in such a case, any right at law against the mtgor.

(5) *Qu.*: whether the directors of the co., preventing the shares from being retransferred, are necessary parties to the suit, in order to give pltf. complete relief.—*PHENÉ v. GILLAN* (1845), 5 Hare, 1; 15 L. J. Ch. 65; 5 L. T. O. S. 389; 9 Jur. 1086; 67 E. R. 803.

Annotations:—*As to* (2) *Refd.* *Hardoon v. Bellilos*, [1901] A. C. 118. *As to* (3) & (4) *Refd.* *St. Thomas’s Hospital v. Richardson*, [1910] 1 K. B. 271. *Generally, Mentd.* *Newry, etc. Ry. v. Moss* (1851), 14 Beav. 64.

2663. To oppose execution by creditor of company.]—*PHENÉ v. GILLAN*, No. 2662, *ante*.

2664. To enforce undertaking by mortgagee to vote as directed—Mortgagee registered as owner.]—Where A. made an advance to B. upon the security of some shares which were transferred into his name & gave B. an undertaking to vote in respect of the shares as & when directed by B. & failed in his undertaking & voted contrary to B.’s wishes:—*Held*: the ct. would grant not only a prohibitive injunction, but also a mandatory injunction to compel A. to vote as required by B. at future meetings.—*PUDDEPHATT v. LEITH*, [1916] 1 Ch. 200; 85 L. J. Ch. 185; 114 L. T. 454; 32 T. L. R. 228; 60 Sol. Jo. 210.

See, now, 1908 Act, s. 262, & *compare* 1845 Act, s. 36, & Part IX., Sect. 8, sub-sect. 8, *post*.

B. On Sale of Shares by Mortgagee.

2665. Where sale wrongful—Right to profits—& interest.]—A. having borrowed of B. £1,100, not only gave him a bond for it, but as a collateral security, deposited with him a subscription receipt of a co., numbered 195, for £500, with liberty to sell it, in case default should be made in payment of the debt. Before the bond became payable, B. sold this receipt for £2,700, but pretended that it was not the receipt deposited by A., that receipt being numbered 194, for the same sum, & which, after default made in payment of the bond, B. sold for no more than £595. On a bill filed against B. an issue was directed to try whether the receipt so deposited was numbered 195 or 194, & a verdict being found that it was numbered 195, B. was decreed to account for the difference, with interests & costs.—*TUTT v. MERCER* (1725), 2 Bro. Parl. Cas. 564; 1 E. R. 1134, H. L.

Annotation:—*Consd.* *Harrison v. Hart* (1726), 1 Com. 393.

2666. — — —.]—*LANGTON v. WAITE*, No. 2659, *ante*.

2667. — Right to proceeds of sale & interest.]—A. having borrowed £30,000 of B. transferred to him £14,000 East India stock, by way of pledge for the repayment of the money so borrowed; & B. agreed, that he would not sell any part of the stock, until after the expiration of one year from that time. Notwithstanding this agreement, B. sold the stock on the very same day:—*Held*: he was answerable for the money received by such sale, with interest.—*ANDRÉ v. CRAWFORD* (1771), 1 Bro. Parl. Cas. 366; 1 E. R. 625, H. L.

2668. Sale after date for redemption—Entitled to account.]—An account directed for all moneys received on the sale of stock pledged, notwithstanding the day of redemption was past; it not appearing that debt. had sufficient stock at the day.—*HARRISON v. HART & FRANKS* (1726), 1 Com. 393; 92 E. R. 1126.

Sect. 25.—Mortgage of shares: Sub-sect. 3, B. & C.; sub-sect. 4, A. & B.]

2669. On bankruptcy of mortgagor—Right of assignee in bankruptcy to maintain trover—Or to recover in damages.]—A holder of scrip certificates for shares, borrowed of deft. a sum of money on his own promissory note, payable on demand, & on the security of the shares, & deposited with deft. the scrip certificates. He afterwards became bkpt., & deft., without demand & without notice, sold ten of the fifteen shares to repay himself his debt. The creditors' assignee, without making any tender of the amount of the debt, brought an action of trover against deft. to recover the value of the shares:—*Held*: even assuming the sale to be wrongful, the immediate right to the possession of the shares was not by the sale re-vested in pltf., & he could not therefore maintain trover, either for the whole value of the shares or for nominal damages.—*HALLIDAY v. HOLGATE* (1868), L. R. 3 Exch. 299; 37 L. J. Ex. 174; 18 L. T. 656; 17 W. R. 13, Ex. Ch.

Annotations:—Mentd. Mulliner v. Florence (1878), 3 Q. B. D. 484; Yungmann v. Briesmann (1892), 67 L. T. 642; Cox v. Liddell (1895), 2 Mans. 212; Durham v. Robertson, [1898] 1 Q. B. 765; Hughes v. Pump House Hotel Co., [1902] 2 K. B. 190; Whiteley v. Hilt, [1918] 2 K. B. 808.

C. Against Sub-Mortgagee.

2670. Right to redeem—On payment of debt to sub-mortgagee.]—*FRANCE v. CLARK*, No. 2338, *ante*.

2671. ——— Sub-mortgagee with constructive notice.]—S. gave to E. certificates of railway stock with transfers thereof executed by him in blank, & bonds of foreign cos., alleged to be negotiable securities, for the purpose of raising £26,000. E. gave the securities to M., a money dealer in London, to secure £26,000 advanced by M. to E. M. deposited the transfers & securities, together with other securities of his customers, with various banks, as security for large loan accounts running between him & them, the blanks in the transfers of stock being filled up with the names of nominees of the banks. The banks in so dealing either actually knew, or had reason to believe, that the securities did or might belong not to M., but to his customers. M. having become bkpt., the banks sold some of S.'s securities, & claimed to hold the proceeds & the unsold remainder as security for all the debt from M. to them:—*Held*: though the banks had the legal title to the securities, they were not purchasers for value without notice, but ought to have inquired into the extent of M.'s authority, & this whether the securities were negotiable or not; & upon payment to the banks of the money advanced by M. to E., S. was entitled to the value of such of the securities as had been sold by the banks, & to redeem the remainder.—*SHEFFIELD (EARL) v. LONDON JOINT STOCK BANK* (1888), 13 App. Cas. 333; 57 L. J. Ch. 986; 58 L. T. 735; 37 W. R. 33; 4 T. L. R. 389, H. L.; *reversg.* S. C. *sub nom.* *EASTON v. LONDON JOINT STOCK BANK* (1886), 34 Ch. D. 95, C. A.

Annotations:—Expld. London Joint Stock Bank v. Simmons, [1892] A. C. 201. *Refd.* Colonial Bank v. Hepworth (1887), 36 Ch. D. 36; Kaemena v. Central Bank of London (1888), 4 T. L. R. 657; Williams v. Colonial Bank, Williams v. London Chartered Bank of Australia (1888), 38 Ch. D. 388; Venables v. Baring, [1892] 3 Ch. 527; Bentinck v. London Joint Stock Bank, [1893] 2 Ch. 120; Jameson v. Union Bank of Scotland (1913), 109 L. T. 850; Fuller v. Glyn, Mills, Currie, [1914] 2 K. B. 168. *Mentd.* Levy v. Richardson (1889), 5 T. L. R. 236; Redfern v. Rosenthal (1901), 85 L. T. 313; Cuthbert v. Roberts, Lubbock (1909), 78 L. J. Ch. 529.

2672. ——— Sub-mortgagee without notice.]—Stockbrokers were employed by a client to make for him from time to time on Stock Exchange speculative purchases & sales of stock, shares, & bonds. The brokers furnished him with money to enable him to pay for the purchases, & he authorised them to hold the purchased stocks, shares, & bonds as security for their advances, & also to repledge them.

The brokers had a loan account with their bankers, with whom they deposited stock, shares, & bonds belonging to various clients, as security for the bankers' advances. The bank allowed the brokers to withdraw the deposited securities from time to time, as they required them, upon their depositing others of equal value. Ultimately, the brokers became defaulters on the Stock Exchange, & were adjudicated bkpts. At the date of the default there were in the hands of the bank various stocks & shares, & also some bonds payable to bearer, which the brokers had purchased for the client. The stocks & shares were transferred by deed in the ordinary way, & they had all been transferred to, & were registered in, the names of trustees for the bank. Some of the transfers were made by the client himself, some by the brokers, & some by third parties. Those which were made by the client were expressed to be for a nominal consideration; the others were expressed to be for full value. The bonds passed by delivery on the Stock Exchange, & were always there treated as negotiable. The client claimed to be entitled to redeem the securities on paying to the bank the amount which was due from himself to the brokers; the bank claimed to hold the securities until payment of a larger amount which was due to them from the brokers. The client asserted that the authority which he had given to the brokers to repledge his securities authorised them to do so only for an amount not exceeding what was due from himself to them.

There was evidence that the majority of transactions on the Stock Exchange, when the purchaser of securities does not pay for them at once, is carried on upon a system as "contango," or "continuation," under which the person who provides the purchase-money becomes the owner of the purchased stock or shares, he entering into a contemporaneous contract with the purchaser to sell to him at a future day, generally the next "account day" on the Stock Exchange, an equal amount of similar stock or shares at the original price, increased by a charge called the "contango":—*Held*: (1) having regard to the evidence relating to the "contango" system, there was nothing to lead the bank to suppose that the stocks & shares which were transferred to their trustees were not the broker's own property; & the bank must therefore be treated as *bona fide* holders for value without notice, & their legal title could not be impeached; & consequently, the client could not redeem without paying the amount which was due from the brokers to the bank; (2) as to the stocks & shares of which the client had himself executed transfers, he was estopped from denying that the brokers had authority to pledge them to the bank for their full value; (3) the bonds were negotiable securities, & the client could not redeem without paying the amount due from the brokers to the bank.—*BENTINCK v. LONDON JOINT STOCK BANK*, [1893] 2 Ch. 120; 62 L. J. Ch. 358; 68 L. T. 315; 42 W. R. 140; 9 T. L. R. 262; 3 R. 120.

2673. ——— Mortgage of negotiable securities.]—*BENTINCK v. LONDON JOINT STOCK BANK*, No. 2672, *ante*.

SUB-SECT. 4.—RIGHTS AND LIABILITIES OF MORTGAGEE.

A. In regard to Shares Mortgaged.

2674. Under legal mortgage—Where mortgagor not bound to take retransfer—Liable to execution as registered shareholder—Debts incurred after mortgage & before redemption.]—PHENÉ v. GILLAN, No. 2662, ante.

See, now, 1908 Act, s. 262, & compare 1845 Act, s. 36, & Part IX., Sect. 8, sub-sect. 8, post.

2675. — Where mortgagor elects to take retransfer—Mortgagee holds as trustee for mortgagor—Until shares retransferred.]—PHENÉ v. GILLAN, No. 2662, ante.

2676. — Right to indemnity for expenses incurred.]—PHENÉ v. GILLAN, No. 2662, ante.

2677. — Shares not fully-paid—Relief from liability.]—Directors of a co. are not personally liable to find cash for cheques drawn by them as officers of their co. upon their co.'s bank, & which the bank honoured when the co. had no funds at the bank, by reason of a letter written by such directors, at a time when the co. had funds at the bank, requesting the bankers to honour cheques of the co. drawn in a particular manner, such letter being only an intention not to treat cheques as cheques of the co., unless signed in that manner; such a letter is not any representation of any authority in the directors to overdraw the account, or that there will be funds forthcoming to answer the cheques, & it does not imply any undertaking on the part of any of the directors signing it that he will personally pay or be answerable for any cheques, though drawn in that particular manner, if they should not be paid by the co. Bankers, to whom, on such cheques, large sums were owing by a railway co., having obtained a transfer to two of their number, of preference shares, on which nothing had been paid, as a collateral security for the advances made by them:—Held: (1) as on the literal construction of the correspondence which resulted in the transfer, there was nothing to show that the shares were to be fully or at all paid up, there was no misrepresentation or liability on the part of the directors to pay what was due upon the shares; but (2) under the circumstances the bankers were entitled to be relieved from liability in respect of such shares, & to have their names cancelled in the register of the shareholders of the co.—BEATTIE v. EBURY (LORD) (1874), L. R. 7 H. L. 102; 44 L. J. Ch. 20; 30 L. T. 581; 38 J. P. 564; 22 W. R. 897, H. L.

Annotations:—As to (1) Refd. Weeks v. Propert (1873), L. R. 8 C. P. 427; Yorkshire Ry. Waggon Co. v. Maclure & Cornwall Minerals Ry. (1881), 45 L. T. 747. Generally, Mentd. Mc Collin v. Gilpin (1880), 5 Q. B. D. 390; West London Commercial Bank v. Kitson (1884), 13 Q. B. D. 380; Robertson v. Harris, [1900] 2 Q. B. 117; Halbot v. Lens, [1901] 1 Ch. 344; Oliver v. Bank of England, Starkey, Leveson & Cooke, Third Parties, [1901] 1 Ch. 652; Rainford v. Keith & Blackman Co., [1905] 1 Ch. 296.

2678. — Entitled to transfer shares—Transfer to avoid liability.]—COLQUHOUN v. COURTENAY, No. 2480, ante.

2679. — Right to registration—Refusal by mortgagor to take account.]—Re TEES BOTTLE CO., LTD., DAVIES' CASE, No. 2327, ante.

2680. — Trustees for debenture-holders—Right to vote—Not fettered by directions of mortgagor.]—Where a co. makes an issue of debenture stock which it secures by a debenture trust deed,

& as part of the specifically mortgaged property causes shares in another co. to be registered in the names of the trustees of the deed, the trustees are, in the absence of any contract restricting their rights, entitled, as the legal owners of the shares, to exercise the voting rights in respect of them in such manner as in their judgment they may deem best, irrespective of any directions of the mtgor. co. as to how the voting rights should be exercised, & this, notwithstanding that the security is not yet enforceable.—SIEMENS BROTHERS & Co. v. BURNS, BURNS v. SIEMENS BROTHERS DYNAMO WORKS, [1918] 2 Ch. 324; 87 L. J. Ch. 572; 119 L. T. 352, C. A.

2681. Under equitable mortgage—Notice of deposit of certificate—Whether notice of trust.]—BRADFORD BANKING Co. v. BRIGGS, No. 2179, ante.

2682. — Shares exchanged for other shares & fresh shares taken in lieu of dividends—New certificates in name of mortgagee—Liable as contributory.]—A number of shares of £1 each in a co. were deposited with A., by way of security for money due to him. A. having received notice that, by a resolution of the co., every ten shares of £1 each had been converted into one share of £10, brought the shares to the co.'s office & received back the new shares in exchange, the new certificates being made out in his name. At the same time he took other shares in lieu of dividends then due on the original shares. The co. was wound up under the Joint-Stock Companies Winding-up Act, 1848 (c. 45):—Held: A. was liable in respect of the shares.—Re PATENT ELASTIC PAVEMENT & KAMPTULICON Co., PRICE & BROWN'S CASE (1850), 3 De G. & Sm. 146; 19 L. J. Ch. 123; 14 L. T. O. S. 346; 14 Jur. 405; 64 E. R. 419.

2683. — Right to sue company as member.]—A co.'s deed provided that the co. should not be affected by notice of any trust, & that where any share should become vested in any person for any interest not absolute, the receipt of the shareholder should remain a sufficient discharge:—Held: the equitable mtgee. of shares had a right to sue the co.—BINNEY v. INCE HALL COAL & CANNEL Co. (1866), 35 L. J. Ch. 363; 14 L. T. 392. *Annotation:—Consd. New London & Brazilian Bank v. Brocklebank (1882), 21 Ch. D. 302.*

2684. — Right to direct mortgagor to vote—Mortgagor a bankrupt—Shares disclaimed by trustee.]—WISE v. LANSDELL, No. 2638, ante.

B. Remedies.

See, generally, MORTGAGE.

2685. Action for debt—Whether tender of shares condition precedent.]—An agreement was as follows: "I acknowledge having received of P. eighty shares in the C. I. N. Co.; & whereas I have this day lent the said P. £200, it is hereby agreed that the said shares shall remain as a security for the above sum; & I further agree to give P. 21 days' notice before I proceed to compel him to pay the money advanced or any portion thereof; & that upon each payment a proportionate amount of the shares shall be given up & transferred to him or to his order." It was signed by the lender & P.:—Held: the lender, after 21 days' notice might bring *indebitatus assumpsit* for the money lent, the return of shares

PART III. SECT. 25, SUB-SECT. 4.—A.

1. Under legal mortgage—Transfer absolute in form—Entry in register.]—A mtgee. of shares & not an absolute owner, who takes a transfer absolute in form & causes it to be entered in the

books of the co. as an absolute transfer, is not estopped from proving that the transfer was by way of mtgc.—PAGE v. AUSTIN (1884), 10 S. C. R. 132.—CAN.
g. Under equitable mortgage—Deposit of shares—Registration.]—PIETSCH v. EASTERN BENGAL INDIGO Co. (1866),

1 Ind. Jur. N. S. 278.—IND.

h. — Shares registered in name of mortgagee—Issue of new shares to registered holders—Duty to notify mortgagor thereof.]—WADDELL v. HUTTON, [1911] S. C. 575.—SCOT.

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not being a condition to be performed before, or concurrently with, the payment.—*SCOTT v. PARKER* (1841), 1 Q. B. 809; 1 Gal. & Dav. 258; 10 L. J. Q. B. 244; 113 E. R. 1341.

Annotations:—*Mentd.* *Jonassohn v. Young* (1863), 32 L. J. K. B. 385; *National Assce. Asscn. v. Stoy* (1863), 11 W. R. 959.

See, generally, CONTRACT, Vol. XII., pp. 409 et seq.

2686. Sale—Bankruptcy of mortgagor—Shares not in order or disposition of bankrupt.]—The petitioners were bankers who had had dealings with the bkpts. who had given them their joint promissory note & a further security by way of assignment to them of certain shares. An entry was made at the office of the co. whose shares were in question. On petitioners applying to be registered, the secretary of the co. said the transfer to them was not in the form prescribed. Petitioners now applied for an order to sell the shares:—*Held*: they were entitled to the relief claimed; there was here no reputed ownership or order & disposition, for any person inquiring at the office would at once have learned that the bkpts. were not the true owners.—*Re LITT & HARRISON, Ex p. MASTERMAN* (1835), 4 Deac. & Ch. 751; 2 Mont. & A. 209, Ct. of R.

Annotations:—*Refd.* *Re Pearse, Ex p. Littledale* (1855), 6 De G. M. & G. 714; *Deering & Mc Question v. Hibernian Joint Stock Banking Co.* (1868), 16 W. R. 578.

2687. — Effected by vesting order under Trustee Act, 1850 (c. 60).]—A debtor resident in India pledged shares, held by him in a joint-stock co. in England, with a creditor in England, with an authority by letter to sell, which was communicated to, & recognised by, the banking co. The creditor, in exercise of the authority, sold the shares to a purchaser. Upon the petition of the purchaser:—*Held*: the shares were "stock," & the debtor in India, being constructively a trustee, was a trustee for the purchaser within the above Act, & the ct. made an order directing a specified person to transfer the shares to the petitioner.—*Re ANGELO, Ex p. FRITH* (1852), 5 De G. & Sm. 278; 18 L. T. O. S. 316; 16 Jur. 831; 64 E. R. 1116.

Annotation:—*Refd.* *Re New Zealand Trust & Loan Co.*, [1893] 1 Ch. 403.

2688. — When right arises—After lapse of reasonable time for repayment.]—(1) A mtgee. of shares in a co. has an implied general power, in the absence of express agreement, to sell the shares after the lapse of a reasonable time for the repayment of the mtge. money.

(2) A mtgee. of shares is justified at any time in selling part of his security in order to make payments necessary for the preservation of the remainder.—*DEVERGES v. SANDEMAN, CLARK & Co.*, [1902] 1 Ch. 579; 71 L. J. Ch. 328; 86 L. T. 269; 50 W. R. 404; 18 T. L. R. 375; 46 Sol. Jo. 316, C. A.

Annotation:—*As to* (1) *Consd.* *Stubbs v. Slater*, [1910] 1 Ch. 632.

2689. — — Sale of part to preserve remainder.]—*DEVERGES v. SANDEMAN, CLARK & Co.*, No. 2688, ante.

2690. — Validity of sale—Mistake in notice requiring repayment.]—(1) A person taking a deposit of a certificate of shares & a blank transfer by way of security is in the position of an equitable mtgee. & not of a pledgee & can sell the shares after reasonable notice requiring payment.

(2) Where a mtge. of shares was made by deposit of the share certificate together with a blank transfer, the fact that the mtgee. in giving notice

requiring payment makes a mistake as to the amount due on the mtge. & demands too much is not a ground for invalidating the exercise of his implied power of sale.

Semble: the same principle applies to the case of a pledge.—*STUBBS v. SLATER*, [1910] 1 Ch. 632; 79 L. J. Ch. 420; 102 L. T. 444, C. A.

Annotations:—*As to* (1) *Refd.* *London County & Westminster Bank v. Tompkins*, [1918] 1 K. B. 515. *Generally, Mentd.* *Aston v. Kelsey*, [1913] 3 K. B. 314; *Blaker v. Hawes & Brown* (1913), 109 L. T. 320; *Ellis' Trustee v. Dixon-Johnson* (1923), 40 T. L. R. 177.

See, also, No. 2691, post.

2691. Foreclosure—Mortgage by deposit.]—The doctrine that an equitable mtgee. by deposit of title deeds is entitled to foreclosure, does not extend to a pledge of personal chattels.

A. deposited with B. certain railway bonds as security for a debt. On bill filed by B. for foreclosure or sale:—*Held*: B. was entitled to an order for sale only.—*CARTER v. WAKE* (1877), 4 Ch. D. 605; 46 L. J. Ch. 841.

Annotations:—*Consd.* *Sadler v. Worley*, [1894] 2 Ch. 170. *Apld.* *Fraser v. Byas* (1895), 11 T. L. R. 481. *Refd.* *Harrold v. Plenty*, [1901] 2 Ch. 314; *London County & Westminster Bank v. Tompkins*, [1918] 1 K. B. 515. *Mentd.* *Re Owen*, [1894] 3 Ch. 220.

2692. — —.]—*HARROLD v. PLENTY*, No. 2646, ante.

2693. — Mortgage with power of sale.]—On a security upon railway shares with power of sale, under which the shares were transferred to the lenders:—*Held*: the lender was entitled to foreclosure, & *Carter v. Wake*, No. 2691, ante, did not apply.—*GENERAL CREDIT & DISCOUNT CO. v. GLEGG* (1883), 22 Ch. D. 549; 52 L. J. Ch. 297; 48 L. T. 182; 31 W. R. 421.

Annotations:—*Refd.* *Sadler v. Worley*, [1894] 2 Ch. 170. *Mentd.* *Mainland v. Upjohn* (1889), 41 Ch. D. 126; *The Benwell Tower* (1895), 72 L. T. 664.

2694. — Right not affected by Statutes of Limitation.]—Where a bank had an equitable charge on shares in a limited co. to secure a simple contract debt, & after the debt was barred, brought an action to enforce their security by foreclosure or sale:—*Held*: the bank were not deprived of their remedy against the property by the fact that the personal remedy for the debt was barred, & there being no Stat. Limitations applicable to foreclosure of a mtge. of personal property, the security was enforceable.—*LONDON & MIDLAND BANK v. MITCHELL*, [1899] 2 Ch. 161; 68 L. J. Ch. 568; 81 L. T. 263; 47 W. R. 602; 15 T. L. R. 420; 43 Sol. Jo. 586.

Annotation:—*Consd.* *Stubbs v. Slater*, [1910] 1 Ch. 632.

See, generally, LIMITATION OF ACTIONS.

C. Priorities.

2695. Whether rule in Dearle v. Hall applies.]—The principle established in *Dearle v. Hall* (3 Russ. 1), as to the effect of notice in determining the priorities of equitable rights, does not extend to the shares of cos. registered under 1862 Act, or to cos. governed by regulations having a provision similar to sect. 30 of that Act.—*SOCIÉTÉ GÉNÉRALE DE PARIS v. WALKER* (1885), 11 App. Cas. 20; 55 L. J. Q. B. 169; 54 L. T. 389; 34 W. R. 662; 2 T. L. R. 200, H. L.; *affg.* *S. C. sub nom. SOCIÉTÉ GÉNÉRALE DE PARIS v. TRAMWAYS UNION CO.* (1884), 14 Q. B. D. 424, C. A.

Annotations:—*Consd.* *Bradford Banking Co. v. Briggs* (1886), 12 App. Cas. 29. *Refd.* *Nanney v. Morgan* (1887), 35 Ch. D. 598. *Mentd.* *Colonial Bank v. Whinney* (1886), 11 App. Cas. 426; *Colonial Bank v. Hepworth* (1887), 36 Ch. D. 36; *Magnus v. Queensland National Bank* (1887), 36 Ch. D. 25; *Roots v. Williamson* (1888), 38 Ch. D. 485; *Williams v. Colonial Bank, Williams v. London Chartered Bank of Australia* (1888), 38 Ch. D. 388; *Re Cawley* (1889), 42 Ch. D. 209; *Moore v. North Western Bank*, [1891] 2 Ch. 599; *Balkis Consolidated Co.*

v. Tomkinson, [1893] A. C. 396; *Re Ottos Kopje Diamond Mines*, [1893] 1 Ch. 618; *Powell v. London & Provincial Bank* (1893), 62 L. J. Ch. 795; *Ireland v. Hart*, [1902] 1 Ch. 522; *Rainford v. Keith & Blackman Co.*, [1905] 1 Ch. 296; *Burgis v. Constantine*, [1908] 2 K. B. 484; *Re Seymour, Fielding v. Seymour*, [1913] 1 Ch. 475; *Wells v. Smith*, [1914] 3 K. B. 722; *Mackereth v. Wigan Coal & Iron Co.*, [1916] 2 Ch. 293.

See, generally, CHOSER IN ACTION, Vol. VIII, pp. 468 *et seq.*

2696. As between cestui que trust & mortgagee—Mortgage by trustee—To company—Agreement to pledge.]—PINKERT *v.* WRIGHT, No. 1273, *ante*.

2697. ——— Notice of mortgage to company.]—On a question of priority of incumbrances on shares, notice to one of a joint-stock co. is not notice to the co.

A. held shares as trustee & executed a declaration of trust, but no notice was given at the office of the co. A. afterwards mortgaged his shares to secure his private debt. Notice of this mtge. was given to the co., & was entered in their books:—*Held*: the mtgee. had priority over the *cestui que trust*.—MARTIN *v.* SEDGWICK (1846), 9 Beav. 333; 7 L. T. O. S. 487; 10 Jur. 463; 50 E. R. 372.

Annotations:—*Consd.* Clack *v.* Holland (1854), 19 Beav. 262; *Soc. Générale de Paris v. Tramways Union Co.* (1884), 14 Q. B. D. 424.

2698. ——— Transfer registered by mortgagee after notice of trust.]—DODDS *v.* HILLS, No. 1278, *ante*.

2699. ——— Mortgage by blank transfer & deposit of certificates—Transfer not registered.]—Shares in a co. were registered in the books of the co. in the name of W., he being a trustee for pltf. In Feb., 1886, as a security for an antecedent debt due from his firm to defts. H. & A., W. deposited with them the certificates for 75 of the shares, & executed & delivered to them a transfer of those shares, & they sent it to the co.'s office for registration. Before it was registered pltf. discovered the facts, & she brought this action to assert her right to the shares. Under the co.'s deed of settlement the person registered in the register of shareholders as the proprietor of a share was to be recognised by the co. as the lawful proprietor, & no person was to be entitled to be recognised as the proprietor of a share as between himself & the co. until he had been registered as the proprietor; no person was to be entitled to be registered as the proprietor of a share until he should, by execution of the deed of settlement, or some deed referring thereto, have undertaken the liabilities & duties of a shareholder; every transfer of shares was to be by deed which when executed was to be deposited at the office of the co., & remain in its custody, & such deed was to be according to a form in the sched. thereto, or the like effect. The transfer by W. to H. & A. was not according to that form, & did not in any way refer to the co.'s deed of settlement:—*Held*: H. & A. had not acquired the legal title to the shares which the transferor had, for they had not been registered as shareholders, nor had the transfer to them been accepted by the co. as a proper transfer, so as to make it effectual as between the co. & them. Neither had they acquired an absolute & unconditional right to be registered as shareholders, & their title was inchoate only, & not sufficient to defeat pltf.'s prior equitable title.—ROOTS *v.* WILLIAMSON (1888), 38 Ch. D. 485; 57 L. J. Ch. 995; 58 L. T. 802; 36 W. R. 758.

Annotations:—*Consd.* Ireland *v.* Hart, [1902] 1 Ch. 522. *Refd.* Moore *v.* North Western Bank, [1891] 2 Ch. 599.

2700. ———.]—MOORE *v.* NORTH WESTERN BANK, No. 2429, *ante*.

2701. ———.]—IRELAND *v.* HART, No. 2425, *ante*.

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2702. As between mortgagor & sub-mortgagee—Fraudulent transfer by unregistered mortgagee—Subsequent notice of fraud to sub-mortgagees.]—(1) Where the owner of shares had deposited the certificates & signed a transfer by way of security, & not to be dealt with in the events that happened, the transferee, who had not been put upon the register, nor executed an acceptance of the shares, which was a requisite for registration, fraudulently purported to transfer the shares, & handed over the previous transfer & certificates to mtgees. for value:—*Held*: the mtgees. could not, after becoming aware of the true ownership, get their title perfected against the owner through further acts on the part of their mtgor. which would be a continuation of his fraud, & in this case, upon all circumstances, the mtgees. had not an equity prevailing against the owner.

(2) Where a transfer of shares under seal was executed with the name of the transferee in blank, the shares being transferable by a parol instrument:—*Held*: the transfer could be effectual like a parol instrument, notwithstanding it purported to be a deed. *Qu.*: whether as a deed it would have operated by estoppel.

(3) It is competent to the directors of a co. registered under 1856 Act, to require a transferee of shares to execute an acceptance before being registered as proprietor.—ORTIGOSA *v.* BROWN (1878), 47 L. J. Ch. 168; 38 L. T. 145.

2703. As between mortgagee & company—Lien conferred by articles of association—Notice by certificate.]—BRADFORD BANKING CO. *v.* BRIGGS, No. 2179, *ante*.

2704. As between mortgagees—Neither mortgagee with title to registration.]—(1) The later in time of two persons holding from the registered shareholder agreements to transfer shares in a co. registered under 1862 & 1867 Acts, neither of whom has a transfer giving him a title to be registered by the co., does not obtain a title superior to that of the holder of the first agreement by first giving notice of his agreement to the co.

(2) Sect. 30 of 1862 Act, which provides that no notice of any trust shall be entered on the register or be receivable by the registrar, means that no notice of a trust is to be taken by the co.; although if the directors have knowledge of circumstances rendering it wrong to accept a transfer, they may be personally liable.

(3) Information was given of the funeral of a shareholder to a relative who was secretary of the co.:—*Held*: it did not amount to notice to the co.

(4) The execution by a registered shareholder of a deed of transfer, blank as to the name of the transferee & the number & numbers of shares, which blanks were subsequently filled in without re-execution & without the transferor seeing the deed in its complete state, does not confer a legal title to the shares.—SOCIÉTÉ GÉNÉRALE DE PARIS *v.* WALKER (1885), 11 App. Cas. 20; 55 L. J. Q. B. 169; 54 L. T. 389; 34 W. R. 662; 2 T. L. R. 200, H. L.; *affg.* S. C. *sub nom.* SOCIÉTÉ GÉNÉRALE DE PARIS *v.* TRAMWAYS UNION CO. (1884), 14 Q. B. D. 424, C. A.

Annotations:—*As to* (1) *Consd.* Roots *v.* Williamson (1888), 38 Ch. D. 485. *Apld.* Ireland *v.* Hart, [1902] 1 Ch. 522. *Refd.* *Re Cawley* (1889), 42 Ch. D. 209; Moore *v.* North Western Bank, [1891] 2 Ch. 599; Powell *v.* London & Provincial Bank (1893), 62 L. J. Ch. 795. *As to* (2) *Refd.* Bradford Banking Co. *v.* Briggs (1886), 12 App. Cas. 29; Roots *v.* Williamson (1888), 38 Ch. D. 485; Mackereth *v.* Wigan Coal & Iron Co., [1916] 2 Ch. 293. *As to* (4) *Consd.* Nanney *v.* Morgan (1887), 35 Ch. D. 598; Roots *v.* Williamson (1888), 38 Ch. D. 485. *Refd.* Magnus *v.* Queensland National Bank (1887), 36 Ch. D. 25; Powell *v.* London & Provincial Bank (1893), 62 L. J. Ch. 795; Burgis *v.* Constantine, [1908] 2 K. B. 484; *Re Seymour*,

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Fielding v. Seymour, [1913] 1 Ch. 475. *Generally, Mentd.* Colonial Bank *v.* Whinney (1886), 11 App. Cas. 426; Colonial Bank *v.* Hepworth (1887), 36 Ch. D. 36; Williams *v.* Colonial Bank, Williams *v.* London Chartered Bank of Australia (1888), 38 Ch. D. 388; Balkis Consolidated Co. *v.* Tomkinson, [1893] A. C. 396; *Re Ottos Kopje Diamond Mines*, [1893] 1 Ch. 618; Rainford *v.* Keith & Blackman Co., [1905] 1 Ch. 296; Wells *v.* Smith, [1914] 3 K. B. 722.

SECT. 26.—SURRENDER OF SHARES.

SUB-SECT. 1.—VALIDITY.

A. In General.

2705. General rule.]—The forfeiture of shares is distinctly recognised by 1862 Act, & by the arts. contained in the sched., which in the absence of other provisions, regulate the management of a limited liability co. It does not involve any payment by the co., & it presumably exonerates from future liability those who have shown themselves unable to contribute what is due from them to the capital of the co. Surrender no doubt stands on a different footing. But it also does not involve any payment out of the funds of the co. If the surrender were made in consideration of any such payment, it would be neither more nor less than a sale, & open to the same objections. If it were accepted in a case when the co. were in a position to forfeit the shares, the transaction would seem to me perfectly valid. There may be other cases in which a surrender would be legitimate (*LORD HERSCHELL*).—*TREVOR v. WHITWORTH* (1887), 12 App. Cas. 409; 57 L. J. Ch. 28; 57 L. T. 457; 36 W. R. 145; 3 T. L. R. 745, H. L.

Annotations:—Apld. Eichbaum *v.* City of Chicago Grain Elevators, [1891] 3 Ch. 459; *Re Denver Hotel Co.*, [1893] 1 Ch. 495; *Bellerby v. Rowland & Marwood's S.S. Co.*, [1902] 2 Ch. 14. *Consd.* Rowell *v.* Rowell, [1912] 2 Ch. 609. *Reid.* *Re Walker & Hacking* (1887), 57 L. T. 673; *Faure Electric Accumulator Co. v. Phillipart* (1888), 58 L. T. 525; *Mother Lode Consolidated Gold Mines v. Hill* (1903), 19 T. L. R. 341; *Hopkinson v. Mortimer, Harley*, [1917] 1 Ch. 646; *I. R. Comrs. v. Blott, I. R. Comrs. v. Greenwood*, [1921] 2 A. C. 171. *Mentd.* *Re Almada & Tinto Co.* (1888), 38 Ch. D. 415; *Re London Celluloid Co.*, Bayley & Hanbury's Cases (1888), 59 L. T. 109; *Lee v. Neuchatel Asphalte Co.* (1889), 41 Ch. D. 1; *Re Mersina & Adana Construction Co.* (1889), 5 T. L. R. 680; *Re Railway Time-Tables Publishing Co., Ex p. Sandys* (1889), 58 L. J. Ch. 504; *Re West London Commercial Bank, Whiteley's Case* (1889), 60 L. T. 807; *Re Bennett, Masonic & General Life Assce. v. Sharpe* (1891), 8 T. L. R. 194; *Ooregum Gold Mining Co. of India v. Roper, Wallroth v. Roper*, [1892] A. C. 125; *Re Sharpe, Re Bennett, Masonic & General Life Assce. v. Sharpe*, [1892] 1 Ch. 154; *Re Sovereign Life Assce.*, [1892] 3 Ch. 279; *Re Borough Commercial & Bldg. Soc.*, [1893] 2 Ch. 242; *Re Eddystone Marine Insce.*, [1893] 3 Ch. 9; *British & American Trustee & Finance Corp'n. v. Couper*, [1894] A. C. 399; *Re Railway Time-Tables Publishing Co.* (1894), 64 L. J. Ch. 177; *Verner v. General & Commercial Investment Trust*, [1894] 2 Ch. 239; *Re Lamson Store Service Co., Re National Reversionary Investment Co.* (1895), 2 Mans. 537; *Metropolitan Coal Consumers' Asscn. v. Scrimgeour* (1895), 44 W. R. 35; *Lock v. Queensland Investment & Land Mortgage Co.*, [1896] 1 Ch. 397; *Welton v. Saffery*, [1897] A. C. 299; *Bury v. Farnatana Development Corp'n.*, [1909] 1 Ch. 754; *Re Thomas, Andrew v. Thomas*, [1916] 2 Ch. 331.

2706. —.]—(1) A surrender of shares in a limited co., the co. releasing the shareholder from further liability in respect of the shares, is equivalent to a purchase of the shares by the co. & is therefore illegal & null & void on the principle of *Trevor v. Whitworth*, No. 2705, *ante*.

(2) A surrender of shares which has the effect of reducing the co.'s capital can be supported only under circumstances which would have justified a forfeiture of the shares, the validity of forfeiture being recognised by 1862 Act, s. 26, & by Table A., arts. 20, 21, to that Act.

(3) A surrender of fully-paid shares is unlawful, except under circumstances which would justify a forfeiture.

(4) A surrender of shares, which is illegal & null & void, having been made, the ct. will, in an action by the surrenderor against the co., order pltf.'s name to be restored to the co.'s register in respect of the surrendered shares, even after the lapse of years, the shares not having been, meanwhile, re-issued or otherwise dealt with by the co.—*BELLERBY v. ROWLAND & MARWOOD'S S.S. Co., LTD.*, [1902] 2 Ch. 14; 71 L. J. Ch. 541; 86 L. T. 671; 50 W. R. 566; 18 T. L. R. 582; 46 Sol. Jo. 484; 9 Mans. 291, C. A.

Annotations:—As to (1) *Reid.* *Mother Lode Consolidated Gold Mines v. Hill* (1903), 19 T. L. R. 341. *As to* (2) *Consd.* Rowell *v.* Rowell, [1912] 2 Ch. 609. *Reid.* *Hopkinson v. Mortimer, Harley*, [1917] 1 Ch. 646. *As to* (3) *Distd.* Rowell *v.* Rowell, [1912] 2 Ch. 609. *Reid.* *Re Guardian Assce.*, [1917] 1 Ch. 431. *Generally, Reid.* *Re Anglo-French Exploration Co.*, [1902] 2 Ch. 845.

2707. —.]—A surrender of shares to a limited co., not involving any reduction of capital & not amounting to a purchase of its own shares by the co., is not necessarily *ultra vires*.

In 1896, pursuant to arts. of assocn. & special resolution, the holders of 6 per cent. fully-paid preference shares surrendered the same to the co. in exchange for fully-paid 5 per cent. preference shares, & a contract in writing was duly filed with the Registrar of Joint-Stock Cos., pursuant to 1867 Act, s. 25. The surrendered shares were not cancelled, but were subject to be re-issued by the co.:—*Held*: the surrender, not involving any reduction of capital, was valid; the transaction did not amount to a purchase by the co. of its own shares; & the new shares issued in exchange were fully paid up.—*ROWELL v. ROWELL (JOHN) & SONS, LTD.*, [1912] 2 Ch. 609; 81 L. J. Ch. 759; 107 L. T. 374; 56 Sol. Jo. 704; 19 Mans. 371.

Annotation:—Reid. *Hopkinson v. Mortimer, Harley*, [1917] 1 Ch. 646.

2708. Where no provision in constitution of company—Effected under special resolution—Subsequent acquiescence by company.]—In making out the list of contributories under the provisions of 1848 (winding-up) Act, the Master is bound to include all those who may be liable under any circumstances, although as between individual shareholders there may be an equity protecting one of them from liability to the other.

The deed of settlement of a joint stock co. provided the mode by which a shareholder parting with his shares was to be relieved from subsequent responsibility. The directors of the co., acting on a resolution passed at an extraordinary general meeting of the co., purchased the shares of B. on certain terms, this transaction not falling within the provisions of the deed of settlement:—*Held*: nothing had been done to bind the co. as a body, & the Master, acting under an order for winding up the co., was bound to include B. in the list of contributories without qualification.—*Re VALE*

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k. Where no provision in constitution of company—Acceptance of surrender by acquiescence of other shareholders.]—The arts. of assocn. of a co. empowered the directors to exercise all such powers of the co. as were not by Companies Act, 1864, or by the co.'s own regulations required to be exer-

cised in general meeting:—*Held*: (1) the power to accept a surrender of shares was not a power of the co., & the acceptance of a surrender was *ultra vires* of the directors; (2) an acquiescence of the co. in this act of the directors must be an acquiescence by the other shareholders.—*Re BEACONS-FIELD HEIGHTS ESTATE CO., LTD.*,

ASHER'S, FIELD'S & SMITH'S CASES (1896), 22 V. L. R. 97.—*AUS.*

l. Under provision in constitution of company—Power to accept surrender—Corresponding reduction of capital.]—*BANKNOCK COAL CO., LTD.* (1897), 34 So. L. R. 342; 4 S. L. T. 249.—*SCOT.*

m. Whether surrender of shares

OF NEATH & SOUTH WALES BREWERY CO., MORGAN'S CASE (1849), 1 Mac. & G. 225; 1 H. & Tw. 320; 18 L. J. Ch. 265; 14 L. T. O. S. 21; 13 Jur. 665; 41 E. R. 1250, L. C.

Annotations.—*Folld. Re Vale of Neath & South Wales Brewery Co., Walters' Second Case* (1850), 3 De G. & Sm. 244. *Distd. Re Vale of Neath & South Wales Brewery Joint Stock Co., Lawes's Case* (1852), 1 De G. M. & G. 421. *Refd. Re Direct London & Exeter Ry., Parbury's Case* (1849), 3 De G. & Sm. 43; *Re Joint-Stock Companies' Winding-up Act, 1848, & Grand Trunk or Stafford & Peterborough Union Ry., Ex p. Apps* (1849), 13 L. T. O. S. 379; *Re North of England Joint Stock Banking Co., Dodgson's Case* (1849), 3 De G. & Sm. 85; *Re Vale of Neath & South Wales Brewery Co., Richmond's Exors.' Case* (1849), 3 De G. & Sm. 96; *Woodfall's Case* (1849), 3 De G. & Sm. 63; *Re Borough of St. Marylebone Joint Stock Banking Co., Ex p. Stanhope* (1850), 15 L. T. O. S. 2; *Re Royal Bank of Australia, Cockburn's Case* (1850), 4 De G. & Sm. 177; *Re Vale of Neath & South Wales Brewery Co., Ex p. White* (1850), 19 L. J. Ch. 497; *Kent v. Jackson* (1851), 14 Beav. 367; *Re North of England Joint Stock Banking Co., Straffon's Exors.' Case* (1852), 1 De G. M. & G. 576; *Re Cameron's Coalbrook Steam Coal & Swansea & Loughor Ry., Ex p. Bennett* (1854), 2 Eq. Rep. 973; *Re German Mining Co.* (1854), 2 Eq. Rep. 983; *Bargate v. Shortridge* (1855), 5 H. L. Cas. 297; *Re Universal Provident Life Assocn., Daniell's Case* (1856), 22 Beav. 43; *Re National Patent Steam Fuel Co., Barton's Case* (1859), 4 De G. & J. 46; *Re Kent Benefit Bldg. Soc.* (1861), 1 Drew. & Sm. 417; *Spackman v. Evans* (1868), L. R. 3 H. L. 171; *Re General Provident Assocn., Cross's Case* (1869), 38 L. J. Ch. 583. *Mentd. Re Direct East & West Junction Ry., Ex p. Johnson* (1855), 3 Eq. Rep. 479; *Re Phosphate of Lime Co., Austins' Case* (1871), 24 L. T. 932.

2709. ——— **Resolution authorising forfeiture.**—By the deed of settlement of a co. its directors had the power of purchasing on behalf of the co. shares in the capital of the co. when there should be a surplus fund of £10,000, & there was no prohibitory clause in the deed restricting the purchase under other circumstances. The deed provided the mode by which a shareholder parting with his shares was to be relieved from subsequent responsibility. The deed also contained clauses regulating the mode of convening extraordinary & general meetings, & provided that, where an extraordinary meeting was to be convened, notice should be given of the specific object of the meeting to each shareholder. The co. being in insolvent circumstances, an extraordinary meeting was held & a resolution passed, the purport of which had not been previously notified, authorising the directors to purchase, within three months, the shares of any member who was desirous of retiring from the co., who would lend to the co. a sum equal to the purchase-money. After the expiration of the three months, a general meeting of the co. was held, at which the directors were authorised to allow such further time as they might think reasonable to those shareholders who had not complied with the resolution of the extraordinary meeting, & the forfeiture of the shares of those proprietors who should continue to be defaulters was sanctioned. Acting on the resolution of the general meeting, W. sold his shares to one of the directors on behalf of the co., & lent a sum equivalent to the purchase-money, receiving the loan note of the co. Having died before the transfer of the shares was effected with all the formalities prescribed by the deed, the co., at the instance of his exor., completed the transfer by the execution of those formalities:—*Held*: (1) the resolution of the extraordinary general meeting, being invalid was incapable

of being ratified by the general meeting whose powers were limited to acts not contrary to the deed; (2) the resolution of the general meeting, in terms applying only to defaulters, could not be construed to extend to the privilege of retiring from the partnership, which had expired by lapse of time; (3) the master, acting under an order for winding up the co., had rightly included the exor. in the list of contributories without qualification.—*Re VALE OF NEATH & SOUTH WALES BREWERY JOINT STOCK CO., LAWES'S CASE* (1852), 1 De G. M. & G. 421; 21 L. J. Ch. 688; 19 L. T. O. S. 14; 16 Jur. 343; 42 E. R. 614, L. C.

Annotation.—*As to* (1) *Refd. Re North of England Joint-Stock Banking Co., Ex p. Straffon's Exors.* (1852), 22 L. J. Ch. 194.

2710. ——— **Alteration of articles—Liability of shareholders diversely affected.**—A co. may by special resolution vary its arts. so as to give itself power to accept surrenders of old shares in exchange for new.

Two thousand £10 shares in a co. had been issued, of which 901, called X shares, had been fully paid up, & on the other 1099, called A shares, £2 10s. per share had been paid. Special resolutions were duly passed that the X shares should be cancelled, & two shares of £10 each, with £5 per share paid thereon, given in lieu of each, & that the A shares should be cancelled & one share of £10, with £5 paid, be given in lieu of every two of them. These resolutions were assented to by all the shareholders & duly registered, & the shareholders generally accepted in lieu of their old shares, shares, which were called in the proceedings B shares, with £5 each paid. T., a holder of A shares, having thus accepted B shares, sold & transferred them, & in the annual lists sent to the registrar, was treated as having then ceased to be a member. About seven years after the passing of the resolutions the co. was ordered to be wound up, & the liquidator placed on the list of contributories the name of T., & also the names of all the other persons who at the passing of the resolutions were holders of A shares, as well as the names of the persons who had become holders of the B shares given in lieu of them:—*Held*: T.'s name must be removed from the list, for that the resolutions ought to be construed, not as purporting to oblige all the shareholders to accept B shares in lieu of their old shares, but only as empowering the directors to effect such exchange with all shareholders who wished it, & so construed, the resolutions were not *ultra vires*, but were effectual as special resolutions altering the arts. of assocn., & a surrender of the old shares made in pursuance of them was valid.—

Re COUNTY PALATINE LOAN & DISCOUNT CO., TEASDALE'S CASE (1873), 9 Ch. App. 54; 43 L. J. Ch. 578; 29 L. T. 707; 22 W. R. 286, L. J.

Annotations.—*Distd. Hope v. International Financial Soc.* (1876), 4 Ch. D. 327. *Folld. Re St. James's Bank, Colville's Case* (1879), 48 L. J. Ch. 633. *Consd. Trevor v. Whitworth* (1887), 12 App. Cas. 409. *Folld. Eichbaum v. City of Chicago Grain Elevators*, [1891] 3 Ch. 459. *Distd. Bellorby v. Rowland & Marwood's S.S. Co.*, [1902] 2 Ch. 14. *Folld. Rowell v. Rowell*, [1912] 2 Ch. 609. *Refd. Re Dronfield Silkstone Coal Co.* (1880), 17 Ch. D. 76; *Re Anglo-French Exploration Co.*, [1902] 2 Ch. 845.

2711. ——— **Transfer to director on behalf of company—Knowledge of shareholder's agent—Subsequent acquiescence by company.**—A shareholder in a brewery co. sold his shares to one of the

void—Under Volunteers & Reservists Relief Act.—A claim by a co. in liquidation for a declaration that a surrender of shares by debt., a volunteer under above Act, was void, & that debt. should be placed upon the list of contributories as a holder of the shares is not prohibited by the said Act.—

CAMROSE STOCK & DAIRY FARM (IN LIQUIDATION) v. CLAXTON, [1919] 1 W. W. R. 984.—CAN.

n. Surrender accepted by special resolution—Subsequent forfeiture—Liability as shareholder.—H., the registered shareholder of unpaid shares in a

co., proposed to surrender them, & the directors passed a resolution that the surrender was thereby accepted, but a few months afterwards, at a general meeting of the shareholders, the shares specified in the resolution were, with others, declared forfeited. No further step to effectuate the surrender or

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directors. His solr., through whom the sale was effected, had notice that the purchase was made by the director with a view of vesting the shares in the co., to whom the director transferred them on the same day on which they were transferred to him. The deed of settlement did not authorise the purchase on behalf of the co.:—*Held*: the shareholder was properly placed on the list of contributories, although seven years had elapsed since the transfer, & it had remained unquestioned during the whole interval.—*Re VALE OF NEATH & SOUTH WALES BREWERY CO., RICHMOND'S EXECUTORS' CASE* (1849), 3 De G. & Sm. 96; 13 L. T. O. S. 422; 13 Jur. 727; 64 E. R. 396.

2712. — By retiring directors—Knowledge of retiring directors.]—There being a disagreement between two sections of directors of a joint-stock co., it was agreed that one section should retire, & transfer their shares to the continuing directors [the purchase & transfer to the co. being authorised by no power contained in the deed of settlement]. The shares were transferred accordingly, & were afterwards again transferred, & at the date of the winding-up order, stood in the names of other persons:—*Held*: the first arrangement was invalid, & the retiring directors were still contributories, notwithstanding the subsequent transfers.

This was a transaction which was, & was known by the parties to it to be, a purchase of shares by a set of remaining directors from directors who intended to retire from the direction, on behalf of the co., & to form part of the stock of shares of the co.; & this was an essential part of the transaction (*ROMILLY, M.R.*).—*Re UNIVERSAL PROVIDENT LIFE ASSOCN., MUNT'S CASE* (1856), 22 Beav. 55; 52 E. R. 1028, L. J.J.

Annotation:—Refd. Haddon v. Ayers (1858), 1 E. & E. 118.

2713. Shares subscribed for—On behalf of company—Subsequent cancellation.]—A director of a joint-stock co. proposed to his co-directors that, for the benefit of the co., each of them should take a certain number of shares to be held in trust for the co.; & to set the example, he signed the deed for 2,000 shares. No note of the proposal was entered on the minutes, nor were the shares handed over to him. No other director followed his example, but, subsequently, he being still a director, his name was returned to the Stamp Office for the shares. Afterwards having ceased to be a director, & having reason to know that the co. was in failing circumstances, he procured his shares to be cancelled by the directors:—*Held*: upon the terms of the co.'s deed of settlement, this was *ultra vires* on the part of the directors, they having no power to cancel or diminish the capital, but only to forfeit shares for the benefit of the co. & was a fraud on the part of the shareholder, who was accordingly a contributory in respect of those shares.—*Re ATHENÆUM LIFE ASSURANCE SOCIETY, RICHMOND'S CASE & PAINTER'S CASE* (1858), 4 K. & J. 305; 32 L. T. O. S. 174; 70 E. R. 127.

Annotations:—Mentd. Re Magdalena Steam Navigation Co. (1860), 8 W. R. 329; *Re Bank of Hindustan, China & Japan, Campbell's Case, Hippisley's Case, Alison's Case* (1873), 9 Ch. App. 1.

2714. — Shares not allotted.]—Upon the formation of a co. nine persons signed the memorandum of assocn. At a preliminary

meeting, attended by four of these persons, a resolution was passed that no shares be allotted to three of the signatories to the arts., & with their consent the deposit money was repaid to them. The arts. contained no power to accept surrenders of shares:—*Held*: the directors had no power to remit the shares; & all those who had signed the arts. were liable as contributories upon the winding up.—*Re LONDON & PROVINCIAL CONSOLIDATED COAL CO.* (1877), 5 Ch. D. 525; *sub nom. Re LONDON & PROVINCIAL CONSOLIDATED COAL CO., HADLEY, NORRIS & JACOB'S CASE*, 46 L. J. Ch. 842; 36 L. T. 545.

Annotation:—Appld. Re Argyle Coal & Cannell Co., Ex p. Watson (1885), 54 L. T. 233.

Compare No. 2718, post, & see, generally, Sect. 7, sub-sect. 6, A. (c), ante.

2715. — Shares issued as security for loan to company—Shares transferred to nominee of company on repayment.]—A co. borrowed £500 from A. upon the following conditions: A. was to apply for 100 shares of £5 each & to pay £500, & if he should give a month's notice before a certain day, the co. was to pay him back £500 & interest, & to cancel the shares. A. gave the requisite notice, & the £500 was paid back to him, & he transferred the shares to a nominee of the co. The co. had power to receive all the capital unpaid on any share, but had no power to cancel shares or to buy shares. The co. was wound up nine years after the transfer of the shares:—*Held*: A. was a contributory in respect of the 100 shares, & liable for the whole of their nominal amount.—*Re PATENT PAPER MANUFACTURING CO., ADDISON'S CASE* (1870), 5 Ch. App. 294; 39 L. J. Ch. 558; 22 L. T. 692; 18 W. R. 365, L. J.

Annotation:—Mentd. Re Monnier, Ex p. Bloomenthal (1896), 44 W. R. 577.

2716. — Unlimited company.]—There is nothing in the Cos. Acts to prevent an unlimited co. being associated on the terms that its members may withdraw from membership in the mode pointed out by its memorandum & arts. of assocn., so as to be free from liability in the event of a winding-up.

Semble: such a co. may validly provide by its memorandum & arts. for a return of capital to its members.

Qu.: whether, in the absence of express power in its memorandum or arts. of assocn., an unlimited co. can allow its members to withdraw from liability as such.—*Re BOROUGH COMMERCIAL & BUILDING SOCIETY*, [1893] 2 Ch. 242; 62 L. J. Ch. 456; 69 L. T. 96; 41 W. R. 313; 9 T. L. R. 282; 37 Sol. Jo. 269; 3 R. 339.

2717. Under provision in constitution of company—Transfer to directors—Right of indemnity against company.]—By arts. of assocn. directors were empowered to purchase out of the co.'s funds shares from persons willing to sell. Under this arrangement shares were transferred to directors, & registered in their names, without anything to indicate that they were not held by them in their individual capacities. In the liquidation of the co. the names of the directors were placed on the list of contributories:—*Held*: their names must remain on the list, but they were entitled to be indemnified out of the funds of the co. for any sums that they might have to pay on the shares.—*Re UNIVERSAL BANKING CORPN.*,

transfer of H.'s shares having been taken by him or by the directors:—*Held*: H. continued liable as a shareholder in the co.—*BARRY v. NAVAN & KINGSCOURT RY. CO.* (1878), 4 L. R. Ir. 68.—*IR.*

o. Power given by statute.]—By 54

& 55 Vict., c. 110, s. 4 (D), power was given to any shareholder of the co. to surrender his stock by notice in writing within a certain time. A shareholder, desiring to surrender his stock, transferred it within the time by an ordinary assignment to the president

"in trust," both intending the transfer to operate as a surrender:—Held: a valid surrender.—HARTE v. ONTARIO EXPRESS & TRANSPORTATION CO., KIRK & MARLING'S CASE (1893), 24 O. R. 340.—*CAN.*

Ex p. CHALLIS (1868), 17 L. T. 637; 16 W. R. 451.

2718. — Share subscribed for—Subscriber not entered on register.]—Where the directors of a co. have power to accept the surrender of shares, they may accept the surrender of the shares of a subscriber of the memorandum of assocn. whose name has not been entered on the share register pursuant to 1862 Act, s. 23.

S., a subscriber of the memorandum of assocn. of a co., who was also a director, applied for the number of shares for which he had subscribed & paid the deposit on them. Before any shares had been allotted to him or his name had been entered on the share register, he withdrew from the office of director, & applied to have his application for shares cancelled. The directors, who had power under the arts. to accept the surrender of shares, cancelled the application & returned the deposit. The co. was afterwards wound up:—*Held*: the surrender of the shares was valid, & S. was not a contributory.—*Re* NATAL INVESTMENT CO., SNELL'S CASE (1869), 5 Ch. App. 22; 21 L. T. 445; 18 W. R. 30, L. J.

Annotations:—*Distd.* *Re* United Service Co., Hall's Case (1870), 5 Ch. App. 707. *Apld.* *Re* County Palatine Loan & Discount Co., Teasdale's Case (1873), 9 Ch. App. 54. *Distd.* *Re* London & Provincial Consolidated Coal Co. (1877), 5 Ch. D. 525. *Apld.* *Re* St. James's Bank, Colville's Case (1879), 48 L. J. Ch. 633. *Consd.* Bellerby v. Rowland & Marwood's S.S. Co., [1901] 2 Ch. 265. *Refd.* *Re* Dronfield Silkstone Coal Co. (1880), 17 Ch. D. 76; Elchbaum v. City of Chicago Grain Elevators, [1891] 3 Ch. 459.

Compare Nos. 2713, 2714, *ante*, & *see, generally*, Sect. 7, sub-sect. 6, A. (c), *ante*.

2719. — Shareholder dissenting from amalgamation.]—*Re* LONDON & MEDITERRANEAN BANK, WRIGHT'S CASE (1868), L. R. 12 Eq. 335, n.: 37 L. J. Ch. 529, L. J.

Annotation:—*Consd.* *Re* St. James's Bank, Colville's Case (1879), 48 L. J. Ch. 633.

2720. ——C., the holder of 160 shares in a limited co., registered in 1870, proposed to the directors to surrender his shares in consideration of £300 to be paid to him by the co. The directors, who had power, under their arts. "to accept a surrender of shares on such terms as they might think fit," acceded to his proposal, cancelled the shares, & paid the money. The co. was, within twelve months, ordered to be wound up:—*Held*: the surrender of shares was valid, & C. was not liable to be placed on the A. list of contributories; the validity of such a surrender was not affected by 1867 Act.—*Re* ST. JAMES'S BANK, COLVILLE'S CASE (1879), 48 L. J. Ch. 633; 41 L. T. 177.

Annotation:—*Refd.* Trevor v. Whitworth (1887), 57 L. J. Ch. 28.

2721. — Surrender by employee on termination of service—Return of amount paid.]—The arts. of assocn. of a co. provided that all employees of the co. other than the managing directors should, on the termination of their service, surrender their shares to the co. The co. was now being wound up, & a cashier who was discharged in 1882 applied for the removal of his name from the list of contributories, & for repayment to him of the value, as in 1882, of his shares, & for indemnity against subsequent calls:—*Held*: no such relief could be granted.—*Re* WALKER & HACKING, LTD. (1887), 57 L. T. 763.

2722. — Power ultra vires.]—C. Co. contracted with B. Co. to issue to the latter the whole issue of its share capital. B. Co. arranged with a firm of contractors for the execution of some works, & the contractors agreed to accept in payment certain shares in B. Co., subject to a condition that B. Co. would, at a future date, accept a surrender

of these shares & in exchange give to the contractors certain shares in C. Co. The memorandum of assocn. of B. Co. made special provision for enabling such a transaction to be carried out:—

Held: a clause in a memorandum of assocn. authorising a co. formed under 1862 Act, to buy or accept a surrender of its shares, otherwise than for forfeiture, is *ultra vires*; & the transaction in question being such a surrender, was invalid.—*Re* MERSINA & ADANA CONSTRUCTION CO. (1889), 5 T. L. R. 680; 1 Meg. 341.

2723. — Power to accept surrender—No power for company to purchase shares—Surrender as consideration for relief from onerous property.]

—By the arts. of an hotel co., its funds were not to be expended in the purchase of its own shares; the directors might accept surrenders of shares; & the co. might in general meeting reduce its capital by paying off capital & cancelling capital which had been lost or was unrepresented by available assets. The co. agreed with its managing director that he should take over an hotel, held by them on an onerous lease, & furniture, upon payment by him of £3,000, & that his shares should be surrendered to the co. & extinguished. A resolution confirming this agreement, which was most beneficial to the co., was passed at meetings at which some of the shareholders were not represented. No shareholders dissented, & the debenture-holders & other creditors assented. The co. presented a petition for the sanction of the ct. to the proposed reduction of capital:—*Held*: (1) the co. had power, without the sanction of the ct., to sell part of its assets in consideration of a price in cash, & a release from liability, & then to accept a surrender of these shares; (2) the transaction was not a purchase by the co. of its own shares; (3) the result would be that these shares would be "capital in excess of the wants of the co." within Companies Act, 1877 (c. 26), s. 3; & (4) the ct., therefore, had power to sanction the resolution, although there was no power to authorise a co. to prefer one shareholder to another of the same class by buying up his shares.—*Re* DENVER HOTEL CO., [1893] 1 Ch. 495; 62 L. J. Ch. 450; 68 L. T. 8; 41 W. R. 339; 9 T. L. R. 169; 37 Sol. Jo. 191; 2 R. 330, C. A.

Annotations:—*As to* (1) *Consd.* British & American Trustee & Finance Corp'n. v. Couper, [1894] A. C. 399. *As to* (2) & (3) *Refd.* British & American Trustee & Finance Corp'n. v. Couper, [1894] A. C. 399; Bellerby v. Rowland & Marwood's S.S. Co., [1902] 2 Ch. 14. *As to* (4) *Consd.* British & American Trustee & Finance Corp'n. v. Couper, [1894] A. C. 399. *Generally, Mentd.* *Re* Oceana Development Co. (1912), 56 Sol. Jo. 537.

2724. — Shares re-allotted.]—*Re* COMPANIES GUARDIAN SOCIETY, WALLSCOURT'S (LORD) CASE, No. 2283, *ante*.

2725. — Power to purchase shares—Surrender by director under arrangement for benefit of company—Confirmed by extraordinary general meeting.]—The memorandum of assocn. of a limited colliery co. gave the co. power to do all things which it should consider conducive to the attainment of its objects, but did not in terms give any power to purchase its own shares. Clause 10 of the arts. empowered the directors to purchase for the co. any shares in the co., & directed that the shares so purchased should be dealt with as if they had never been issued, & that any profit arising on the re-issuing or subsequent sale of such shares should be deemed profits of the year in which they were re-issued or sold. In 1872, disputes having arisen as to the conduct of the business, the directors agreed with W., the largest shareholder, who was also one of the directors, to purchase for the co. his shares & also

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his interest as landlord of the mines worked by the co. This arrangement was confirmed by an extraordinary general meeting of the co., & was carried into effect by an assignment of his interest in the mines to the co. for a specific sum, & by a transfer to the co. of his shares for another specific sum. The co. was entered in the share register as holder of these shares, & in all the subsequent returns to the Registrar of Joint-Stock Cos. the co. was entered as such holder. The co. for some time was prosperous, but afterwards fell into difficulties, & in 1879 an order was made for winding it up:—*Held*: (1) although the arts. could not effectually authorise a general trafficking in shares, as that would be extending the business of the co. in a way not authorised by the memorandum, there was nothing illegal in a clause authorising a purchase of shares, not for profit, but for carrying into effect an arrangement considered to be for the benefit of the co.; & such a purchase did not reduce the capital of the co. in any sense in which such reduction is prohibited by the Cos. Act; & W. had effectually surrendered his shares, to the co. & ceased to be a shareholder from the date of the surrender, & was not a contributory; (2) if the transaction, supposing it to have been carried into effect without the sanction of the extraordinary general meeting, would have been questionable, the co. having confirmed it & taken the benefit of it, could not now have impeached it, & the liquidator had no better right.—*Re DRONFIELD SILKSTONE COAL CO.* (1880), 17 Ch. D. 76; 44 L. T. 361; *sub nom. Re DRONFIELD SILKSTONE COAL CO., LTD., Ex p. WARD*, 50 L. J. Ch. 387; 29 W. R. 768, C. A.

Annotations:—*As to* (1) *Consd. Guinness v. Land Corp. of Ireland* (1882), 22 Ch. D. 349. *Distd. Trevor v. Whitworth* (1887), 12 App. Cas. 409. *Reid. Re Mersina, Tarsus & Adana Ry. Construction Co.* (1889), 1 Meg. 341; *Eichbaum v. City of Chicago Grain Elevators*, [1891] 3 Ch. 459; *Re Sovereign Life Assce.*, [1892] 3 Ch. 279. *As to* (2) *Appld. Re Ince Hall Rolling Mills Co.* (1882), 23 Ch. D. 545, n. *Reid. Re Florence Land & Public Works Co., Nicol's Case, Tufnell & Ponsonby's Case* (1885), 29 Ch. D. 421. *Generally, Reid. Bellerby v. Rowland & Marwood's S.S. Co.*, [1902] 2 Ch. 14. *Mentd. Re Dronfield Silkstone Coal Co. (No. 2)* (1883), 23 Ch. D. 511.

2726. — Surrender involving release of shareholder from liability—Equivalent to purchase of shares by company.]—BELLERBY v. ROWLAND & MARWOOD'S S.S. CO., LTD., No. 2706, ante.

2727. — Unlimited company.]—Re BOROUGH COMMERCIAL & BUILDING SOCIETY, No. 2716, ante.
— **As altered by special resolution.]—See No. 2710, ante.**

See, further, Sect. 10, sub-sect. 3, F. (a) ii., ante, Sect. 31, sub-sect. 2, B., post.

2728. Effect of provision in articles validating contract approved by general meeting.]—By the arts. of assocn. of a limited co., it was provided that no contract entered into by the directors to which the assent of the co. in general meeting should be given, should be afterwards impeached on any ground whatsoever. In Dec. 1866, the directors entered into a contract with pltf., one of

the terms of which was that the co. would "forthwith" cancel all shares in the co. then standing in pltf.'s name which were not fully paid up. The contract was assented to by the co. in general meeting, & was largely performed in part, but pltf.'s shares were not cancelled on Feb. 13, 1867, when resolutions were passed for a voluntary winding up, which was afterwards continued under supervision:—*Held*: the agreement for cancellation of the shares could not be impeached; & pltf.'s name ought not to be on the list of contributories in the character of a present member.—*MARSHALL v. GLAMORGAN IRON & COAL CO.* (1868), L. R. 7 Eq. 129; 28 L. J. Ch. 69; 19 L. T. 632; 17 W. R. 435.

Annotations:—*Reid. Re St. James's Bank, Colville's Case* (1879), 41 L. T. 177. *Mentd. Re Anglo-Indian & Colonial Industrial & Commercial Institution, Montagu's Case* (1888), 4 T. L. R. 580.

Disclaimer by trustee in bankruptcy.]—See No. 2638, ante.

B. By way of Compromise.

2729. Dispute over obligation of director to take qualification shares.]—In Oct. 1846, A. in the belief that he must take shares in order to qualify for the office of director which he had accepted in a co., applied for, & had certain shares allotted to him. Understanding shortly afterwards that no qualification was necessary, he thenceforward repudiated the shares, refusing to execute the deed of settlement, or to pay calls. No dividend was ever received by him. In 1855, after intermediate communications, he offered to pay a specified sum on being released from all further liability, & the directors, who were empowered by the deed of settlement to compromise disputed claims, passed a resolution accepting his proposal. This resolution was confirmed at a general meeting of shareholders, but no notice had been given of the intention to confirm the arrangement, or of its terms, nor were the terms stated in the circular subsequently sent to the shareholders, containing the directors' report, & the resolutions passed by the meeting. A's name had been originally put upon the register of shareholders, & was never removed. In 1861, the co. was wound up. A's name was put on the list of contributories:—*Held*: there being no ground for imputing fraud, collusion, suppression or concealment, the arrangement under which A. had been released must stand as a *bond fide* compromise, whether he was originally liable as a shareholder or not, & the order must be discharged.—*Re AGRICULTURIST CATTLE INSURANCE CO., BELHAVEN'S (LORD) CASE* (1865), 3 De G. J. & Sm. 41; 34 L. J. Ch. 503; 12 L. T. 595; 11 Jur. N. S. 572; 13 W. R. 849; 46 E. R. 553, L. JJ.

Annotations:—*Consd. Re Agriculturist Cattle Insce., Stanhope's Case* (1865), 1 Ch. App. 161. *Appld. Dixon v. Evans* (1872), L. R. 5 H. L. 606. *Reid. Spackman v. Evans* (1868), L. R. 3 H. L. 171; *Re United Ports Co., Adam's Case* (1872), L. R. 13 Eq. 474.

2730. Misrepresentation in prospectus.]—F., a shareholder of a co. who was entitled to have his name removed from the register of shareholders

PART III. SECT. 26, SUB-SECT. 1.—B.

p. Misrepresentation.]—A corp. has authority, as an incident of its existence, to compromise all *bond fide* claims made against it, & therefore has power to compromise claims made by a shareholder to be relieved of his shares either by reason of fraud or misrepresentation or any other cause which would enable the ot. to decree such relief; but the corp. cannot validly compromise a claim for damages against it by accepting the surrender of & by

cancelling shares of, its capital stock held by claimant.—*LIVINGSTONE v. TEMPERANCE COLONIZATION SOCIETY* (1890), 17 A. R. 379.—CAN.

q. Whether transfer of shares amounts to surrender.]—T. subscribed for stock. In Aug., 1910, T. transferred all his rights to L., who accepted them. The co. approved & sanctioned the transfer. In Jan., 1913, the co. became insolvent. In the winding up the liquidator sought to make T. a

not surrendered but transferred.—*Re PORT ARTHUR WAGGON CO., LTD., TUDHOPE'S CASE* (1920), 47 O. L. R. 565.—CAN.

r. —.]—A co. was formed for the acquisition of mines with a capital consisting of preferred & deferred shares. The deferred shares, which were bearer shares, were issued as fully paid to the vendors, who subsequently sold part of these shares. Thereafter an agreement was entered

on account of misrepresentation in the prospectus, wrote to the secretary declining to have anything more to do with the co., & requiring the return of his deposit. The deposit was returned, but F.'s name was not removed from the register. A year & five months afterwards the co. was ordered to be wound up. The directors had not express power to compromise disputes, but they had all powers which could be exercised by the co. in general meetings:—*Held*: F. was not a contributory.—*Re CANADIAN NATIVE OIL CO., FOX'S CASE* (1868), L. R. 5 Eq. 118; 37 L. J. Ch. 257.

Annotations:—*Distd. Re Anglo-Danubian Steam Navigation & Colliery Co., Walker's Case* (1868), L. R. 6 Eq. 30; *Re Lennox Publishing Co., Ex p. Storey* (1890), 62 L. T. 791. *Reid. Re Scottish Petroleum Co.* (1883), 23 Ch. D. 413.

2731. — Unknown to member at date of surrender.—The cancellation of shares by directors, where the shareholder has valid grounds to claim cancellation, is good & effectual, although the shareholder claimed such cancellation on invalid grounds, not being at the time aware of the existence of valid grounds.

In the prospectus of a co. it was untruly stated that 80,000 shares had been subscribed for. W., relying on this statement applied for shares, & had ten shares allotted to him, on which he paid the deposit. The committee of the Stock Exchange refused to grant a settling day, whereupon W. wrote to the directors that they ought to return the deposit. The shareholders at a meeting agreed that the allottees were entitled to have their allotments cancelled, whereupon W. received back his deposit money, & returned his share certificates, & an entry was made in the register of shareholders that his shares were cancelled. The co. was afterwards wound up, & W. then discovered the misrepresentation as to the number of shares subscribed for:—*Held*: the cancellation of the allotment was valid, the directors having been aware of the misrepresentation though the shareholder was not aware of it; & W. was not a contributory either as a present or past member.—*Re LONDON & MEDITERRANEAN BANK, WRIGHT'S CASE* (1871), 7 Ch. App. 55; 25 L. T. 471; 20 W. R. 45, L. C.

Annotations:—*Reid. Re London Suburban Bank* (1872), L. R. 15 Eq. 274; *Re Scottish Petroleum Co., MacLagan's Case* (1882), 51 L. J. Ch. 841; *Cocksedge v. Metropolitan Coal Consumers' Assn.* (1891), 64 L. T. 826; *First National Reinsurance v. Greenfield*, [1921] 2 K. B. 260. *Mentd. Re Scottish Petroleum Co., Wallace's Case* (1883), 31 W. R. 846.

See, generally, Sect. 8, sub-sect. 3; Sect. 17, sub-sect. 1, A., *ante*.

2732. Representation by promoter as to calls—Compromise by cancellation of partly-paid shares—Issue of less number of paid-up shares.—*MOTHER LODGE CONSOLIDATED GOLD MINES, LTD. v. HILL* (1903), 19 T. L. R. 341.

See, generally, Sect. 17, sub-sect. 1, A., *ante*.

2733. Compromise ultra vires—Subsequent ratification by shareholders.—Defts., the promoters of a co., were entitled to receive a sum of money on the conclusion of a transaction with the co. & D. The directors of the co. advanced defts. a sum of £6,500 & some debenture-stock in the co. on the security of the money which would be due to

defts. on the conclusion of the transaction with D. The transaction went off, & the directors called upon defts. to repay the money. Defts. being unable to pay, proposed a compromise, which the directors accepted, that they should deliver up 400 shares, which they held in the co., to be cancelled in satisfaction & discharge of their debt. At a general meeting of the co., the fact that the 400 shares had been forfeited was mentioned to the shareholders & published in a circular, & the books of the co. were open for inspection, so that every shareholder had the means of inquiring into the transaction. The arts. of assocn. provided that the co. should not buy or sell its own shares. In an action brought to recover the money lent:—*Held*: (1) although the directors, in entering into a compromise with defts., had exceeded the authority given to them by the arts. of assocn., yet the shareholders had ratified the directors' acts by not objecting at the right time; & (2) they could not, after profiting by an increased dividend arising from the forfeiture of the shares, open anew transactions to which they had tacitly assented.

(3) A shareholder is bound by the acts of the directors, if he had the means of knowing that they have acted beyond their authority, & he does not interfere.—*PHOSPHATE OF LIME CO. v. GREEN* (1871), L. R. 7 C. P. 43; 25 L. T. 636.

Annotations:—*As to* (1) & (2) *Consd. Trevor v. Whitworth* (1887), 12 App. Cas. 409. *Reid. Ashbury Ry. Carriage & Iron Co. v. Riche* (1875), L. R. 7 H. L. 653; *London Financial Assn. v. Kelk* (1884), 26 Ch. D. 107. *As to* (3) *Reid. Cullerne v. London & Suburban General Permanent Benefit Bldg. Soc.* (1890), 6 T. L. R. 214. *Generally, Mentd. Hadley v. Hadley* (1897), 77 L. T. 131; *Marsh v. Joseph*, [1897] 1 Ch. 213; *Ho Tung v. Man On Insce.*, [1902] A. C. 232.

See, also, Sect. 23, sub-sect. 12, B., *ante*; Sect. 27, sub-sect. 4, *post*.

C. Surrender in Exchange for New Shares.

2734. Under resolution altering articles—Where resolution bona fide—Not made to escape liability.—(1) A co. may by special resolution give itself power to accept surrenders of old shares in exchange for new, provided that the resolution is passed *bona fide* & not with a view to enable one set of shareholders to escape liability.

(2) A co. which has, by its memorandum of assocn., power to issue new shares, with preferential rights both as regards dividend & repayment of capital, can give itself power to issue to some of its ordinary shareholders new shares with such preferential rights in consideration of the surrender by them of an equivalent amount of ordinary shares.—*EICHBAUM v. CITY OF CHICAGO GRAIN ELEVATORS, LTD.*, [1891] 3 Ch. 459; 61 L. J. Ch. 28; 65 L. T. 704; 40 W. R. 153.

Annotations:—*As to* (2) *Consd. Rowell v. Rowell*, [1912] 2 Ch. 609. *Generally, Reid. Bellerby v. Rowland & Marwood's S.S. Co.*, [1902] 2 Ch. 14.

2735. — Liability of shareholders diversely affected.—*Re COUNTY PALATINE LOAN & DISCOUNT CO., TEASDALE'S CASE*, No. 2710, *ante*.

2736. — Preference shares issued in place of ordinary shares surrendered.—*EICHBAUM v. CITY OF CHICAGO GRAIN ELEVATORS, LTD.*, No. 2734, *ante*.

vendors should transfer to the co. "or its nominees for behoof of the preferred shareholders," all the deferred shares then held by them. These deferred shares were duly delivered to the co. Thereafter in an action against the co. for declarator that the deferred shares were held in trust for the preferred shareholders:—*Held*: the agreement being of the nature of a compromise & the shares in question

being fully paid, it was not *ultra vires* of the co. to acquire them & the transfer was not equivalent to a surrender of the shares to the co., but the co. was bound to hold them in trust for behoof of the preferred shareholders.—*GILL v. ARIZONA COPPER CO., LTD.* (1900), 2 F. (Ct. of Sess.) 843; 36 Sc. L. R. 741; 7 S. L. T. 424.—*SCOT.*

S. Surrender by insolvent shareholder—Power of company to accept.—

A co. is entitled to accept a surrender of shares by an insolvent shareholder without reserving its right to recover unpaid calls, as a fair compromise of the co.'s claims against the shareholder, & the liquidator is not entitled to reduce the transactions on the ground that it was *ultra vires* of the co.—*GENERAL PROPERTY INVESTMENT CO., LTD. v. CRAIG* (1891), 18 R. (Ct. of Sess.) 389; 26 Sc. L. R. 326.—*SCOT.*

Sect. 26.—Surrender of shares: Sub-sect. 1, C.; sub-sect. 2. Sect. 27: Sub-sects. 1 & 2, A. & B. (a), (b).]

2737. Issue of fresh capital of greater nominal amount—No reduction of capital.]—Re WESTMINSTER ELECTRIC SUPPLY CORPN. (1897), cited [1902] 2 Ch. 855.

Annotation:—Distd. Re Anglo-French Exploration Co., [1902] 2 Ch. 845.

2738. —.]—Re ST. JAMES' & PALL MALL ELECTRIC LIGHT CO. (1899), cited [1902] 2 Ch. 855.

Annotation:—Distd. Re Anglo-French Exploration Co., [1902] 2 Ch. 845.

2739. Surrendered shares available for reissue.]—Rowell v. ROWELL (JOHN) & SONS, LTD., No. 2707, ante.

SUB-SECT. 2.—AGREEMENTS TO SURRENDER.

2740. What amounts to an agreement—Resolution authorising directors to accept surrenders—Not binding on company as agreement.]—(1) A new certificate of incorporation is necessary to complete a change of name by a co. under 1862 Act, s. 13. It is not enough that the change has been sanctioned by a special resolution of the co. & approved by the Board of Trade. On July 18, 1867, a co. duly passed a resolution to change its name, which resolution was confirmed on Aug. 9. On Aug. 23 the directors made a call in the old name of the co. On Sept. 7 the approval of the change of name by the Board of Trade was obtained, & on Sept. 13 notice of the call, in the new name, was given to the shareholders. On Dec. 31 an action in the old name was brought against a shareholder who knew of the proposed change of name, to recover the amount of the call. The certificate of incorporation in the new name was not issued until Feb. 13, 1868:—*Held*: the action was properly brought in the old name of the co., & the notice of the call in the new name was sufficient, as it in fact gave deft. notice that the call had been made.

(2) The co. passed a resolution authorising the directors, "if they should think fit," to accept transfers from such shareholders as should give notice of their willingness to surrender their shares:—*Held*: this was not binding on the co. as an agreement to accept such surrenders.—SHACKLEFORD, FORD & CO. v. DANGERFIELD (1868), L. R. 3 C. P. 407; *sub nom.* SHACKLEFORD, FORD & CO., LTD. v. OWEN, SHACKLEFORD, FORD & CO., LTD. v. DANGERFIELD, 37 L. J. C. P. 151; 18 L. T. 289; 16 W. R. 675.

See, further, Sect. 27, sub-sect. 4, post.

SECT. 27.—FORFEITURE OF SHARES.

SUB-SECT. 1.—THE POWER TO FORFEIT.

2741. Existence—Whether inherent.]—There is no inherent power in the directors or in a general meeting of the shareholders in a co. to declare a forfeiture of shares.

Therefore a person who had taken shares, but had not signed the deed, & whose shares had been declared forfeited by the directors with the sanction of a general meeting of the shareholders, was not

relieved from his liability as a contributory, the forfeiture being *ultra vires*, & the directors not being expressly empowered by the deed to forfeit shares.—*Re NATIONAL PATENT STEAM FUEL CO., BARTON'S CASE* (1859), 4 De G. & J. 46; 4 Drew. 535; 28 L. J. Ch. 637; 33 L. T. O. S. 99; 5 Jur. N. S. 420; 7 W. R. 396; 45 E. R. 19, L. JJ.

2742. —.]—Directors of a co. were alleged to have paid calls merely on a small portion of the shares for which they had subscribed the deed, & they had also, out of the co.'s funds, purchased part of the chairman's shares, & had cancelled a considerable number of those subscribed for by him & by themselves. This not being authorised by the constitution of the co. or by the provisions of the deed of settlement:—*Held*: it was not a matter of internal management to be confirmed by a general meeting, & a demurrer to a bill to make the directors liable was therefore overruled.—HODGKINSON v. NATIONAL LIVE STOCK INSURANCE CO. (1859), 4 De G. & J. 422; 26 Beav. 473; 28 L. J. Ch. 676; 33 L. T. O. S. 266; 5 Jur. N. S. 969; 7 W. R. 680; 45 E. R. 163, L. JJ.

Annotation:—Mentd. Russell v. Wakefield Waterworks Co. (1875), 23 W. R. 887.

2743. —.]—BELLERBY v. ROWLAND & MARWOOD'S S.S. CO., LTD., No. 2706, ante.

Power to forfeit for unpaid calls.]—See Sect. 21, sub-sect. 7, ante, & see, also, No. 2780, post.

2744. Under provision in articles—Alternative remedy provided—Effect of election.]—GILES v. HURT, No. 2148, ante.

2745. — Power to promote interests of company.]—The deed of settlement of a joint-stock banking co. contained a stipulation that, in all cases not provided for by that or any supplemental deed of settlement, the directors might act in such manner as to promote the interests & welfare of the co.:—*Held*: this clause did not enable the directors to cancel the shares of a retiring director, so as to exempt him from responsibility; but, on the co. being wound up upwards of ten years after such a cancellation, the retiring director was properly placed upon the list of contributories.—*Re ST. MARYLEBONE JOINT-STOCK BANKING CO., STANHOPE'S CASE* (1850), 3 De G. & Sm. 198; 19 L. J. Ch. 389; 15 L. T. O. S. 2; 14 Jur. 610; 64 E. R. 443.

Annotations:—Reid. Re Royal Bank of Australia, Cockburn's Case (1850), 4 De G. & Sm. 177. *Mentd. Re St. Marylebone Joint Stock Banking Co., Walker's Case* (1856), 8 De G. M. & G. 607; *Haddon v. Ayers* (1858), 5 Jur. N. S. 408; *Ex p. London & Colonial Co., Tooth's Case* (1868), 19 L. T. 599.

2746. — Share not transferable while calls unpaid—Transfer sanctioned while call unpaid.]—WATSON v. EALES, No. 2071, ante.

2747. — Forfeiture on suing company—Payment of full market value—Article invalid.]—A clause in the arts. of assocn. of a co. provided that the shares of any shareholder who directly or indirectly commenced or threatened any action, suit or other proceeding against the co. or the directors should be forfeited on payment to him of the full market value:—*Held*: the clause was invalid.—HOPE v. INTERNATIONAL FINANCIAL SOCIETY (1876), 4 Ch. D. 327; 35 L. T. 623; 25 W. R. 67; *affd.* on other grounds, 4 Ch. D. 332, C. A.

Annotations:—Mentd. Re St. James's Bank, Colville's Case

PART III. SECT. 26, SUB-SECT. 2.

t. By whom made.]—An agreement to surrender shares may be made by a co. of Dominion Incorporation.—Re PORT ARTHUR WAGGON CO., LTD., TUDHOPE'S CASE (1919), 45 O. L. R. 260; *affd.* (1920), 47 O. L. R. 565.—CAN.

PART III. SECT. 27, SUB-SECT. 1.

a. Existence—Power to forfeit for unpaid calls.]—By Marmora Foundry Act it is provided that the stock subscribed for "shall be due & payable to the said co." in the manner mentioned in the Act; & that in case of

neglect or refusal to pay the instalments due on shares, such shares shall be forfeited & sold:—*Held*: the co. were not restricted to the remedy by forfeiture.—MARMORA FOUNDRY CO. v. JACKSON (1852), 9 U. C. R. 509.—CAN.

(1879), 48 L. J. Ch. 633; *Re Dronfield Silkstone Coal Co.* (1880), 17 Ch. D. 76; *Trevor v. Whitworth* (1887), 12 App. Cas. 409; *Eichbaum v. City of Chicago Grain Elevators*, [1891] 3 Ch. 459.

2748. — Forfeiture under lien for debts—Invalid as clog on equity of redemption.]—HOPKINSON v. MORTIMER, HARLEY & CO., LTD., No. 2168, ante.

Compare No. 2660, ante; & see, generally, MORTGAGE.

SUB-SECT. 2.—EXERCISE OF POWER.

A. In General.

2749. For benefit of shareholders.]—Directors of a co. have no right to use the powers entrusted to them, except for the benefit of all the shareholders, & for the purpose for which they were given. Therefore, where directors, desiring to benefit a solvent shareholder, relieved him of his shares, by virtue of a power they possessed to forfeit shares on which default had been made in the payment of calls:—*Held*: although there were calls unpaid upon the shares, & the shareholder was not a party to the act of the directors, it was a collusive forfeiture from which he could reap no benefit, & his name must be placed on the list of contributories. —*EUROPEAN ASSURANCE SOCIETY, MANISTY'S CASE* (1873), 17 Sol. Jo. 745.

2750. Whether leave of court necessary—Under Courts (Emergency Powers) Act, 1914 (c. 78).]—BURGESS v. O. H. N. GASES, LTD., No. 2147, ante.

Compare No. 2713, ante, No. 2779, post.

2751. In exercise of lien for shareholder's bank account—Full value not accounted for.]—STUBBS v. LISTER, No. 2189, ante.

B. Compliance with Formalities.

(a) In General.

2752. Degree of compliance—Substantial compliance.]—Re HOME COUNTIES & GENERAL LIFE ASSURANCE CO., WOOLLASTON'S CASE, No. 1559, ante.

2753. — Strict compliance.]—JOHNSON v. LITTLE'S IRON AGENCY, No. 2145, ante.

(b) Particular Formalities.

2754. Notice—Necessity for.]—The arts. of assocn. of a co. provided that if a shareholder should fail in paying any call, the co. might give

him notice that in default of payment within a specified time his shares would be forfeited; that if the requisitions of any such notice were not complied with, the shares might be forfeited by a resolution of the directors to that effect; that when any share had been so forfeited, notice of such forfeiture should be given to such shareholder, & an entry should be forthwith made in the register of shareholders, stating the date of such forfeiture; & that any share so forfeited should become the property of the co. K., a shareholder in the co., made default in payment of his calls, & notice was sent to him in due form that, unless he paid the calls by Sept. 2, they would be forfeited. The time having elapsed without payment, the secretary made entries in the books on Sept. 3 that the shares were forfeited, & had been transferred to the co. But there was no entry in the minutes of any resolution having been passed by the directors, nor any evidence of any notice of the forfeiture having been sent to K.: —*Held*: (1) there was a valid forfeiture of the shares, & K. could not be placed on the list of contributories as a member of the co.; (2) as the entry of forfeiture on the books could not have been properly made without a resolution of the directors, the ct. was bound to assume that such a resolution had been passed; (3) the forfeiture was complete on Sept. 3 without sending a notice of it to the shareholders, the provisions in the arts. as to sending the notice being mandatory only, & not of the essence of the forfeiture.—*Re NORTH HAILLENBEAGLE MINING CO., KNIGHT'S CASE* (1867), 2 Ch. App. 321; 36 L. J. Ch. 317; 15 L. T. 546; 15 W. R. 294, L. J.J.

Annotations:—As to (1) *Folld. Re Tavistock Ironworks Co., Lyster's Case* (1867), L. R. 4 Eq. 233. As to (2) *Refd. Re Great Northern Salt & Chemical Works, Ex p. Kennedy* (1890), 44 Ch. D. 472. As to (3) *Consd. Re Phosphate of Lime Co., Austin's Case* (1871), 24 L. T. 932. *Generally, Mentd. North Stafford Steel, etc. Co. v. Ward* (1868), L. R. 3 Exch. 172; *Re Fireproof Doors, Umney v. Fireproof Doors*, [1916] 2 Ch. 142.

2755. — — —.]—C., a holder of shares in a co., limited, had a call made upon him in June, 1886, which he did not pay at the time appointed by the directors; & they, by a resolution of the board, made in Aug. 1886, forfeited the shares, without having previously given C., in accordance with one of the arts. of assocn., notice that if he failed to pay on or before the day appointed for payment they might at any time forfeit them.

PART III. SECT. 27, SUB-SECT. 2.—A.

b. For failure to pay calls — Vendor's shares.]—Shares were issued to vendors as purchase price for property. The arts. of assocn. provided that a majority of the shareholders could alter them, such alteration to be binding on all. Power was also given to increase the capital by making fresh calls. The arts. were duly altered, one of the alterations providing that in case of non-payment of new calls the shares of those in arrears should be forfeited. Subsequently a resolution was duly passed to increase the capital by making a fresh call. Pltf., a vendor, refused to pay such calls on her vendor's shares, & in consequence her shares were forfeited. —*Held*: the resolutions were binding on all shareholders of whatever class.—*TUCKER v. MIDDELVEI BLACK REEF GOLD PROSPECTING & DEVELOPING SYNDICATE* (1897), 4 O. R. 268.—S. AF.

PART III. SECT. 27, SUB-SECT. 2.—B. (a).

c. Necessity for declaration of forfeiture.]—Pltf. was a director of a co. when a call was made & notice of it given, & afterwards when notice was

given to shareholders, including himself, that unless the call was paid by a certain date their shares would be forfeited. He did not pay the call, & after the date fixed by the last notice he resigned his position as director. Subsequently the directors passed a resolution that pltf.'s shares being forfeited, should be sold, & removed his name from the register. Pltf. afterwards claimed them & tendered all calls. The directors then passed a resolution declaring the calls forfeited:—*Held*: no declaration of the forfeiture having been made, the directors had no right to remove the name from the register.—*GREENWOOD v. CROWN PRINCE GOLD MINING CO.* (1875), 1 J. R. N. S. 41.—N.Z.

PART III. SECT. 27, SUB-SECT. 2.—B. (b).

d. The resolution — Entry of forfeiture in company's books.]—Rules of a co. provided that the manager should enter in the share register opposite shares forfeited the words, "Forfeited by resolution of board of directors":—*Held*: mere omission to make such entry did not *per se* prevent forfeiture.—*REEVES v. McCARTHY* (1870), 1 V. R. (Law) 190.—AUS.

2754 i. Notice—Necessity for.]—Pltf., on becoming a member of debt. co., agreed to accept his shares subject to the rule of the co. that in default of payment of dues for a year, the directors might forfeit any share so in default. Pltf. being in default for a year & upwards the directors declared his shares forfeited, & this proceeding was confirmed at a meeting of the shareholders. Pltf. instituted proceedings to have such forfeiture declared invalid, on the ground (*inter alia*) that notice of the intention to forfeit had not been given to him; & that notice of the forfeiture had not been served on him, so that he had been unable to appeal to the shareholders:—*Held*: these objections could not prevail.—*NELLIS v. SECOND MUTUAL BUILDING SOCIETY OF OTTAWA* (1881), 29 Gr. 399.—CAN.

e. — Whether notice can be waived.]—The arts. of a co. contained clauses enabling the directors to forfeit for non-payment of calls, after certain formalities of notice & advertisement. On Aug. 16, 1867, at an extraordinary meeting of shareholders duly summoned, at which resp. was present by proxy, a resolution was passed empowering the directors "to forfeit any

Sect. 27.—Forfeiture of shares: Sub-sect. 2, B. (b), & C.; sub-sects. 3 & 4.]

The directors in Dec. 1886, allotted the forfeited shares to numerous shareholders. The shares were at the date of forfeiture at a premium. In June, 1888, the co. was ordered to be wound up. In Feb. 1889, C. applied, under another art. of assocn., to be allowed to prove in the liquidation for damages for the irregularity of the directors in ordering the forfeiture:—*Held*: there had been an irregularity by the directors in not giving notice to C., & he was entitled to prove for damages under the art., & in competition with the other creditors of the co., 1862 Act, s. 38 (7), not applying to the case.—*Re NEW CHILE GOLD MINING CO.* (1890), 45 Ch. D. 598; 60 L. J. Ch. 90; 63 L. T. 344; 39 W. R. 59; 6 T. L. R. 462; 2 Meg. 355.

2756. — Sufficiency of—Excessive interest claimed.]—JOHNSON v. LYTLE'S IRON AGENCY, No. 2145, ante.

Compare Nos. 7700, 8500, 8615, post.

2757. The resolution—Resolution for forfeiture at meeting resolving on notice—Conditional on non-payment.]—Re HOME COUNTIES, ETC. ASSURANCE CO., WOOLLASTON'S CASE, No. 1559, ante.

2758. — Presumption as to—After lapse of time.]—Re NORTH HALLENBEAGLE MINING CO., KNIGHT'S CASE, No. 2754, ante.

Compare No. 2153, ante, Nos. 2802, 2804, post.

2759. — Necessity for.]—Re EAST KONGSBERG CO., BIGG'S CASE, No. 2769, post.

2760. — Evidence of—Entry of forfeiture in company's books.]—Re NORTH HALLENBEAGLE MINING CO., KNIGHT'S CASE, No. 2754, ante.

2761. Quorum of directors at meeting resolving on forfeiture—No quorum prescribed by articles.]—(1) Where the arts. of assocn. of a co. do not prescribe the number of directors required to constitute a quorum, the number who usually act in conducting the business of the co. will constitute a quorum. A forfeiture of shares by two out of six directors was held valid.

(2) Where shares have been forfeited by a valid resolution of directors, it is immaterial that the name of the owner has not been removed from the register of members.]—Re TAVISTOCK IRONWORKS CO., LYSTER'S CASE (1867), L. R. 4 Eq. 233; 36 L. J. Ch. 616; 16 L. T. 824; 31 J. P. 726; 15 W. R. 1007.

2762. — Directors invalidly appointed.]—GARDEN GULLY UNITED QUARTZ MINING CO. v. MCLISTER, No. 2144, ante.

2763. — Quorum not present.]—GOULTON v. LONDON ARCHITECTURAL BRICK & TILE CO., [1877] W. N. 141.

2764. — —.]—Re ALMA SPINNING CO., BOTTOMLEY'S CASE, No. 2048, ante.

2765. — Effect as against director taking part in resolution.]—FAURE ELECTRIC ACCUMULATOR CO., LTD. v. PHILLIPART, No. 2049, ante.

2766. Whether removal from register essential.]

shares on which calls are owing within fourteen days from above date, if they deem the same advisable." This resolution dispensed with the notice to defaulting shareholders required by clause 30 of the arts. A call on resp.'s shares was unpaid, & the directors proceeded to declare them forfeited. At the time of this declaration of forfeiture one director had been invalidly elected & took part in the meeting of directors. The directors, fearing that the forfeiture was invalid, proceeded to make a fresh declaration of forfeiture with all the formalities

required by the arts.:—*Held*: there had been no valid forfeiture of the shares.—*GARDEN GULLY UNITED QUARTZ MINING CO. (REGISTERED) v. MCLISTER* (1876), 24 W. R. 744.—*AUS.*

f. Advertisement of notices of call & sale—Acquiescence in invalid forfeiture—Effect of.]—A forfeiture of shares in a no-liability co. must be enforced *strictissimi juris*, & notice of a call in the co., as well as notice of the sale of shares forfeited for non-payment of the call, must be advertised in the Govt. Gazette in the correct name of the co. If notice of a call in

the M. E. Q. Co. be advertised in the name of the M. E. G. Co., & the same mistake be made in the advertisement of notice of sale of shares forfeited for non-payment of the call, a shareholder, whose shares have been so forfeited will be entitled to a declaration that they were improperly forfeited. Acquiescence by a shareholder is no answer to his claim against the co. that it has wrongfully treated his shares as forfeited when they were not legally forfeited.—*CLARKE v. MOONLIGHT EXTENDED QUARTZ MINING CO.* (1888), 14 V. L. R. 976.—*AUS.*

—Re TAVISTOCK IRONWORKS CO., LYSTER'S CASE, No. 2761, ante.

See, also, No. 2785, post.

Call invalidly made.]—See, generally, Sect. 21, sub-sect. 2, ante.

See, also, No. 2047, ante.

C. Effect of Winding up.

2767. Company in voluntary liquidation—Forfeiture after first meeting—Before confirmatory meeting.]—When a co. is wound up voluntarily by means of a preliminary & a confirmatory resolution under 1862 Act, ss. 129, 130, the commencement of the winding up dates from the passing of the second resolution.

Where a forfeiture of shares has been validly made by the directors of a co. before the commencement of a winding-up, the liquidators have no power, under sect. 131 of the Act, to cancel such forfeiture.

Accordingly, where the directors of a co. had forfeited the shares of D. for non-payment of calls after the passing of a preliminary resolution to wind up, & before its confirmation, & the liquidators had subsequently agreed with D. to cancel the forfeiture:—*Held*: (1) the forfeiture was valid; (2) the liquidators had no power to cancel it; (3) D. could not be made a contributory.—*Re CHINA S.S. CO., DAWES' CASE* (1868), L. R. 6 Eq. 232; 37 L. J. Ch. 901; 16 W. R. 995.

Annotations:—Generally, Mentd. Re Smith, Knight, Weston's Case (1868), 4 Ch. App. 20; *Re Imperial Land Co. of Marseilles, Ex p. Colborne & Strawbridge* (1871), L. R. 11 Eq. 478.

2768. — Forfeiture after appointment of liquidator—With sanction of liquidator or general meeting.]—The powers of selling & forfeiting shares vested by the arts. of the co. in its directors may be exercised at any time after the appointment of liquidators during the voluntary winding up of the co. by the directors, with the sanction of the liquidators or general meeting of the co., under 1862 Act, s. 133 (5). All the directors of the co. being dead, new directors should be appointed by a general or special meeting of the co. called by the liquidators to exercise the rights of selling & forfeiting shares.—*Re FAIRBAIRN ENGINEERING CO., LADD'S CASE*, [1893] 3 Ch. 450; 63 L. J. Ch. 8; 69 L. T. 415; 42 W. R. 155; 1 Mans. 100; 8 R. 16.

SUB-SECT. 3.—WHAT OPERATES AS FORFEITURE.

2769. Where provision for forfeiture discretionary—Non-payment of call—No resolution forfeiting particular shares.]—A shareholder in a co. received a notice that on non-payment by him of arrears of calls on a certain day, his shares "would be forfeited without further notice." He also knew that the question of winding up the co. was under consideration. Two days before the day appointed for the payment of the arrears, he went to the co.'s

office, paid the arrears on a few of his shares, & took a receipt, saying that on the rest he should submit to a forfeiture. The directors, at a board meeting, five days afterwards, examined the list of defaulters, & declared that the shares of some of them, whom they considered as not solvent, to be forfeited; but they did not declare the shares of this particular shareholder to be forfeited, & they continued to treat him as the holder of the whole number of shares. The arts. of assocn. of the co. provided that "in the event of non-payment at the time & place appointed by the notice, any share might thereupon be forfeited without any further act to be done by the co."—*Held*: the shares upon which the arrears were not paid up, were not absolutely forfeited by the non-payment, & the co.'s right of option remained; & as the co. had declared their intention of retaining the shareholder on the list, that he must, upon winding up, be held to be a contributory in respect of the full number of shares.—*Re EAST KONGSBERG Co., BIGG'S CASE* (1865), L. R. 1 Eq. 309; 35 L. J. Ch. 216; 13 L. T. 627; 12 Jur. N. S. 89; 14 W. R. 244.

2770. Where provision for forfeiture not discretionary—Non-payment of call—No resolution remitting forfeiture.—*PAINTER v. FORD*, [1866] W. N. 77.

2771. — Non-payment of instalment on shares.—The directors of a co. issued to the allottees of new shares provisional certificates which provided that on default in payment by a certain day of a second instalment of the moneys payable in respect of such new shares "the amount paid, together with the rights & privileges appurtenant to the certificates, would be forfeited"; an allottee of new shares to whom such provisional certificates had been issued made such default in payment. The co. being wound up:—*Held*: he was not a contributory.—*Re ASIATIC BANKING CORPN., Ex p. COLLUM* (1869), L. R. 9 Eq. 236; 39 L. J. Ch. 59; 21 L. T. 350; 18 W. R. 245.

Annotation:—*Mentd. McIlwraith v. Dublin Trunk Connecting Ry.* (1871), 7 Ch. App. 134.

2772. — Non-production of certificate.—The proprietors of a mine in 1835 agreed to form themselves into a co., upon the plan that the mining property should be divided into 12,000 shares, of which 5,500 should be retained by themselves & the remaining 6,500 allotted to the public at £40 a share, the allotment moneys being retained by the proprietors. The deed of settlement provided that if default should be made in payment of the instalments of the £40, the shareholder should cease to be a proprietor, & the share should be forfeited. Powers were reserved to increase the capital by augmenting the amount of the shares, & of altering the existing laws, rules & regulations of the co. In 1836 another deed of settlement was executed, the effect of which was to make the shares transferable by simple delivery of the certificates. In 1866, it was resolved at a general meeting held under the deed of settlement, that the capital should be increased by augmenting the 12,000 shares from £40 to £50, to be paid by instalments, upon non-payment of which the share was to be forfeited; that within a certain period the shareholders were to bring in their certificates, with the name, residence, & description of the holders to be registered; & in default that the shares should be forfeited for the benefit of the co. It was also resolved that the co. should be registered as a limited co. under 1862 Act. Copies of the resolutions were sent to all the shareholders whose addresses were known; but the holders of 2,405 of the 12,000 shares did not send

in their certificates to be registered. The holders of the 9,595 shares who sent in their certificates were, in Dec., 1866, registered as a limited co., which, in 1868, went into voluntary liquidation, afterwards continued under supervision:—*Held*: the shares of the members who did not send in their certificates had been effectually forfeited; & they were not liable to be placed on the list of contributories.—*Re COBRE COPPER MINE Co., KELK'S CASE, PAHLEN'S CASE* (1869), L. R. 9 Eq. 107; 18 W. R. 371; *sub nom. Re ROYAL COPPER MINES OF COBRE Co., KELK'S CASE, PAHLEN'S CASE*, 39 L. J. Ch. 231.

Acquiescence in invalid forfeiture.—*See* Subsect. 5, B. (b), *post*.

Disclaimer by trustee in bankruptcy.—*See* No. 2638, *ante*.

SUB-SECT. 4.—FORFEITURE BY AGREEMENT WITH SHAREHOLDER.

2773. Whether valid—Shareholder relieved from liability.—*Re CAMERON'S COALBROOK STEAM COAL & SWANSEA & LOUGHER RY. Co., BENNETT'S CASE*, No. 2364, *ante*.

2774. — Modification of application before allotment.—*Re EXHALL COAL MINING Co., LTD., MILES' CASE*, No. 1627, *ante*.

2775. — Shares taken to enable company to be registered—Subsequent reissue to other members.—B., a director & promoter of an insurance co., took 500 shares in order to enable the co. to obtain registration, upon an understanding that he was not to be called upon to pay anything in respect of those shares. Calls were made, & a resolution was then passed declaring the forfeiture of all those shares upon which the calls had not been paid, but payment of past calls was not required, although the directors had power to enforce such payment. The 500 shares, upon which no calls had been paid, were declared to be forfeited, & were taken up by other parties. The directors subsequently voted a sum of money to B. for his services, & compromised the question of forfeiture for that sum, which was only half the amount of the calls due. Upon the winding up of the co.:—*Held*: B. was liable to be placed on the list of contributories in respect of the 500 shares.—*Re LONDON & COUNTY ASSURANCE Co., Ex p. JONES* (1858), 27 L. J. Ch. 666; 4 Jur. N. S. 448; 6 W. R. 479.

Annotation:—*Mentd. Re Great Northern & Midland Coal Co., Ex p. Currie* (1862), 32 L. J. Ch. 59, n.

2776. — Where contract to take shares effective—Application unconditional.—*Re SALOON STEAM PACKET Co., Ex p. FLETCHER*, No. 1477, *ante*.

2777. — Agreement ultra vires under constitution of company.—The directors of a co. made an arrangement with a shareholder who wished to retire from the co., that on payment by him of a sum of money, his shares should be declared forfeited for non-payment of a call which had been made. The money was paid & the shares transferred to the co. Twelve years afterwards the co. was wound up, & two years after that an application was made to place the shareholder on the list of contributories:—*Held*: (1) the shareholder ought to be placed on the list, as the arrangement was not within the power of the directors, & was a fraud on the other shareholders.

(2) The shareholders in a co. are not bound to look into the management, & will not be held to have notice of everything which has been done by the directors, who may be assumed by the

Sect. 27.—Forfeiture of shares: Sub-sect. 4.]

shareholders to have done their duty.—*Re AGRICULTURIST CATTLE INSURANCE CO., STANHOPE'S CASE* (1866), 1 Ch. App. 161; 35 L. J. Ch. 296; 14 L. T. 468; 12 Jur. N. S. 79; 14 W. R. 266, L. C.

Annotations:—As to (1) Fold. Re Agriculturist Cattle Insce., Dixon's Case (1869), 5 Ch. App. 79. *Reid. Ex p. London & Colonial Co., Tooth's Case* (1868), 19 L. T. 599; *Spackman v. Evans & Hughes* (1868), 37 L. J. Ch. 752; *Re Esparto Trading Co.* (1879), 12 Ch. D. 191.

2778. ——— Effect of assent by all shareholders—Acquiescence as assent.]—(1) An arrangement allowing members of a co. to retire from the co. under certain conditions therein agreed to by a public meeting of the shareholders, convened after due notice to all the shareholders, is not in itself valid, unless made in accordance with the provisions of the deed of settlement, & if not assented to directly or indirectly, after due notice, by all the shareholders, may be impeached by any one of them. But if the means of notice to all appear sufficient, so as to raise a clear presumption of knowledge & acquiescence, & the arrangement is left unimpeached by any one for a great many years, the shareholder who has been allowed to retire, & whose name has been removed from the lists of the co., will be held to be relieved from his liability as a shareholder.

(2) An arrangement known among the shareholders as the Chippenham arrangement was, in this case, adopted & acted on, with this single exception, that the retiring shareholder did not at once pay the sum for which he was liable, but was allowed to give a bill for the amount, which bill was paid at maturity. The directors then passed a resolution declaring his shares cancelled, & his name was removed from the lists:—*Held*: his name could not, after the lapse of years, be put on the list of contributories.

(3) A shareholder who had been allowed to retire, upon terms not consistent with the provisions of the deed of settlement, nor those of the Chippenham arrangement, & was therefore held liable to have his name put upon the list of contributories, was not in a better situation than any of the ordinary acquiescing shareholders to complain of what had been done in this case. The costs were ordered to come out of the general fund.—*EVANS v. SMALLCOMBE* (1868), L. R. 3 H. L. 249; 37 L. J. Ch. 793; *sub nom. EVANS v. SMALLCOMBE, Re AGRICULTURISTS' CATTLE INSURANCE CO.*, 19 L. T. 207, H. L.; *affg. S. C. sub nom. Re AGRICULTURISTS' CATTLE INSURANCE CO., SMALLCOMBE'S CASE*, L. R. 3 Eq. 769.

Annotations:—As to (1) & (2) Reid. Houldsworth v. Evans (1868), L. R. 3 H. L. 263; *Re Agriculturist Cattle Insce., Dixon's Case* (1869), 21 L. T. 288; *Murray v. Bush* (1873), 22 W. R. 280; *Ashbury Ry. Carriage & Iron Co. v. Riche* (1875), L. R. 7 H. L. 653; *Hadley v. Hadley* (1897), 77 L. T. 131. *Generally, Mentd. Ho Tung v. Man On Insce.* (1901), 71 L. J. P. C. 46.

2779. ——— Shareholder no longer treated as member.]—Though the directors of a co. may grant to a dissenting shareholder leave to retire from the co. on conditions which they deem prudent & advisable to be granted in his case, yet if such conditions are not in accordance with the terms of the deed of settlement, or with conditions for retirement, notice of which was distinctly given to all shareholders, & which were agreed no at a public meeting of the shareholders, though he performs the conditions on which such leave was granted, & his name is for years removed from the lists of the shareholders, & the co. changes its form of conducting its business, of which he has no notice, & dividends are received in which he does not participate, he is liable to have his name

inserted in the list of contributories on the final winding up of the co.

A joint stock co. was formed & a deed of settlement was executed, which had in it various clauses as to the admission & withdrawal of shareholders, & the transfer & forfeiture of shares. On difficulties arising in its business a proposition was made to allow, on certain conditions, dissenting shareholders to retire on the forfeiture of their shares. This proposal, of which distinct notice had been given to all, was adopted at a public meeting of the shareholders. S., a shareholder, who owned shares both by allotment & purchase, & who had executed the deed of settlement, dissented from these conditions, & sought by proceedings in Chancery to have the co. wound up. He was not successful in the attempt. An action was brought against him for overdue calls. He defended the action. After a time, & while the litigation with him was still going on, the directors entered into an agreement with him to allow him to retire upon conditions which were not those named in the deed of settlement, nor in the proposal agreed to at the public meeting. No notice of these conditions thus entered into with S. was shown to have been communicated to the other shareholders, but the fact of S.'s retirement was known to them, & there was no imputation of any fraudulent concealment. The name of S., who had performed all the conditions on which leave to retire was granted to him, was removed from the list of shareholders at the end of 1849. Changes were afterwards made in the mode of carrying on the co.'s business, & dividends were received, but he was not informed of the changes, he never received a dividend, & he never was called on to take, & never did take, any part in the affairs of the co. In 1861 the co. was ordered to be wound up:—*Held*: (1) his name was rightly placed on the list of contributories; (2) the effect of the clauses as to forfeiture was only to make the shares a security for calls; (3) it was the duty of the directors to enforce their calls by every means, & it was a breach of trust to accept, under the pretence of a forfeiture, shares known to be valueless in discharge of money due from a shareholder known to be solvent.—*SPACKMAN v. EVANS* (1868), L. R. 3 H. L. 171; 37 L. J. Ch. 752; 19 L. T. 151, H. L.; *affg. S. C. sub nom. Re AGRICULTURIST INSURANCE CO., SPACKMAN'S CASE* (1865), 5 New Rep. 385, L. C.

Annotations:—As to (1) Consd. Re Agriculturist Cattle Insce., Belhaven's Case (1865), 3 De G. J. & Sm. 41; *Re Agriculturist Cattle Insce., Stanhope's Case* (1866), L. R. 1 Ch. App. 161; *Houldsworth v. Evans* (1868), L. R. 3 H. L. 263. *Expld. Evans v. Smallcombe* (1868), L. R. 3 H. L. 249. *Fold. Re Agriculturist Cattle Insce., Dixon's Case* (1869), 5 Ch. App. 79. *Consd. British & Foreign Ry. Plant Co. v. Ashbury Carriage & Iron Co., Smith v. Ashbury Carriage & Iron Co.* (1869), 20 L. T. 360; *Re General Provident Assce., Cross's Case* (1869), 38 L. J. Ch. 583; *Phosphate Lime Co. v. Green* (1871), L. R. 7 C. P. 43; *Re Phosphate of Lime Co., Austin's Case* (1871), 24 L. T. 932. *Apld. Re Bewley's Estate, Jefferys v. Jefferys* (1871), 24 L. T. 177. *Reid. Downes v. Ship* (1868), L. R. 3 H. L. 343; *Ex p. London & Colonial Co., Tooth's Case* (1868), 19 L. T. 599; *Re Cobbe Copper Mine Co., Kelk's Case, Pahlen's Case* (1869), L. R. 9 Eq. 107; *Re Agriculturist Cattle Insce., Bush's Case* (1870), 6 Ch. App. 246; *Re Patent Paper Manufacturing Co., Addison's Case* (1870), 5 Ch. App. 294; *Re Accidental Death Insce., Allin's Case* (1873), L. R. 16 Eq. 449; *Ashbury Ry. Carriage & Iron Co. v. Riche* (1875), L. R. 7 H. L. 653; *Re Esparto Trading Co.* (1879), 12 Ch. D. 191; *Re London & Staffordshire Fire Insce.* (1883), 24 Ch. D. 149; *Ho Tung v. Man On Insce.* (1901), 71 L. J. P. C. 46. *As to (3) Reid. Re Phosphate of Lime Co., Austin's Case* (1871), 24 L. T. 932; *Re Republic of Bolivia Exploration Syndicate*, [1914] 1 Ch. 139. *Generally, Mentd. Re Agriculturist Cattle Insce., Stewart's Exors. Case* (1866), 12 Jur. N. S. 611; *Re Scottish Petroleum Co., MacLagan's Case* (1882), 46 L. T. 880; *Re Argyle Coal & Cannell Co., Ex p. Watson* (1885), 54 L. T. 233.

2780. ——— Power to forfeit for unpaid

calls—Forfeiture without reference to calls—Though calls unpaid.]—(1) A cancellation of shares was held not to be justified under a power to forfeit & extinguish for non-payment of calls, where, though in fact calls had not been paid, the cancellation was made at the request of the holders, & without reference to the question of calls. An ineffectual cancellation of shares will not be validated by the shares being returned to the Registrar of Joint-Stock Cos. as cancelled.

(2) The circumstance that the cancellation took place seven years before the co. ceased to carry on business was held to be immaterial on the question of the liability of the holders as contributories.—*Re ESPARTO TRADING CO.* (1879), 12 Ch. D. 191; *sub nom. Re ESPARTO TRADING CO., FINCH & GODDARD'S CASES*, 48 L. J. Ch. 573; 28 W. R. 146.

Annotations:—As to (1) & (2) Consd. Re Argyle Coal & Cannell Co., Ex p. Watson (1885), 54 L. T. 233. *Generally, Mentd. Re Colombia Chemical Factory Manure & Phosphate Works, Hewitt's Case, Brett's Case* (1883), 25 Ch. D. 283.

See, generally, Sect. 21, sub-sect. 7, ante.

2781. — Non-compliance with terms of offer—Time for acceptance.]—At a meeting of a co. it was resolved that a large call should be made, & that any shareholders who wished to retire, & accepted the terms proposed before a certain day, might pay a part of the call, & that then their shares should be forfeited for non-payment of the rest. A shareholder accepted these terms after the day fixed, & his shares were declared forfeited by the directors:—*Held*: though the shareholder might have been able to retire if he had accepted before that day, the directors had not power, under the circumstances, to declare the shares forfeited, & he remained a shareholder.—*Re AGRICULTURISTS' CATTLE INSURANCE CO., STEWART'S CASE* (1866), 1 Ch. App. 511; 35 L. J. Ch. 750; 14 L. T. 841; 12 Jur. N. S. 611; 14 W. R. 954, L. C.

2782. — — — — —.]—Where a general meeting of the shareholders of a co. had agreed to certain conditions on which dissenting members were to be allowed to retire from the co., one of which fixed the date at which assent to the arrangement was to be declared:—*Held*: (1) that date was an essential part of the proceeding, & the directors had no power, after the expiration of that date, to receive proposals & enter into arrangements with any member who desired to retire but had not expressed his wish to do so within the stipulated time; (2) where shareholders know that their directors have been exceeding their legal powers & take no steps in the matter, but allow the things done to remain unimpeached for years, they must be taken to have retrospectively sanctioned what has been done.—*HOULDSWORTH v. EVANS* (1868), L. R. 3 H. L. 263; 37 L. J. Ch. 800; *sub nom. HOULDSWORTH v. EVANS, Re AGRICULTURISTS' CATTLE INSURANCE CO.*, 19 L. T. 211, H. L.

Annotations:—As to (2) Refd. Re Agriculturist Cattle Insce. Co., Dixon's Case (1869), 21 L. T. 288; *Murray v. Bush* (1873), 22 W. R. 280; *Ashbury Ry. Carriage & Iron Co. v. Riche* (1875), L. R. 7 H. L. 653; *Ho Tung v. Man On Insce.* (1901), 71 L. J. P. C. 46.

2783. — — — — — Shareholder no longer treated as member.]—*SPACKMAN v. EVANS*, No. 2779, *ante*.

2784. — Valueless shares accepted in discharge of shareholder's liability.]—*SPACKMAN v. EVANS*, No. 2779, *ante*.

2785. — Resolution for forfeiture—Name not removed from register.]—Fifty shares in a co. were registered in the joint names of a father & son on their application, & they paid £150 by way of deposit & allotment money. Shortly afterwards a call of £2 a share was made. The father became

a director, & having, as he said, discovered that the co. was formed under circumstances of gross fraud, wrote to the chairman warning the directors against involving the shareholders in any fresh liability. Shortly after, he resigned his seat as director. Two months afterwards, the call being unpaid, the father wrote to the chairman, requesting the directors to declare the shares forfeited; & said that he & his son must be satisfied that their names were taken off the register. A resolution was thereupon passed that the shares be forfeited; but the names were not removed from the register of shareholders, & were on it when the winding-up order was made more than a year afterwards. No steps were taken on one side to enforce the call, or on the other to recover the deposit & allotment money. Upon summons by the official liquidator, that the names might be settled on the list of contributories:—*Held*: (1) the so-called forfeiture of shares was void; & resps. must be settled on the list of contributories; (2) the costs of a contest by a person disputing his liability to be a contributory, & failing, must, except under special circumstances, be paid by such contributory.—*Re LONDON & PROVINCIAL STARCH CO., GOWERS' CASE* (1868), L. R. 6 Eq. 77; 18 L. T. 283, 317; 16 W. R. 751.

See, also, No. 2761, ante.

2786. — Under power of compromise—Membership conditional.]—W. was an official in Scotland of an English co.; the co. desired to have a board of directors there. W. suggested to D., who lived in Scotland, to take shares & become one of the intended directors. D. objected on the ground that it was not a co. of limited liability; W. assured him that he should be secured against loss, & that a bill was then about to be presented to Parliament to limit the shareholders' liability. D. thereon consented, & W. applied in his name for ten shares, obtained an allotment of ten & paid the deposit on them. This deposit was never repaid by D. to W. D., at W.'s request, signed a proxy paper, & also a receipt for a dividend, which, however, was in fact paid to W. The bill in Parliament was not passed. Some time afterwards a call was made on D. in respect of his shares, of which he took no notice; another call was made; he denied his liability, & desired W. to state the facts to the directors & to claim his discharge from liability. W. did so; & the directors, who, by the resolution of a general meeting, possessed powers to make compromises in disputes with shareholders, though not, in terms, to cancel shares, consented that, on D.'s paying a certain call then due, his shares should be cancelled. The money was paid, & D.'s name was struck out of the list, & a balance-sheet with his name struck out was presented at a general meeting as containing a list of persons whose shares had been cancelled. So things remained till some years afterwards, when the co. was ordered to be wound up; & D.'s name was put upon the list of contributories:—*Held*: it must be removed therefrom; the directors had had the power to make a compromise of a disputed claim, this case came within the power, & the power had been *bond fide* & rightly exercised.—*DIXON v. EVANS, Re AGRICULTURIST CATTLE INSURANCE CO.* (1872), L. R. 5 H. L. 606; 42 L. J. Ch. 139, H. L.; *affg. S. C. sub nom. Re AGRICULTURIST CATTLE INSURANCE CO., DIXON'S CASE*, 5 Ch. App. 79, L. J.

Annotations:—Refd. Mother Lode Consolidated Gold Mines v. Hill (1903), 19 T. L. R. 341; *Holsworthy U. C. v. Holsworthy R. C.*, [1907] 2 Ch. 62. *Mentd. Re Norwich Provident Insce. Soc., Bath's Case* (1878), 8 Ch. D. 334.

Compare No. 2729, ante.

Sect. 27.—Forfeiture of shares: Sub-sects. 4 & 5, A. & B. (a), (b).]

2787. Effect of lapse of time.]—*Re AGRICULTURIST CATTLE INSURANCE CO., STANHOPE'S CASE, No. 2777, ante.*

2788. —.]—*EVANS v. SMALLCOMBE, No. 2778, ante.*

2789. —.]—*HOULDSWORTH v. EVANS, No. 2782, ante.*

2790. —.]—*Re ESPARTO TRADING CO., No. 2780, ante.*

See, further, Sub-sect. 5, B. (b), post, & compare Sect. 26, sub-sect. 1, B., ante.

SUB-SECT. 5.—EFFECT OF FORFEITURE.

A. Liability of Member.

2791. As contributory—Requirements as to membership not complied with—Deed of settlement not executed.]—Shares were allotted to B. in respect of which he paid calls, but he was not a party to, & did not execute, the deed of settlement. The deed empowered the directors, in case the parties thereto, or the persons named in the sched., did not execute the deed, to declare their shares forfeited, but there was no sched. to the deed. The directors, in consequence of B.'s refusal to execute the deed, after giving him notice, declared his shares forfeited; & B. paid no further sums in respect of the shares:—*Held*: B. was not a contributory.—*Re KOLLMANN'S RAILWAY LOCOMOTIVE & CARRIAGE IMPROVEMENT CO., Ex p. BERESFORD (1850), 2 Mac. & G. 197; 2 H. & Tw. 388; 19 L. J. Ch. 332; 15 L. T. O. S. 429; 14 Jur. 655; 42 E. R. 76.*

Annotations:—Consd. Re Kollmann's Ry. Locomotive & Carriage Improvement Co., Ex p. Baily (1850), 20 L. J. Ch. 145; Re National Patent Steam Fuel Co., Barton's Case (1859), 4 Drew. 535.

2792. —.]—*Forfeiture for non-payment of calls.]—*A. took shares in a joint-stock co. & paid a deposit & a call, but did not execute the deed of settlement. A further call was made, which A. did not notice. The deed of settlement contained clauses authorising the directors to declare shares forfeited for non-payment of calls, & for not executing the deed of settlement. The directors declared A.'s shares to be forfeited for non-payment of calls. The co. was ordered to be wound up:—*Held*: A. was not a contributory.—*Re KOLLMANN'S RAILWAY LOCOMOTIVE & CARRIAGE IMPROVEMENT CO., Ex p. BAILY (1850), 20 L. J. Ch. 145; 16 L. T. O. S. 259; 15 Jur. 29.*

2793. —.]—*Liability as present member—Calls unpaid at date of forfeiture.]—*The arts. of assocn. of a co. provided that the forfeiture of a share should involve the extinction of all interest in, & all claims against, the co. in respect of the share; but that any member whose shares had been forfeited should be liable to pay to the co. all

calls owing on such shares at the time of such forfeiture:—*Held*: (1) the former owner of forfeited shares could not be placed on the list of contributories as a present member, in respect of the calls owing on his shares at the time of forfeiture; (2) no person can be settled on the list of contributories as a past member until it has been actually ascertained that the present members are unable to satisfy the contributions required to be made by them.

(3) The word "unpaid" in clause 4 of 1862 Act, s. 38, does not mean "unpaid at the time of winding up," but applies to a case of calls unpaid on shares forfeited prior to the winding up.—*Re BLAKELY ORDNANCE CO., NEEDHAM'S CASE (1867), L. R. 4 Eq. 135; 36 L. J. Ch. 665; 16 L. T. 472.*

Annotations:—As to (1) Reid. Aberaman Ironworks v. Wickens (1868), 18 L. T. 305; Re Goy, Farmer v. Goy (1900), 83 L. T. 309; Ladies' Dress Assocn. v. Pulbrook, [1900] 2 Q. B. 376.

2794. —.]—*Liabe as past member—Forfeiture for calls made after transfer.]—*Shareholders in a co. limited by shares transferred their shares within a year before the commencement of the winding up of the co. Calls were made on the transferees which they failed to pay, & the shares were duly forfeited by the directors for the benefit of the co.:—*Held*: the transferors were liable to be placed on the list of contributories as past members of the co.—*Re ACCIDENTAL & MARINE INSURANCE CORPN., BRIDGER'S CASE & NEILL'S CASE (1869), 4 Ch. App. 266; 38 L. J. Ch. 201; 19 L. T. 624; 17 W. R. 216, L. JJ.*

Annotation:—Apld. Re Blakely Ordnance Co., Creyke's Case (1869), 5 Ch. App. 63.

2795. —.]—(1) The arts. of a co. provided that shares may be forfeited for non-payment of a call, & that the forfeiture of any share should involve the extinction of all interest in & all claims & demands against the co. in respect of the share, & all other rights incident to the share. C. was the original holder of shares which were forfeited for non-payment of a call less than a year before the winding up of the co.:—*Held*: C. was properly placed upon the list of past members as a contributory.

(2) The liability of a past member is entirely created by 1862 Act, & it is immaterial whether his shares have been transferred or have been extinguished by forfeiture.—*Re BLAKELY ORDNANCE CO., CREYKE'S CASE (1869), 5 Ch. App. 63; 39 L. J. Ch. 124; 21 L. T. 572; 18 W. R. 103, L. J.*

See, also, No. 2799, post.

2796. For call—Forfeiture after call made & before due.]—*FAURE ELECTRIC ACCUMULATOR CO., LTD. v. PHILLIPART, No. 2049, ante.*

2797. Provision in articles for payment of interest on calls in arrear—Whether applicable to liability for calls on forfeiture.]—*Re BLAKELY ORDNANCE CO., STOCKEN'S CASE, No. 2100, ante.*

2798. Right of company to prove in bankruptcy of shareholder.]—A. was a shareholder in a joint-

PART III. SECT. 27, SUB-SECT. 5.—A.

g. As contributory—In winding up—Calls unpaid at date of forfeiture.]—Shareholders whose shares have been forfeited are not liable to be placed on list of contributories in winding-up proceedings, but may be sued, if the arts. of assocn. so provide, for amount unpaid on calls made.—*Re WADE (D.) Co. (1909), 2 Alta. L. R. 117.—CAN.*

h. —.]—Where the power of forfeiting shares has been properly & legally exercised, the person whose shares have been forfeited is not liable to be put on the list of contributories, on a winding-up.—*SCHETKY v. BRADSHAW, [1919] 2 W. W. R. 885.—CAN.*

k. —.]—*Re ACADIA, LTD., [1918] 3 W. W. R. 477.—CAN.*

l. —.]—*Effect of Statute of Limitations.]—*By the arts. of assocn. of a co. it was provided that "any member whose shares have been forfeited shall notwithstanding be liable to pay to the co. all calls, instalments, interest & expenses owing upon such shares at the time of such forfeiture." Deft. was sued for calls on shares & interest on such calls. The calls were made more than six years before the commencement of the action, but the shares had been forfeited only three years before:—*Held*: the above statute would not operate, & deft. was liable.—*GILLESPIE & Co. v. REID, [1905] V. L. R. 101.—AUS.*

m. As debtor to company—Plea of misrepresentation—Liquidation.]—

Where shares in a co. are forfeited for non-payment of calls the holder becomes a debtor of the co., & is not barred by the liquidation of the co. from pleading in answer to the demand for payment of calls that he was induced to take the shares through the fraudulent misrepresentations of the co.—*MOUNT MORGAN GOLD MINE v. M'MAHON (1891), 18 R. (Ct. of Sess.) 772; 28 Sc. L. R. 552.—SCOT.*

n. Calls unpaid at date of forfeiture—Due when made though payable by instalments.]—Shares of deft. were

stock bank, the deed of settlement of which provided that if any shareholder did not, on demand, pay all moneys which he owed to the bank, the directors might declare his shares forfeited for the benefit of the other proprietors, but that he should, notwithstanding such forfeiture, remain liable to pay the full amount of his debt. The directors gave A. a notice on Nov. 25 to pay on Dec. 2 a large sum which he owed them, in default of which his shares would be forfeited. On Nov. 28, he filed a declaration of insolvency, & was adjudged bkpt. on the following day. On Dec. 3 the directors forfeited his shares. On the bank coming in to prove, the comr. held the forfeiture invalid, & admitted the proof for the amount of the debt less the value of the shares, as in the case of a secured creditor:—*Held*: the validity of the forfeiture, if questioned, must be tried in an independent proceeding, & the proof must be admitted for the full amount of the debt, without prejudice to the right of the assignees to question the forfeiture.—*Re ANDREW, Ex p. RIPPON* (1869), 4 Ch. App. 639; 20 L. T. 936; 18 W. R. 1, L. J. Annotation:—*Mentd. Re Westbourne-Grove Drapery & Furnishing Co.* (1877), 25 W. R. 509.

2799. As debtor to company—In winding up.]—

(1) The arts. of assocn. of a co. provided that any member whose shares had been forfeited should, nevertheless, be liable to pay all calls owing upon the shares at the time of the forfeiture. Deft. had been the owner of shares in the co., but his shares had been forfeited for non-payment of calls. More than a year after the forfeiture the co. went into liquidation, & deft. was then sued for the unpaid calls:—*Held*: notwithstanding the provisions of 1862 Act, s. 38 (1) (3), the action was maintainable, inasmuch as deft. was liable, not as a contributory, but as a debtor to the co.—*LADIES' DRESS ASSOCN. v. PULBROOK*, [1900] 2 Q. B. 376; 69 L. J. Q. B. 705; 49 W. R. 6; 7 Mans. 465, C. A.

Annotation:—*Mentd. Re Walker & Smith* (1903), 72 L. J. Ch. 572.

B. Invalid Forfeiture.

(a) Remedies.

2800. Right to declaration that forfeiture void.]

—(1) A tender accompanied by a protest is valid.
(2) Where the directors of a co. have acted on a void forfeiture of shares, the holder is entitled to a declaration that the forfeiture is void, & to have the same cancelled.

(3) He may sue on behalf of himself & all other shareholders to obtain that relief.—*SWENY v. SMITH* (1869), L. R. 7 Eq. 324; 38 L. J. Ch. 446.

2801. Parties to action—Plaintiffs—Shareholder may sue in representative capacity.]—*SWENY v. SMITH*, No. 2800, *ante*.

Compare No. 7762, *post*.

Restraint of forfeiture.]—*See* Sub-sect. 6, *post*.

(b) Operation by way of Estoppel.

2802. Against member—Acquiescence for several years—Partial absence abroad.]—In Feb. 1825, a joint-stock co. was established for the purpose of working a mine, the capital of which was to consist

of 200 shares of £50 each. The directors had power to exact the full payment of £50 on each share, but if further aid were required, then they were to call a meeting of proprietors & submit to their decision the propriety of increasing the number of shares, or of taking such other steps as might appear advisable. Pltfs., who were shareholders, paid the full amount of their calls, but in Oct. 1862, were informed by the secretary of the co. that he had some time since mentioned to a person, who was pltfs.' agent for payment of their calls, that in the previous July the directors had resolved to increase the amount of calls on each share. To this pltfs. objected, & refused to pay the additional calls. An altercation by letter ensued till about Aug. 1828, when pltfs., as they alleged, left the country. In July, 1828, their shares were declared forfeited. The other shareholders then continued to work the mine, but the concern was unsuccessful till 1835, when it began to make an increasing profit. In Nov. 1837, pltfs., as they alleged by their bill, returned to this country. In Sept. 1838, they filed their bill to be let into the receipts of the profits with the other shareholders. It did not appear in evidence whether pltfs. were absent from this country, or where they were, between Aug. 1828 & Nov. 1837, except that it was admitted by defts. that in 1828 they were in Jersey. Many acts of irregularity & misconduct in the management of the concern during the interval were admitted by defts., & amongst others, the fact that, during a great portion of that period, the concern was managed by an insufficient number of directors. Pltfs. had no means, under the deed of settlement, of dissolving the society:—*Held*: pltfs., not having sufficiently accounted for their acts & conduct during the interval between Aug. 1828, & Nov. 1837, must be considered as having acquiesced in the conduct of the directors & other shareholders in the concern, & were not entitled to the relief sought by their bill.—*PRENDERGAST v. TURTON* (1841), 1 Y. & C. Ch. Cas. 98; 11 L. J. Ch. 22; 5 Jur. 1102; 62 E. R. 807; *affd.* (1843), 13 L. J. Ch. 268, L. C.

Annotations:—*Consd. Clarke & Chapman v. Hart* (1858), 6 H. L. Cas. 633; *Garden Gully United Quartz Mining Co. v. McLister* (1875), 1 App. Cas. 39; *Rule v. Jewell* (1881), 18 Ch. D. 660. *Appld. Jones v. North Vancouver Land & Improvement Co.*, [1910] A. C. 317. *Reid. Re Shadwell Waterworks Co.*, *Ex p. Dibbens* (1869), 18 W. R. 160. *Mentd. Penny v. Pickwick* (1852), 16 Beav. 246; *Myers v. United Guarantee, etc. Co.*, *United Guarantee, etc. Co. v. Cleland* (1855), 7 De G. M. & G. 112; *Whalley v. Whalley* (1860), 2 De G. F. & J. 310; *Erlanger v. New Sombrero Phosphate Co.* (1878), 3 App. Cas. 1218; *Palmer v. Moore*, [1900] A. C. 293.

2803. ——— Shareholder a director & party to forfeiture proceedings.]—*JONES v. NORTH VANCOUVER LAND & IMPROVEMENT CO.*, No. 2153, *ante*.

2804. Against company—Shareholder no longer treated as member—Acquiescence for several years—No dividends paid—Some shares reissued.]—A shareholder had retired from a co. in pursuance of an invalid arrangement for the forfeiture of shares, which had been proposed to the shareholders generally by circular. Twelve years afterwards the co. was ordered to be wound up. The shareholder's name had never during the

forfeited for non-payment of call in Dec. 1900. In Oct. 1900, co. made a second call & sued deft. in Nov. 1901, for amount of the second call before last two instalments had become due:—*Held*: the whole call was "owing" at the date of forfeiture & deft. was liable.—*LAND MORTGAGE BANK OF VICTORIA, LTD. v. MCCONNELL* (1902), 28 V. L. R. 19.—**AUS.**

c. For call — During period of

forfeiture—Liability of purchaser of forfeited shares.]—Calls cannot be made on forfeited shares during the period of their forfeiture. *Semble*: assuming that when a forfeited share is sold it ought not to be treated as paid up to the same amount as the non-forfeited shares on which the calls have been paid, then the person who buys such forfeited share may be liable for the whole amount of unpaid capital, but not to pay the past calls.—*MORLEY v.*

GORE (1893), 19 V. L. R. 199.—**AUS.**

PART III. SECT. 27, SUB-SECT. 5.—
B. (a).

p. Application to court to rectify register.]—The validity of a forfeiture of shares may be inquired into by application to the court to rectify the register.—*GRAHAM ISLAND COLLIERIES, LTD. v. MCLEOD* (1914), 27 W. L. R. 227.—**CAN.**

Sect. 27.—Forfeiture of shares: Sub-sect. 5, B. (b); sub-sects. 6, 7 & 8. Sect. 28: Sub-sect. 1, A.]

interval been upon the register, nor had any payment been made to him in respect of the dividends which had been paid to continuing shareholders, & some of his shares had actually been allotted to other persons who were registered in respect of them & received the dividends. It did not appear that any debt existed at the date of the winding-up order, which had been contracted before the shareholder's retirement:—*Held*: it was too late to question the regularity of the forfeiture, & the retired shareholder was not a contributory.—*Re AGRICULTURAL CATTLE INSURANCE CO., BROTHERHOOD'S CASE* (1862), 4 De G. F. & J. 566; 31 L. J. Ch. 861; 7 L. T. 142; 8 Jur. N. S. 926; 10 W. R. 852; 45 E. R. 1304, L. J.J.

Annotations:—Distd. *Re Agriculturists' Cattle Insee.*, Stewart's Case (1866), 1 Ch. App. 511. **Consd.** *Re Agriculturist Cattle Insee.*, Stanhope's Case (1866), 1 Ch. App. 161; Spackman v. Evans (1868), L. R. 3 H. L. 171. **Refd.** *Re Agriculturist Cattle Insee.*, Belhaven's Case (1865), 3 De G. J. & Sm. 41; Evans v. Smallcombe (1868), L. R. 3 H. L. 249; *Re Agriculturist Cattle Insee.*, Dixon's Case (1869), 21 L. T. 288; Phosphate of Lime Co. v. Green (1871), L. R. 7 C. P. 43. **Mentd.** *Re General Provident Assce.*, Cross's Case (1869), 38 L. J. Ch. 583; *Re Accidental Death Insee.*, Allin's Case (1873), L. R. 16 Eq. 449.

2805. ——— Forfeiture for non-payment of call after invalid conversion—Protest by member but no action taken by company.]—*Re FINANCIAL CORPN., FEILING'S & RIMINGTON'S CASE, KING'S CASE, HOLMES'S, PRITCHARD'S & ADAMS'S CASES*, No. 1447, *ante*.

2806. ——— Shares shown as forfeited in balance sheet.]—Where shares have been clearly treated by the directors of a public co. as forfeited, such as giving credit in their report & balance-sheet for moneys received in respect of shares which had been forfeited, the parties who originally held the shares will not be considered as contributories.—*Re STATE FIRE INSURANCE CO., WEBSTER'S CASE* (1862), 32 L. J. Ch. 135; 7 L. T. 618; 11 W. R. 226.

Annotation:—Refd. *Re East Kongsberg Co.*, Bigg's Case (1865), L. R. 1 Eq. 309.

Presumption that forfeiture valid—After lapse of time.]—See No. 2754, *ante*.

See, further, Sub-sect. 4, *ante*.

SUB-SECT. 6.—RESTRAINT OF FORFEITURE.

2807. Time for taking proceedings—Whether before forfeiture threatened.]—*HOPKINSON v. MORTIMER, HARLEY & CO., LTD.*, No. 2168, *ante*.

2808. By injunction—When granted—Threat of forfeiture while action for rescission pending—Amount of call paid into court.]—*RIPLEY v. PAPER BOTTLE CO.*, No. 2149, *ante*.

2809. ———.]—*LAMB v. SAMBAS RUBBER & GUTTA PERCHA CO., LTD.*, No. 2150, *ante*.

2810. ———.]—*CHARRON, LTD. v. INDIAN MOTOR TAXI-CAB CO.*, No. 2152, *ante*.

2811. ———.]—*JONES v. PACAYA RUBBER & PRODUCE CO., LTD.*, No. 2151, *ante*.

Compare Nos. 8110, 8300, *post*.

Remedies for invalid forfeiture.]—See Sub-sect. 5, B. (a), *ante*.

SUB-SECT. 7.—RESCISSION OF FORFEITURE.

2812. By liquidator—By agreement with shareholder.]—*Re CHINA S.S. CO., DAWES' CASE*, No. 2767, *ante*.

2813. By company—Against wish of member—Member not subjected to liability.]—The arts. of a co. provided that on non-payment of a call on shares the directors might forfeit the shares; that the forfeited shares should be the property of the co.; that before the shares were disposed of the directors might "annul the forfeiture" upon such conditions as they thought fit; & that withstanding the forfeiture the shareholder should be liable to pay all calls, interest, & expenses owing in respect of the shares at the time of forfeiture. The directors passed a resolution forfeiting the shares of L. for non-payment of a call, & gave him notice of the forfeiture. On demand L. paid the call, interest, & expenses, & at the same time wrote that he repudiated any further liability on the shares. Nine months afterwards the directors passed a resolution purporting to rescind the forfeiture & giving notice to L. that he was registered in respect of the shares. L. replied declining to have his name reinstated as owner of the shares:—*Held*: the co. had no power adversely to L. to reinstate him with the liability of a shareholder.—*Re EXCHANGE TRUST, LTD., LARK-WORTHY'S CASE*, [1903] 1 Ch. 711; 72 L. J. Ch. 387; 88 L. T. 56; 10 Mans. 191.

2814. At option of shareholder—On application in writing & payment of arrears of calls—Application not in writing—Payment by cheque.]—Directors who were empowered by the arts. of assocn. to remit the forfeiture of shares upon such terms as they might think fit, gave notice to a shareholder whose shares had been forfeited for non-payment of a call, that if an application in writing were made to the board, such application to be made not later than the evening of May 10, & accompanied by the amount of the call & interest at 10 per cent., the directors would remit the forfeiture; & concluding: "N.B.—The directors have no power to remit the forfeiture after May 11":—*Held*: the tender of a cheque for the proper amount at the office of the co. about 3.45 p.m. on May 10, accompanied by no written application for remission of the forfeiture, was a sufficient compliance with the requisitions of the notice, although such cheque was not paid into the co.'s bankers until the morning of May 11.—*Re QUEBRADA CO., LTD., CLARKE'S CASE* (1873), 42 L. J. Ch. 277; *sub nom. Re NEW QUEBRADA CO., LTD., CLARKE'S CASE*, 27 L. T. 843; 21 W. R. 429.

Sufficiency of tender & payment.]—See, generally, CONTRACT, Vol. XII., pp. 319 *et seq.*, 454 *et seq.*

SUB-SECT. 8.—REISSUE OF FORFEITED SHARES.

2815. Power to reissue—At less than nominal value—Whether issue at discount.]—(1) Original shares that have been forfeited by the co. for non-payment of calls can be resold by the directors for less than the nominal value without a contract registered in accordance with 1867 Act, s. 25.

(2) Calls due from a shareholder who is also the

PART III. SECT. 27, SUB-SECT. 7.

q. On payment of arrears of calls—Right to set off dividends.]—Shares in a co. were declared forfeited, for non-payment of calls. On petition filed to redeem them, the redemption was decreed, on payment of all arrears of calls, & of interest thereon:—*Held*:

the owner of the shares was entitled to set off, as against such arrears of calls, & interest, the amount of all dividends which, but for default in payment of calls, would have been payable in respect of such shares, in proportion to the capital paid up.—*TURNER v. DUBLIN & BELFAST*

JUNCTION RY. CO. (1854), 4 I. Ch. R. 194.—IR.

PART III. SECT. 27, SUB-SECT. 8.

r. Effect of re-issue.]—Shares in a co. were forfeited for non-payment of calls. The calls were subsequently paid & the forfeited shares reissued to

solr. of the co. may be set off against his bill of costs.

(3) Directors with power to accept payment in advance of calls authorised their solr. R., who was a shareholder, to pay the claims of three pressing creditors, amounting to £250. R. paid these creditors & took from the directors a receipt for the amount "in prepayment of calls." These creditors were paid when the insolvency of the co. was admitted but before the presentation of the winding-up petition. The official liquidator having made a call which amounted in R.'s case to £320:—*Held*: the £250 was a valid payment *pro tanto*, in advance of calls, & not a fraudulent preference, & R. was only liable for the balance.—*Re EXCHANGE BANKING CO., LTD., RAMWELL'S CASE* (1881), 50 L. J. Ch. 827; 45 L. T. 431; 29 W. R. 882.

Annotation:—*As to* (1) *Reid. Randt Gold-Mining Co. v. New Balkis Eersteling* (1901), 71 L. J. K. B. 346.

2816. ——— **Credit given for amount already paid.**—Where a limited co. has power to forfeit shares for non-payment of calls, & sell, re-allot, & dispose of them in such manner as the directors think fit, it can, in re-allotting forfeited shares partly paid-up, give credit for the money already received in respect of the shares. Such a transaction is not an issue of shares, & is not contrary to the principle that a co. under the Cos. Acts cannot issue shares at a discount.—*MORRISON v. TRUSTEES, EXECUTORS & SECURITIES INSURANCE CORPN.* (1898), 68 L. J. Ch. 11; 79 L. T. 605; 15 T. L. R. 34; 43 Sol. Jo. 41; 5 Mans. 356, C. A.

Annotations:—*Consd. Randt Gold-Mining Co. v. New Balkis Eersteling* (1901), 71 L. J. K. B. 346. *Apld. Re Victoria (Malaya) Rubber Estates* (1914), 58 Sol. Jo. 706.

See, generally, Sect. 20, sub-sect. 1, *ante*.

2817. ——— **At full value—Though partly paid.**—It was provided by one of the arts. of assocn. of a co. that every share which should be forfeited should thereupon become the property of the co. & the directors might sell, re-allot or otherwise dispose of the same upon such terms & in such manner as they should think fit. On a petition for reduction of capital:—*Held*: the forfeited shares could be treated as unissued & with nothing paid thereon, although the sum of £82 7s. 6d. had in fact been paid in respect of them.—*Re VICTORIA (MALAYA) RUBBER ESTATES, LTD.* (1914), 58 Sol. Jo. 706.

2818. **Effect of reissue—As preference shares—Issue of preference shares ultra vires.**—The directors, with the approbation of a general meeting of a co., reissued certain shares, purporting to be shares entitled to preference interest, some of which shares were taken by A., & by him sold to B. as preference shares. The directors, however, had no power to issue such preference shares:—*Held*: nevertheless B. was a contributory.—*Re NATIONAL PATENT STEAM FUEL CO., Ex p. WORTH* (1859), 4 Drew. 529; 28 L. J. Ch. 589; 33 L. T. O. S. 87; 5 Jur. N. S. 504; 7 W. R. 281; 62 E. R. 203.

Annotations:—*Mentd. Re Royal British Bank, Ex p. Frowd* (1861), 30 L. J. Ch. 322; *Re Overend, Gurney, Ex p. Oakes & Peek* (1867), L. R. 3 Eq. 576.

2819. ——— **Right to vote—While calls remain unpaid—Calls payable by former member.**—Where the arts. of assocn. of a co. provide that after forfeiture of shares for non-payment of calls the co. shall be entitled to recover the calls from the original holder, & also that no member shall have a vote so long as any calls, or other sums, are due & payable in respect of any share, the calls

upon a forfeited share are "sums due in respect thereof," & the purchaser from the co. of forfeited shares cannot vote so long as the calls have not been recovered from the former shareholder.—*RANDT GOLD MINING CO., LTD. v. WAINWRIGHT*, [1901] 1 Ch. 184; 70 L. J. Ch. 90; 84 L. T. 348; 17 T. L. R. 29; 45 Sol. Jo. 60; 8 Mans. 61.

2820. ——— **Liability in respect of calls—Shares taken to enable company to be registered—Forfeiture by agreement.**—*Re LONDON & COUNTY ASSURANCE CO., Ex p. JONES*, No. 2775, *ante*.

2821. ——— **Reissue discharged from all prior calls—Prior call for whole amount unpaid—Subsequent fresh call.**—When shares which have been forfeited for non-payment of a call are sold, & a certificate of proprietorship is delivered to the purchaser under 1862 Act, Table A., art. 22, stating that he is to be deemed to be the holder of the shares "discharged from all calls due prior to the date" of the certificate, he is liable for the payment of future calls duly made.—*NEW BALKIS EERSTELING, LTD. v. RANDT GOLD MINING CO.*, [1904] A. C. 165; 73 L. J. K. B. 384; 90 L. T. 494; 52 W. R. 561; 20 T. L. R. 396; 48 Sol. Jo. 368, H. L.; 11 Mans. 159; *affg. S. C. sub nom. RANDT GOLD MINING CO. v. NEW BALKIS EERSTELING, LTD.*, [1903] 1 K. B. 461, C. A.

Annotation:—*Mentd. Re West Coast Gold Fields, Rowe's Trustee's Claim*, [1906] 1 Ch. 1.

2822. ——— **New member entitled to be credited with subsequent payments by former member.**—Where a co. in pursuance of its arts. of assocn. has forfeited shares for non-payment of calls, & the arts. provide that notwithstanding forfeiture the ex-shareholder shall be liable to pay the amount of the calls, & the shares are subsequently re-allotted to another person, that person is entitled on the winding up of the co. to be credited with all sums paid by the previous holder, whether in respect of money paid by him as a shareholder in respect of the shares, or as a debtor in respect of his liability under the arts. to pay calls notwithstanding forfeiture.—*Re RANDT GOLD MINING CO.*, [1904] 2 Ch. 468; 73 L. J. Ch. 598; 91 L. T. 174; 53 W. R. 90; 20 T. L. R. 619; 12 Mans. 93.

SECT. 28.—DIRECTORS.

SUB-SECT. 1.—APPOINTMENT.

A. Who are Eligible.

2823. **Undischarged bankrupt—Articles providing for vacation of office on bankruptcy—Eligible.**—(1) No. 114 of the arts. of a co. provided that all acts done at any meeting of directors or by any person acting as a director should, notwithstanding that it should be afterwards discovered that there was some defect in the appointment of such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed & was qualified to be a director. T., N., & S., the *de facto* directors, made a call, payment of which was resisted by some of the shareholders on the ground that T., N., & S., were not *de jure* directors. To show that they were not, various irregularities were alleged, the most important of which was that N. had according to the arts. vacated his office by parting with all his shares. After six days he acquired other shares sufficient for a qualification,

the shareholders. The co. went into voluntary liquidation:—*Held*: the reissue of the shares to the persons

who had forfeited them entitled those shareholders to share in the distribution of the co.'s assets.—*Re POINT CHEVA-*

LIER MOTOR BUS CO., LTD. (IN LIQUIDATION), [1921] N. Z. L. R. 263.—N.Z.

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& continued to act as a director. His co-directors, who had power to fill up the casual vacancy occasioned by his parting with his shares, did not formally reappoint him, but all along treated him as a director; & it did not appear that they ever knew that for six days he had not been a shareholder:—*Held*: a clause such as art. 114 did not operate only as between the co. & outsiders, but also as between the co. & its members, & was sufficient to cover such irregularities as those alleged, & the call was valid.

(2) T. was an undischarged bkpt. One of the arts. provided that a director should vacate his office if he became bkpt.:—*Held*: this did not prevent the appointment of bkpt. to be a director.

—*DAWSON v. AFRICAN CONSOLIDATED LAND & TRADING CO.*, [1898] 1 Ch. 6; 67 L. J. Ch. 47; 77 L. T. 392; 46 W. R. 132; 14 T. L. R. 30; 42 Sol. Jo. 45; 4 Mans. 372, C. A.

2824. Limited company.]—A co. registered under 1862 Act need not have any directors, & there is nothing in the Cos. Acts prohibiting the appointment of a limited co. as a director or manager of another co.—*Re BULAWAYO MARKET & OFFICES CO., LTD.*, [1907] 2 Ch. 458; 76 L. J. Ch. 673; 97 L. T. 752; 23 T. L. R. 714; 51 Sol. Jo. 703; 14 Mans. 312.

Disqualification.]—See Sub-sect. 8, C., *post*.

B. Power and Mode of Appointment.**(a) By Subscribers to Memorandum.**

2825. Time for exercise—After incorporation of company.]—The subscribers to the memorandum of assocn. of a co. met, & before the registration of the co., purported to appoint certain persons as directors. The co. was then registered, but without arts. of assocn., and it was therefore governed by the regulations in Table A to 1862 Act. Relying on this appointment these directors objected to their management of the affairs of the co. being interfered with by certain persons who set up that they had been appointed directors after registration of the co. Art. 52 of Table A provides that "the number of directors, & the name of the first directors, shall be determined by the subscribers of the memorandum of assocn.":—*Held*: this can apply only to empower the subscribers to appoint directors after the co. has been registered. Table A cannot have any application to regulate a co. before its incorporation. The co. has no existence until registration.—*MÖLLER v. MACLEAN* (1889), 1 Meg. 274.

2826. — After first ordinary meeting & adjourned meeting held.]—(1) Art. 58 of Table A to

1862 Act, providing that "at the first ordinary meeting after the registration of the co. the whole of the directors shall retire from office," does not apply to mere *de facto* directors; nor does it apply to subscribers of the memorandum of assocn. who, not having appointed directors under art. 52, are, by art. 53, "deemed to be directors"; it only applies to directors who have been duly appointed under the arts.

(2) Art. 62 does not apply so as to continue mere *de facto* directors as directors till the ordinary meeting in the year next after that in which a meeting has been held at which an election of directors ought to have taken place, when no directors have been elected either at such earlier meeting or the adjournment thereof.

(3) The power given by art. 52 to the subscribers of the memorandum, to determine who shall be the first directors, remains in force notwithstanding the first ordinary meeting after registration & the adjourned meeting held seven days afterwards, have been held without any directors being appointed thereat.

(4) Art. 35, prescribing seven days' notice for summoning a meeting, only applies to general meetings of the co. Table A contains no special provision as to summoning meetings of subscribers of the memorandum of assocn., & only reasonable notice of such meetings is necessary.—*JOHN MORLEY BUILDING CO. v. BARRAS*, [1891] 2 Ch. 386; 60 L. J. Ch. 496; 64 L. T. 856; 39 W. R. 619.

2827. Where appointment by resolution at meeting—Whether notice of meeting necessary—Under 1862 Act, Table A., art. 35.]—*JOHN MORLEY BUILDING CO. v. BARRAS*, No. 2826, *ante*.

2828. — Under special article.]—A co. was registered on Feb. 17, 1897, under the Cos. Acts, & on Feb. 18 a meeting of the subscribers to the memorandum of assocn. was held, at which one of the subscribers was appointed a director, & he afterwards acted as such. By the arts. of assocn. of the co., Table A of 1862 Act, so far as it dealt with the appointment of the first directors, was expressly excluded, but the arts. contained no provisions in substitution therefor. By the arts. seven days' notice of any meeting was necessary. The person so appointed as a director assigned to pltf. the fees alleged to be due to him as such:—*Held*: as seven days' notice of the meeting was not & could not have been given, the appointment of the director was invalid, & neither he nor his assignees could sue the co. for his fees, or upon a *quantum meruit* for services rendered.—*WOOLF v. EAST NIGEL GOLD MINING CO., LTD.* (1905), 21 T. L. R. 660.

2829. — Necessity for quorum—Majority of subscribers.]—A co. registered under 1856 Act,

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2824 i. Limited company.]—Where the arts. of a co. empower a single director to govern, a limited co. may be appointed to perform the duties & powers usually performed by individuals appointed as directors.—*BANK OF IRELAND v. COGRY SPINNING CO.*, [1900] 1 I. R. 219.—*IR.*

s. Legatee of shares of deceased director—Act requiring three directors—Only three shareholders.]—The Act of incorporation of a co. provided that there should not be less than three directors, each of whom should be a shareholder. The corpn. consisted of three shareholders, who were the directors. Upon the death of one a meeting was called to appoint a new director, when S., to whom the deceased director had bequeathed his shares, was declared elected by one of the two directors, although the other refused

to concur in the appointment:—*Held*: no election was necessary to make S. a director, there being only three shareholders each of whom was qualified to be a director.—*KIELY v. KIELY* (1878), 3 A. R. 438.—*CAN.*

t. Provisional directors.]—When deft. co. became incorporated certain parties were called provisional directors. No bye-laws were adopted, no directors elected, nor any subsequent proceedings taken:—*Held*: these directors were the directors of the co.—*MULDOWAN v. GERMAN CANADIAN LAND CO.* (1909), 10 W. L. R. 561.—*CAN.*

a. Partners of firm.]—The arts. of assocn. of a one-ship co. provided: "That the partners for the time being of B. & Co. shall be the first managers of the co.":—*Held*: the individuals who were partners of B. & Co. at the time when the co. was incorporated,

remained managers till death, resignation, disqualification, or removal, quite irrespective of any changes in the constitution of the B. Co.—*DUFF v. S.S. OVERDALE CO., LTD.* (1915), 52 So. L. R. 849.—*SCOT.*

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b. Power not exercised — Subscribers to act in default of exercise.]—By the arts. of assocn. of a co. it was provided that the first directors should be appointed in writing, under the hands of not less than four of the subscribers to the memorandum of assocn., & that, until directors were appointed, the subscribers to the memorandum of assocn. should have the power of, & might act as, directors. The co. made application for the purpose of obtaining powers to carry out their undertaking. The application was

brought an action against a shareholder for calls under sect. 22 of that Act. It was proved that the co. was formed to consist of 240 shares of £20 each; that it was provided by the arts. of assocn. Art. 44, "The number of directors shall be five, three of whom shall form a quorum, & the names of the first directors shall be determined by the subscribers of the memorandum of assocn.;" Art. 45, "Until directors are appointed the subscribers of the memorandum of assocn. shall for all purposes of this Act be deemed to be directors." Seven persons subscribed the memorandum of assocn. At a meeting of which three only of them were present, five of their number, of whom deft. was one, were appointed directors of the co. Deft. attended meetings as a director. A call was made at a meeting at which three only of the persons so chosen as directors were present. At this time only 68 shares had been subscribed for:—*Held*: deft. was not liable to an action for calls, because the directors had not been duly appointed; & the persons who made the call were not a quorum of the subscribers of the memorandum of assocn.—*HOWBEACH COAL CO., LTD. v. TEAGUE* (1860), 5 H. & N. 151; 2 L. T. 187; 6 Jur. N. S. 275; 8 W. R. 264; 157 E. R. 1136; *sub nom.* *HOWBEACH COAL CO. v. TEAGUE*, *HOWBEACH COAL CO. v. BENNETT*, 29 L. J. Ex. 137.

Annotations:—*Consd.* *Dawson v. African Consolidated Land & Trading Co.*, [1898] 1 Ch. 6. *Refd.* *York Tram. Co. v. Willows* (1882), 8 Q. B. D. 685; *Re London & Southern Counties Freehold Land Co.* (1885), 31 Ch. D. 223; *Briton Medical, General & Life Assocn. v. Jones* (2) (1889), 61 L. T. 384. *Mentd.* *Ornamental Pyrographic Woodwork Co. v. Brown* (1863), 2 H. & C. 63; *Re English, etc., Rolling Stock Co., Lyon's Case* (1866), 35 Beav. 646; *Re Liverpool Household Stores Assocn.* (1890), 59 L. J. Ch. 616.

2830. ————.]—The arts. of assocn. of a co. followed Table A. of 1862 Act; clauses 52 & 53 of that table being to the effect that the number of directors shall be determined by the subscribers of the memorandum of assocn., & that until directors are appointed the subscribers of the memorandum of assocn. shall be deemed to be directors. There was also a special article that the number of directors should not be less than three nor more than ten, & that two should form a quorum. Directors were appointed at a meeting attended by two only of the subscribers of the memorandum of assocn.:—*Held*: the special art. only applied when the directors had been duly appointed, & the directors having been appointed at a meeting consisting of a minority of the subscribers of the memorandum of assocn., the appointment was invalid.—*Re LONDON & SOUTHERN COUNTIES FREEHOLD LAND CO.* (1885), 31 Ch. D. 223; 55 L. J. Ch. 224; 54 L. T. 44; 34 W. R. 163; 2 T. L. R. 148.

Annotations:—*Appld.* *Re Great Northern Salt & Chemical Works, Ex p. Kennedy* (1890), 44 Ch. D. 472. *Refd.* *Dawson v. African Consolidated Land & Trading Co.* (1897), 77 L. T. 392. *Mentd.* *Ellett v. Sternberg* (1910), 27 T. L. R. 127.

2831. ———— **Sufficiency of quorum**—Four out of seven.]—By the arts. of assocn. the business of a co. was to be managed by a board, which was to consist of the directors for the time being, or a quorum of such directors assembled at a meeting constituting a board for the transaction of business. The number of the board was not to be less than three, nor more than seven. The first directors were to be determined by the subscribers to the

memorandum of assocn., & until the directors were appointed the subscribers were to be the directors. The first directors had power to add any persons to their number, within a certain time, provided the total number of the board did not at any time exceed seven. No person, except the first directors & such persons as were added to their number, was qualified to be a director unless he was the registered holder of shares of a certain value for at least three months. Any casual vacancy in the board was to be filled up by the board, which was empowered to continue to act notwithstanding such vacancy. The board was also empowered to determine the quorum necessary for the transaction of business. All acts of the board, or of any person acting as one of the board, were to be valid, notwithstanding the discovery afterwards of any defect in the appointment or qualification of any of the board. Four out of seven of the original subscribers only were present at the first meeting of the co.; three of their number were elected first directors, & a resolution was passed that two of such directors should form a quorum. At the next meeting of the board, F., H., & E. were appointed directors, & at a subsequent meeting the resignations of the three original directors were accepted. F. shortly afterwards sent in his resignation by letter. At a meeting of the board on Oct. 28, 1880, at which H. & E. were the only directors present, fifty shares were allotted to deft.; F.'s resignation was accepted, & deft. was appointed director to fill up the casual vacancy caused thereby. Deft. joined the board, & on Nov. 15 acted as a director, confirming, amongst others, the resolution passed at the previous meeting allotting fifty shares to him. In an action for calls on the shares allotted to deft.:—*Held*: (1) the first directors had been properly appointed by four out of seven subscribers to the memorandum of assocn.; (2) the quorum appointed by the subscribers at the first meeting was not properly appointed, & ought to have been appointed by the board; (3) deft., in the absence of any proper quorum, was duly appointed by a majority of the board, namely, two out of three, to fill up the casual vacancy caused by F.'s resignation.—*YORK TRAMWAYS CO. v. WILLOWS* (1882), 8 Q. B. D. 685; 51 L. J. Q. B. 257; 46 L. T. 296; 30 W. R. 624, C. A.

Annotations:—*As to* (1) *Refd.* *Re London & Southern Counties Freehold Land Co.* (1885), 31 Ch. D. 223. *As to* (2) *Refd.* *Re Fireproof Doors, Umney v. The Co.*, [1916] 2 Ch. 142. *As to* (3) *Refd.* *Faure Electric Accumulator Co. v. Phillipart* (1888), 58 L. T. 525. *Generally, Mentd.* *Municipal Freehold Land Co. v. Pollington* (1890), 59 L. J. Ch. 734; *Dawson v. African Consolidated Land & Trading Co.*, [1898] 1 Ch. 6.

See, also, Nos. 2829, 2830, *ante*.

See, now, 1908 Act, Table A, art. 68.

2832. Whether meeting necessary—Appointment by document signed by all subscribers.—The seven subscribers to the memorandum of assocn. of a co., regulated by Table A. of 1862 Act, without meeting together for the purpose, all signed a document in writing, dated July 27, 1888, appointing four persons to be the first directors of the co., & these four persons met & resolved that two directors should form a quorum to transact the business of the co. At the first ordinary meeting, which was held on Aug. 20, 1888, these four persons did not retire from office, as provided by art. 58 of Table A.; but a resolution was passed at the meeting

rejected, & the co. took no further proceedings, & transacted no other business. No meeting of the co. was ever called, & no directors were appointed. An order having been made for winding up the co., the

liquidator contended that the signatories to the memorandum having neglected to appoint directors, must be deemed to have constituted themselves directors:—*Held*: the subscribers to the memorandum, having

made default in holding an election of directors, were chargeable in equity as if they had duly appointed themselves.—*Re BALLINA LIGHT RY. CO.* (1888), 21 L. R. Ir. 497.—IR.

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authorising them to continue to act as directors; & two of those four persons on the same day allotted to K., an appct., 200 ordinary shares in the co.:—*Held*: (1) as the subscribers to the memorandum of assocn. had all concurred in appointing the first directors of the co., the fact that they had not met together for the purpose of coming to their determination did not invalidate their act, & accordingly, the appointment in writing of July 27, 1888, was good; (2) the resolution passed at the general meeting of Aug. 20, 1888, was valid to the extent of continuing in office the then present directors; (3) art. 62 of Table A, which provides that, if at any meeting at which the election of directors ought to take place the places of the vacating members are not filled up, the meeting shall stand adjourned till the same day in the next week, & further provides as therein mentioned, is directory only; & the meaning of that art. is, that if for any reason either the first meeting, or the adjourned meeting at which the election of directors ought to take place, does not proceed validly to fill up the places of the vacating directors, then they are to continue in office; & accordingly, the four directors were validly in office on Aug. 20, 1888, & the allotment of 200 shares made to K. by two of those four directors was valid.—*Re GREAT NORTHERN SALT & CHEMICAL WORKS, Ex p. KENNEDY* (1890), 44 Ch. D. 472; 59 L. J. Ch. 288; 62 L. T. 231; 2 Meg. 46.

Annotation:—As to (3) *Reid. Re Consolidated Nickel Mines*, [1914] 1 Ch. 883.

(b) By Existing Directors.

2833. Directors authorised to appoint additional directors—No proper quorum appointed—Appointment by majority.—*YORK TRAMWAYS CO., v. WILLOWS*, No. 2831, *ante*.

See, also, No. 2839, *post*.

2834. Directors authorised to fill casual vacancies—General meeting held before vacancy filled—Power not lost.—One of the arts. of assocn. of a co. provided that any "casual vacancy" occurring in the board of directors might be filled up by the directors by the election of a member duly qualified. Previously to the general meeting of the co. a vacancy occurred in the board, & the vacancy was filled up by the directors after the general meeting had been held. The directors filled up the vacancy by electing pltf. as a director, but they subsequently refused to allow him to join the board, & maintained that his election was invalid because a general meeting had intervened between the time when the vacancy occurred & the time when pltf. was elected by the board. Pltf. commenced an action against the co. & the directors, & moved for an injunction to restrain the directors, from interfering or preventing him from acting

as a director:—*Held*: the general meeting did not put an end to the power of the directors to fill up a "casual vacancy," & pltf. was entitled to the injunction.—*MUNSTER v. CAMMELL CO.* (1882), 21 Ch. D. 183; 51 L. J. Ch. 731; 47 L. T. 44; 30 W. R. 812.

Annotations:—*Reid. Harben v. Phillips* (1883), 23 Ch. D. 14. *Bennett (Birmingham) v. Lewis* (1903), 20 T. L. R. 1.

2835. — Existing directors fewer than minimum provided by articles.—By the arts. of assocn. of pltf. limited co., in liquidation, it was provided that the board of directors should consist of not less than three or more than seven directors. Calls were to be made by the board of directors. If any casual vacancy occurred in the office of directors, it might be filled up by the board of directors. Deft. was a director of pltf. co. & a shareholder in it to a large extent. At a meeting of directors held on Nov. 7, 1882, a call of £1 per share was made, payable on Dec. 6. Before Dec. 19, 1882, by the resignation of some of the directors, their number was reduced to two, of whom deft. was one. At a meeting held on Dec. 19, 1882, these two, deft. being in the chair, elected three other directors, & the board thus constituted passed a resolution that notice be sent to the shareholders who had not paid the call, that, in default of its payment by Dec. 30, their shares would be liable to forfeiture. They also made a second call of £1 per share, payable on Jan. 20, 1883. At a meeting of the same directors held on Jan. 3, 1883, deft. in the chair, it was resolved that the shares on which the first call had not been paid should be forfeited. Amongst the names of the shareholders in arrear that of deft. was included. Upon an action to recover the amount of the said two calls:—*Held*: the two directors who were alone in office at the commencement of the meeting held on Dec. 19, 1882, not being sufficient in number to form a properly constituted board, although sufficient to form a quorum of a properly constituted board, had no power to act so as to increase the number of directors, or to make a call, as between the co. & the ordinary shareholders; as deft. was a director, in the chair, & assisted in passing the resolutions for the second call, & for the forfeiture of the shares on the non-payment of the first call, he was estopped from disputing the validity of such resolutions, & was liable to pay the amount of the calls.—*FAURE ELECTRIC ACCUMULATOR CO., LTD. v. PHILLIPART* (1888), 58 L. T. 525; 4 T. L. R. 365.

2836. — Resolution passed at meeting for the non-re-election of retiring directors—Continuing directors entitled to fill pre-existing casual vacancy.—*BENNETT BROTHERS (BIRMINGHAM), LTD. v. LEWIS* (1903), 20 T. L. R. 1; 48 Sol. Jo. 14, C. A.

2837. — Refusal by some of first directors to act.—(1) It is not necessary to state in the notice convening a meeting of the directors of a co. the business to be transacted at the meeting, even if

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c. Directors authorised to appoint additional directors—By resolution ratified by shareholders—No record of resolution.—One of the bye-laws of pltf. co. provided that the directors, three in number, might increase their number to seven, at any time by resolution to be ratified by the shareholders. The evidence showed that the directors passed such a resolution but the minutes of the meeting contained no reference to it. Subsequently, at a meeting of the shareholders, a resolution was passed "that the board of directors be increased from three to seven members, an amendment to the bye-laws being put

& carried to that effect":—*Held*: the passing of the resolution of the directors to increase their number might be proved by the oath of one or more of them, & the new board of seven directors was properly constituted.—*NORTH WEST BATTERY, LTD. v. HAR-GRAVE* (1913), 26 W. L. R. 331.—*CAN.*

d. Directors authorised to fill casual vacancies—Act requiring three directors—Only three shareholders.—The Act of incorporation of a co. provided that there should not be less than three directors, each of whom should be a shareholder. The corp. consisted of three shareholders, who were the directors. Upon the death of one a meeting was called to appoint a new director, when S., to whom the

deceased director had bequeathed his shares, was declared elected by one of the two directors, although the other refused to concur in the appointment:—*Held*: no election was necessary to make S. a director, there being only three shareholders each of whom was qualified to be a director.—*KIELY v. KIELY* (1878), 3 A. R. 438.—*CAN.*

e. — Existing directors not forming a quorum.—Bye-laws of a co. provided that there should be seven directors, four of whom should be a quorum. Four directors ceased to be qualified:—*Held*: the remaining directors had not power to fill the vacancies, notwithstanding that the board might consist of only three members. & the vacancies could only

it is of an extraordinary character; & any decision come to at such a meeting cannot afterwards be questioned on the ground that no notice of such business was given.

(2) Where the first directors of a co. were appointed by the subscribers to the memorandum of assocn. & some of them refused to act & others retired:—*Held*: the remaining directors could appoint other directors in their places under an art. giving them power to fill up casual vacancies on the board of directors.—*COMPAGNIE DE MAYVILLE v. WHITLEY*, [1896] 1 Ch. 788; 65 L. J. Ch. 729; 74 L. T. 441; 44 W. R. 568; 12 T. L. R. 268; 40 Sol. Jo. 352, C. A.

2838. Concurrent power—In directors & company—Construction of articles.]—By art. 65 of a co.'s arts. of assocn. four named persons were appointed directors & it was provided that they should, subject to the provisions as to resignation & removal of directors, retain office until a special resolution had been passed to vary the art. Art. 66 provided: "The directors shall have power to appoint any other persons to be directors at any time before a special resolution shall be passed bringing into operation the provision as to the retirement of directors by rotation." Arts. 72 to 79 dealt with the rotation of directors, art. 74 providing:—"The co. at any general meeting at which any director retires in manner aforesaid shall . . . unless it be determined to reduce the number of directors, fill up the vacated office by electing a person to be director, & may fill up any other vacancies, & the co. may at any general meeting fill up any vacancy arising otherwise than by such retirement of a director, or appoint an additional director or directors":—*Held*: the passing of the special resolution referred to in art. 66 was not a condition precedent to the co.'s having power under art. 74 to appoint directors, & therefore until such special resolution had been passed the co. & the directors had concurrent powers of appointment.—*ISAACS v. CHAPMAN* (1916), 32 T. L. R. 237, C. A.

(c) *By Company.*

2839. Where power of appointment vested in directors.]—The arts. of assocn. of an English co. in which an American co. held a majority of shares

provided that casual vacancies in the office of director might be filled up by the board, & that the directors might appoint additional directors up to the prescribed maximum, which was seven. The arts. also provided for votes being given either personally or by proxy appointed in writing or under the common seal of a corporation. Only persons entitled to vote at any general meeting were to act as proxies, except that a co. which was a member might by proxy authorise a representative to act at meetings for them. R., who held a power of attorney from the American co., issued a requisition & notice for an extraordinary general meeting of the shareholders of the English co., at which he was chairman & voted as proxy, & which meeting, on a poll, purported to pass two resolutions, increasing the number of directors to sixteen & electing additional directors:—*Held*: in an action by the English co., the express power vested in the board of appointing additional directors excluded any implied concurrent power to the same effect in the co. which had by its constitution delegated to the members of the board for the time being the sole right of appointing additional directors.—*BLAIR OPEN HEARTH FURNACE CO., LTD. v. REIGART* (1913), 108 L. T. 665; 29 T. L. R. 449; 57 Sol. Jo. 500.

Annotation:—*Distd. Barron v. Potter, Potter v. Berry*, [1914] 1 Ch. 895.

2840. — Disagreement by directors.]—(1) A board meeting of directors can be held under informal circumstances, but the casual meeting of two directors even at the office of the co. cannot be treated as a board meeting at the option of one against the will & intention of the other, & it makes no difference that a notice convening a board meeting has been sent by the one to the other if such notice has not in fact been received by the other.

(2) Where the arts. of assocn. of a co. incorporated under 1908 Act, give to the board of directors the power of appointing an additional director, & owing to differences between the directors no board meeting can be held for the purpose, the co. retains power to appoint additional directors in general meeting.

(3) Where under the arts. of assocn. of a limited co., formed under Cos. Acts, the directors have power to appoint additional directors & the existing

be properly filled by a meeting of shareholders duly called for that purpose.—*SOVEREIGN MITT, GLOVE & ROBE CO. v. WHITSIDE* (1906), 12 O. L. R. 638; 8 O. W. R. 279, 582.—CAN.

1. — Appointment by majority.]—The arts. of assocn. of a co. provided that in case of a casual vacancy occurring on the board of directors the continuing directors should fill up the position by electing another director, & in the event of the directors being unable to agree a meeting of the shareholders of the co. should be called for the purpose of appointing a new director. A casual vacancy having occurred the continuing directors met & by a majority elected another director to fill the vacancy. This election was disputed on the ground that the provision as to the procedure to be followed in the event of the directors being unable to agree required that the directors should be unanimous:—*Held*: the casual vacancy on the board of directors had been properly filled.—*LOGAN v. SETTLERS' S.S. CO., LTD.* (1906), 26 N. Z. L. R. 193.—N.Z.

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B. (c).

g. Nominated directors rejected — No others nominated.]—At the annual

meeting of the stockholders of a co. held for the purpose of electing directors, one of the stockholders moved that certain named persons be the directors of the co.:—*Held*: in order to defeat their election, other parties must be nominated & elected by a majority of votes, & it would not be sufficient for the majority merely to vote against the persons nominated without voting for someone else.—*SPURR v. ALBERT MINING CO.* (1874), 2 Pug. 260.—CAN.

h. At special general meeting — On date & with quorum fixed by directors.]—*Ptfs.* were a co. incorporated under Canada Joint Stock Cos. Act, 1877 (c. 43). By a bye-law passed by the directors in pursuance of the Act the last Tuesday in Sept. was fixed as the date of the annual general meeting, & the quorum for such meeting was to consist of five members; but at a special meeting they were required in addition to represent one-third of the capital stock. In 1884 there was no election of directors at the appointed time, owing to the office where the meeting was to have been held being locked up & deft. refusing to attend the meeting or give up the books, etc.; & in Oct. a special general meeting of the shareholders was held, called on notice stating the object thereof, on a

requisition by one-fourth in value of the shareholders, & directors were elected, who appointed a new secretary. At the meeting there were present three-fourths of the qualified vote & one-third of the subscribed capital, but considerably less than that amount of the nominal capital. In an action by the co. against deft. for the non-delivery of the books, etc., to the new secretary, deft. set up that he was still secretary, because, as he alleged, the directors who appointed the new secretary were not duly elected, & that there was not a quorum at the meeting to transact business:—*Held*: (1) there was authority to call the special general meeting for the election of directors; & it was duly called by the proper number of shareholders; (2) the directors could by bye-law determine the quorum & all other formal proceedings for the control & conduct of the meeting of the board & shareholders, & there was a proper quorum present at the meeting under the bye-law — *AUSTIN MINING CO., LTD. v. GEMMEL* (1886), 10 O. R. 696.—CAN.

k. Right to elect majority of directors — Vested in holders of minority of stock — Ultra vires.]—In the memorandum of assocn. of a joint-stock co. there was a clause purporting to give to the holders of a certain block of

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directors are only two in number, & cannot agree, so that a deadlock exists in the affairs of the co., the co. in general meeting have power to remove the directors & fill up vacancies.—*BARRON v. POTTER, POTTER v. BERRY*, [1914] 1 Ch. 895; 83 L. J. Ch. 646; 110 L. T. 929; 58 Sol. Jo. 516; 21 Mans. 260; *sub nom. Re BRITISH SEAGUMITE CO., LTD., BARRON v. POTTER, POTTER v. BERRY*, 30 T. L. R. 401.

Annotation:—As to (3) Apld. Foster v. Foster, [1916] 1 Ch. 532.

2841. —.]—*FOSTER v. FOSTER*, No. 2856, *post*.

Compare No. 3484, post.

2842. Concurrent power—In directors & company—Construction of articles.]—*ISAACS v. CHAPMAN*, No. 2838, *ante*.

2843. Company in voluntary liquidation.]—A general meeting of a co. in voluntary liquidation has power to elect directors & sanction the exercise by them of powers of enforcing payment of calls by sale or forfeiture of shares.—*Re FAIRBAIRN ENGINEERING CO., LADD'S CASE*, [1893] 3 Ch. 450; 63 L. J. Ch. 8; 69 L. T. 415; 42 W. R. 155; 1 Mans. 100; 8 R. 16.

2844. At meeting called by requisitionists—Insufficient notice.]—*PATENT WOOD KEG SYNDICATE, LTD. v. PEARSE* (1906), 50 Sol. Jo. 650.

(d) By Strangers.

2845. Whether election of nominee enforceable—Nominee unfit or unacceptable—Nomination by another company.]—A co. may be restrained by injunction from altering its arts. for the purpose of committing a breach of contract, but where the contract is one by which another co. has the right to nominate a director the ct. will not, by injunction, force the co. to accept as director a person who is unfit or is unacceptable to the shareholders.—*BRITISH MURAC SYNDICATE, LTD. v. ALPERTON RUBBER CO., LTD.*, [1915] 2 Ch. 186; 84 L. J. Ch. 665; 113 L. T. 373; 31 T. L. R. 391; 59 Sol. Jo. 494.

Annotation:—Distd. Plantations Trust v. Bila (Sumatra) Rubber Lands (1916), 85 L. J. Ch. 801.

2846. —.]—(1) In consideration of pltf. co. guaranteeing an issue of debentures by deft. co. the latter agreed to appoint two nominees of pltf. co. as directors. Two directors were nominated

by pltf. co., but deft. co. refused to appoint them. On an application to restrain deft. co. from preventing the two nominees from acting as directors:—*Held*: the nomination had not the effect of appointing the nominees as directors, & on the merits of injunction ought not to be granted.

(2) *Qu.*: whether a contract to elect as directors the nominees of an outside body will be enforced by a decree for specific performance.—*PLANTATIONS TRUST, LTD. v. BILA (SUMATRA) RUBBER LANDS, LTD.* (1916), 85 L. J. Ch. 801; 114 L. T. 676.

2847. Whether nomination alone equivalent to appointment—Nomination by another company.]—*PLANTATIONS TRUST, LTD. v. BILA (SUMATRA) RUBBER LANDS, LTD.*, No. 2846, *ante*.

2848. Right of appointment vested in another company.]—*BRITISH MURAC SYNDICATE, LTD. v. ALPERTON RUBBER CO., LTD.*, No. 2845, *ante*.

2849. —.]—*PLANTATIONS TRUST, LTD. v. BILA (SUMATRA) RUBBER LANDS, LTD.*, No. 2846, *ante*.

C. Compliance with Formalities.

2850. Necessity for—General rule.]—A director may be appointed in an informal manner, provided the requirements of the arts. of assocn. are complied with. A director need not therefore be appointed at the offices of the co.—*SMITH v. PARINGA MINES, LTD., PARINGA MINES, LTD. v. BLAIR, PARINGA MINES, LTD. v. BOYLE*, [1906] 2 Ch. 193; 75 L. J. Ch. 702; 94 L. T. 571.

2851. — Resolution of appointment.]—*Re PUBLIC SUPPLY ASSOCN.*, [1880] W. N. 106.

— Quorum.]—*See Nos. 2831, 2835, ante.*

— Qualification required by constitution of company.]—*See Sub-sect. 2, A., post.*

2852. Sufficiency of—Recommendation to be by board of directors—Recommendation by directors at general meeting.]—It was provided by the arts. of a co. that no person not recommended by the board of directors for election as a director should be eligible unless at the time of election he had held twenty shares for two months. B., who was not a shareholder, agreed to become a director, & was unanimously elected at a general meeting at which six of the seven directors, who were then the only shareholders, were present. B. did not act as a director, & before anything further had been done he wrote refusing to be connected

shares, being a minority of the capital stock issued, the right at each election of the board of directors to elect 3 of the 5 directors:—*Held*: the agreement was beyond the powers conferred by British Columbia Cos. Act, 1890, & was null & void, being repugnant to the conditions as to elections of directors imposed by the Act.—*COLONIST PRINTING & PUBLISHING CO. v. DUNSMUIR* (1902), 32 S. C. R. 679; 23 C. L. T. 65.—CAN.

l. Under powers conferred by Table A—As modified by special article.]—A co. adopted Table A as its arts. of assocn. except as modified or altered by its registered arts. The registered arts. provided that at the first general meeting the shareholders should determine the number of directors, & should appoint those shareholders who were to act as directors:—*Held*: the registered arts. did not alter or modify Table A, & the number of directors could be increased or reduced by ordinary resolution passed by the shareholders in general meeting.—*MCCURDY v. GORRIE* (1913), 32 N. Z. L. R. 769.—N.Z.

m. Delegation of power to directors—Ultra vires.]—The arts. of assocn. of a co. vested the power of election

of directors in the co. at a general meeting:—*Held*: it was *ultra vires* for the co. by extraordinary resolution to delegate their powers of election to the directors.—*DUNN v. BANKNOCK COAL CO., LTD.* (1901), 9 S. L. T. 51.—SCOT.

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2851 i. Necessity for—Resolution of appointment—Insufficient notice of meeting.]—Where directors, appointed at a meeting invalid for want of compliance with the provisions for 7 days' notice thereof, under art. 35 of Table A, allotted shares to one of their number present at the meeting at which the allotment took place:—*Held*: Companies Statute, s. 64, rendered such allotment valid although at the time of allotment the directors were not validly appointed.—*FEDERAL MUTUAL LIVE STOCK INSURANCE CO. v. DONAGHY* (1888), 14 V. L. R. 857.—AUS.

n. — Election by ballot—No ballot held.]—Although the Act requires that the election of directors shall be by ballot, an election by unanimous vote without balloting will be valid if no more than the necessary number are nominated.—*MORDEN*

WOOLLEN MILLS CO. v. HECKELS (1908), 17 Man. L. R. 557.—CAN.

o. — — — — —.]—By the special Act incorporating pltf. co., it was provided that the directors should be elected by ballot, & that all questions proposed for the consideration of the meeting should be determined by the majority of votes, the chairman having the casting vote in case of an equality:—*Held*: the chairman of the meeting had no power to declare defts. elected without a ballot.—*COLONIAL ASSURANCE CO. v. SMITH* (1912), 21 W. L. R. 815.—CAN.

p. — Provision precluding shareholder exercising privileges while calls unpaid.]—Where the arts. of assocn. of a co. provide that no shareholders shall be entitled "to exercise any privilege as a shareholder" while calls on his shares are unpaid, the election of a shareholder as a director, whose calls are in arrear, is void; & the ct. will, by mandamus, direct that the qualified candidate receiving the next number of votes shall be admitted as a director.—*FRYER v. AYNLEY* (1887), 5 N. Z. L. R. 380.—N.Z.

q. — Whether defect validated by conduct of company.]—One of the arts. of assocn. of a co. provided that

with the co. The co. nevertheless sent him a letter of allotment for twenty shares, of which he took no notice. The co. was afterwards ordered to be wound up:—*Held*: the holding of twenty shares for two months prior to the date of election, in the absence of a recommendation by the board, was a condition precedent to B.'s eligibility for election; the fact that six of the seven directors voted for B. at the general meeting did not amount to a recommendation by the board, as they were not met in the capacity of directors; B.'s election was, therefore, void, & he was not a contributory.—*Re EAST NORFOLK TRAMWAYS CO., BARBER'S CASE* (1877), 5 Ch. D. 963; 26 W. R. 3, C. A.

Annotation:—*Appld. Re Percy & Kelly Nickel, Cobalt & Chrome Iron Mining Co., Jenner's Case* (1877), 7 Ch. D. 132.

2853. — Notice of intention to move election—Directors not named in notice.—Arts. of assocn. required notices of general meetings at which special business was to be transacted to specify the general nature of the special business for which the meeting was convened; the signed minute book was to be conclusive that the proceedings took place at a duly convened meeting & was to be binding for all purposes; the co. might alter the number of directors between the number of seven & three. Notice of a general meeting stated it to be for the purpose of considering a resolution that three retiring directors be appointed directors; according to the minutes of the meeting the notice was treated as read; the three persons named in the notice were proposed & seconded as directors; that resolution was put, & an amendment to appoint two additional directors was carried:—*Held*: on motion by the co. to restrain the additional directors from acting, the ct. was not precluded from looking at the notice convening the meeting as part of the *res gestæ*; the amendment appointing the additional directors was sufficiently indicated

in the notice of meeting.—*BETTS & CO., LTD. v. MACNAGHTEN*, [1910] 1 Ch. 430; 79 L. J. Ch. 207; 100 L. T. 922; 25 T. L. R. 552; 53 Sol. Jo. 521; 17 Mans. 71.

2854. — Notice in time for adjourned meeting.—One of the arts. of assocn. of a limited co. provided that a member should not be qualified to be elected a director unless written notice of the intention in that behalf were given to the co. not less than fourteen clear days before the day of election of directors. The ordinary general meeting of the co. was held on Dec. 10, 1915, at which meeting, according to the arts., the two deff. directors retired by rotation. The report of the directors was not adopted; there was no election of directors, but a committee of shareholders was appointed to investigate the affairs of the co. & report to a general meeting, & the meeting stood adjourned to receive this report. On Feb. 21, 1916, written notice was given to the co. by a shareholder stating that at the adjourned meeting he proposed to move the election of four named members as directors. The adjourned meeting was held on Mar. 10, 1916, to consider the committee's report & to transact the unfinished business. The chairman ruled the notice of Feb. 21, 1916, to be out of order, & after declaring the election of auditors said there was no further business & left the chair. Subsequently the shareholders appointed a chairman & elected the four new directors. On motion by the shareholders for an interlocutory injunction to restrain the two former directors from acting:—*Held*: the day of election of directors within the art. was the date of the adjourned meeting on Mar. 10, 1916; the notice of Feb. 21, 1916, was in compliance with that art.; the first two persons elected as directors in lieu of the two who retired were duly elected; & the injunction asked for must be granted.—*CATESBY v. BURNETT*, [1916] 2 Ch. 325; 85

no person unless nominated by the directors should be elected as a director for the first time unless he should have given seven days' previous notice in writing, etc. Pltf. was elected as a director at a general meeting of the co. without being nominated by the directors, & without having given the required seven days' notice. He acted as a director for about three years, & was then re-elected as a director in a similar manner, & was subsequently appointed chairman of directors. The latter position he held for a year, & shortly after ceasing to be chairman the managing director & others of the board refused to recognise him any longer as a director, on the ground that he had not been legally elected:—*Held*: the article in question was mandatory, not merely directory, & pltf. had not been duly elected in the first instance, & the defective election of pltf. had not been validated or ratified by the conduct of the co.—*ANDERSON v. COASTAL S.S. CO., LTD.* (1903), 22 N. Z. L. R. 180.—N.Z.

r. Defect in appointment not known—Effect of.—Where a person, *de facto* elected as a director of a co. incorporated under Cos. Statute, 1864 (No. 190), has been permitted to take his seat at the board or to continue to sit there unchallenged, both he & the directors acting with him must be deemed to be ignorant of any defect in his appointment or qualification until the contrary appears; & acts done by him prior to the knowledge by the board of such defect will be valid.—*BUZOLIO PATENT DAMP-RESISTING & ANTI-FOULING PAINT CO., LTD. v. CORNWELL* (1885), 11 V. L. R. 371.—AUS.

s. Right to take advantage of non-compliance—Shareholder—Resolution not registered.—H. applied verbally to a co. for 30 shares, offering to pay by two bills at three & four months. The co. accepted the offer, H. accepted the two bills for the price & left the shares as security. Scrip was filled in but not signed or issued. H. signed no application & did not sign the deed or the register, but his name was entered on the register as a member. The original number of directors was six, & a resolution increasing them to nine was passed. No notice or copy of this resolution was sent to the registrar-general to be recorded. The nine directors made calls & sued H. for them:—*Held*: (1) H.'s signature of the acceptances only was evidence of his consent to be a member if such consent were necessary; (2) without such consent proof of his name being in the register was *prima facie* proof of his being a shareholder; (3) the acts of the nine directors *de facto* were valid.—*McIVOR HYDRAULIC SLUICING & GOLD MINING CO. v. HUGHES* (1867), 4 W. W. & A.B. 111.—AUS.

t. — No due notice of meeting.—A shareholder, who is present at a meeting of shareholders at which directors are appointed, & agrees to waive his right to due notice of the meeting as required by the arts. of assocn., is estopped from raising the want of notice as an objection to the validity of the appointment of the directors.—*Re NEOKRATINE SAFETY EXPLOSIVE CO. OF NEW SOUTH WALES, LTD.* (1891), 12 N. S. W. Eq. 269.—AUS.

a. — Illegal contract.—

Declaration against deff. for calls on stock. Plea, that by pltf.'s charter it was provided that so soon as \$100,000 stock should be taken, & ten per cent thereon paid into a chartered bank, the provisional directors might call a general meeting, & the shareholders who had paid such ten per cent should elect directors & organise the co.; that one D., acting in collusion with the provisional directors, to enable them to make a colourable compliance with the Act, agreed to & did enter his name as a subscriber for \$30,000 stock, & to pay \$3,000 thereon, & it was agreed that he should not be called on for any further payment on said stock, & that any payment he might colourably make should be restored to him by means of a contract for building a railway for pltf., which the provisional directors then agreed to give him on such terms as would yield a large profit; that his subscription was not *bona fide*, but in fraud of the Act; & before \$100,000 stock had been taken, exclusive of such fraudulent subscription, the provisional directors called a meeting, at which D. was present, & assumed to rate as a shareholder, & chose directors, who made the alleged calls; wherefore the co. had never been legally organised, & the calls were not authorised:—*Held*: no defence, for D. could not dispute his being a shareholder, & the alleged agreement with him, being contrary to the statute, could not operate.—*PORT WHITBY & PORT PERRY RY. CO. v. JONES* (1871), 31 U. C. R. 170.—CAN.

b. — Present at election by proxy.—A party had been present at the election of directors of a railway co. by proxy & had seconded the

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L. J. Ch. 745; 114 L. T. 1022; 32 T. L. R. 380.

Poll improperly granted.]—See No. 3812, post.

Conditions relating to qualification shares.]—See Sub-sect. 2, C., post.

D. Defective Appointments.

See, now, 1908 Act, s. 74.

2855. When court will grant relief—Candidates defeated by fraud.]—The declaration of a chairman of the election of directors of a co. is *prima facie* evidence of the validity of such election. In a case of fraud, however, the ct. would grant relief to the candidates against whom the declaration was made; until the declaration is set aside, such candidates have no authority to act as directors, & when they caused a bill to be filed in the name of the co. it was taken off the file, with costs to be paid by the solr. who filed it.—**WANDSWORTH & PUTNEY GAS-LIGHT & COKE CO. v. WRIGHT** (1870), 22 L. T. 404; 18 W. R. 728.

Annotations:—Refd. Harben v. Phillips (1883), 23 Ch. D. 14. *Mentd. Duckett v. Gover* (1877), 25 W. R. 554.

2856. — Irregularity capable of being cured by company in general meeting.]—The arts. of assocn. of deft. co. provided that every share should confer one vote both at general meetings of the co. & at meetings of the directors, & by art. 89 that the business of the co. should be managed by the directors. Art. 93 provided that a director might contract with the co., but prohibited a director from voting in respect of any contract in which he was interested, & art. 99 empowered the directors from time to time to appoint one of their body to be managing director for such period & at such remuneration as they thought fit. Pltf. was appointed director by the co. at a remuneration of £300 *per annum* & chairman & managing director by the board of directors, but without remuneration & for no fixed period. Two years later, at a board meeting of the three directors, deft. F., supported by the third director but opposed by pltf., appointed herself chairman in his place & joint managing director with him, in both cases without remuneration. At a subsequent extraordinary general meeting the co. reduced pltf.'s remuneration as director from £300 to £25 *per annum*. Some time afterwards, at a board meeting of three directors, F., supported by the third director, carried resolutions removing pltf. from the office of managing director & appointing herself sole managing director at a substantial remuneration. Pltf. opposed both resolutions & upon the latter, demanded a poll, with the result that by means of F.'s own votes there was a

majority in favour of the resolution appointing her. In an action by pltf. in his individual capacity & also on behalf of the shareholders other than F.:—*Held*: (1) the mere appointment of pltf. to be chairman & managing director did not entitle him to fill those offices for as long as he retained his directorship; (2) when no remuneration was attached to the office, the appointment as chairman or managing director was merely a delegation of their powers by the directors to the director so appointed, & did not constitute a contract between him & the co. within art. 93; *secus*, where remuneration was attached, & consequently, the appointment by F. of herself as sole managing director was within the prohibition of that art. & invalid; (3) it was competent for the co. in general meeting notwithstanding art. 99, to waive the irregularity occasioned by F. voting contrary to the prohibition & to confirm the resolution appointing her, & the irregularity was, therefore, not of such a character as to give a dissentient minority any right to sue, and the ct. would not interfere; (5) the directors being in the circumstances unable to exercise the powers conferred upon them by the arts., the co. in general meeting could make the appointment; (6) the co. had power to reduce the remuneration of an existing director & to discriminate between directors in respect of their remuneration; & the exercise of such power was not part of the business of the co., the management of which was by art. 89 delegated to the directors so as to render the same exclusively exercisable by them.—**FOSTER v. FOSTER**, [1916] 1 Ch. 532; 85 L. J. Ch. 305; 114 L. T. 405.

2857. Fraudulent declaration of election by chairman at meeting—Election valid until set aside.]—**WANDSWORTH & PUTNEY GAS-LIGHT & COKE CO. v. WRIGHT**, No. 2855, *ante*.

2858. Poll granted on improper demand—Candidate defeated on show of hands elected on poll.]—A co. was registered under 1862 Act, with the following arts. of assocn. Art. 64: "Upon all questions at every meeting a show of hands shall in the first instance be taken, & unless before or immediately upon such show of hands a poll be duly demanded such question shall be decided by such show of hands." Art. 67: "If a poll is demanded by shareholders qualified to vote & holding in the aggregate 2000 shares or more, it shall be taken in such manner as the chairman shall direct, & the result of such poll shall be deemed to be the resolution of the co. in general meeting." Art. 75: "Votes may be given either personally or by proxy." Two vacancies arose among the directors & there were four, candidates, of whom prosecutor was one. At the meeting for election a show of hands was

motion for their election:—*Held*: he was barred *personali exceptione* from objecting to their proceedings, on the ground that they were not the directors of the co.—**HUTCHESON v. HALKETT** (1847), 10 Dunl. (Ct. of Sess.) 150; 20 Sc. Jur. 43.—**SCOT**.

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c. Effect of—In misfeasance proceedings.]—A *de facto* director may be liable to misfeasance proceedings although there is an irregularity in his appointment.—**Re OWEN SOUND LUMBER CO.** (1915), 9 O. W. N. 103; 34 O. L. R. 528.—**CAN**.

d. ———.]—De facto directors are liable for all acts of omission or commission on their part in the same manner & to the same extent as if they had been *de jure* as well as *de facto* directors.—**NORTHERN TRUST CO. v.**

BUTCHART, [1917] 2 W. W. R. 405.—**CAN**.

e. When court will grant relief—Election by nominal shareholders.]—The Ct. of Ch. has jurisdiction to set aside an election of directors by persons who are subscribers nominally & not *bona fide*.—**DAVIDSON v. GRANGE** (1854), 4 Gr. 377.—**CAN**.

f. Action to set aside election—Who are necessary parties.]—A suit to set aside an election of directors on the alleged ground of fraud may be brought by some of the shareholders on behalf of all & need not be in the name of the corp'n. itself.—**DAVIDSON v. GRANGE** (1854), 4 Gr. 377.—**CAN**.

g. ———.]—Action by certain shareholders of a co., on behalf of themselves & all other shareholders, except the individual defts., to have

the election of the latter as directors set aside for irregularity:—*Held*: the action must be dismissed unless pltf. obtained the consent of the co. to sue in the co.'s name; as, however, the co. was a party as deft. & all necessary parties were before the ct., it was proper to dispose of the case on the merits, conditionally on such consent being obtained & the record amended.—**KELLY v. ELECTRICAL CONSTRUCTION CO.** (1907), 16 O. L. R. 232; 10 O. W. R. 704.—**CAN**.

h. Application of special articles—Acquiescence—Voters deprived of votes.]—Where an election of directors in a joint stock co. was clearly illegal, the voters having been each allowed only one vote, whereas each share should have been given a vote—but the parties chosen had for more than eight months discharged the duties, the ct.

taken, when prosecutor obtained the largest number of votes. A poll was then demanded by the deputy chairman, who was the holder of twenty shares only, but who held proxies for more than 2000 shares. At the poll the prosecutor was not elected:—*Held*: a *mandamus* must be granted to admit prosecutor as having been elected director by the show of hands, for the poll was illegally demanded, as the holder of proxies was not a person holding shares within the meaning of art. 67.—*R. v. GOVERNMENT STOCK INVESTMENT CO.* (1878), 3 Q. B. D. 442; 47 L. J. Q. B. 478.

Annotations:—*Reid. Re Bidwell*, [1893] 1 Ch. 603. *Mentd.* Wall v. London & Northern Assets Corpn. (1898), 79 L. T. 249.

2859. Application of 1844 Act, s. 30—Informal transfer of qualification shares.—A joint-stock co. was registered under the above Act. Certain clauses in its deed of settlement required that a holder of shares desirous of transferring them must give notice to the officer of the co.; that the directors at a board meeting must certify their approval of the proposed transferee; that the transferor must execute a deed of transfer; & that every transferee, approved of by the directors, must, within one calendar month execute, at the office of the co., or at such other place as the board should reasonably require, a deed of covenant to abide by the rules & regulations of the co. "whereupon such person shall become a shareholder of the co." B. held shares in the co., & was a director; he desired to transfer his shares; he gave no notice, no certificate of approval was given before the transfer; a deed of transfer was executed, but no deed of covenant as required by the arts. of the assocn. was ever executed:—*Held*: the transfer thus made, though irregularly, was not invalidly made, & the persons then known as directors having at a meeting of shareholders recognised the transferees as shareholders, & having then & there declared them to be elected as directors, & the shareholders at such meeting having accepted them as directors, the validity of the transfer to them & their title to office could not afterwards be impeached.

The clauses in the deed are affirmative clauses; the objection as to the non-execution by the transferee of the deed of covenant is cured by the above sect. The moment the transferee assumed to act as a director, & allowed himself to be returned as a shareholder, he lost all right to question his liability (*LORD CAIRNS, L.J.*).—*MURRAY v. BUSH* (1873), L. R. 6 H. L. 37; 42

L. J. Ch. 586; 29 L. T. 217; 22 W. R. 280, H. L.; *affg. S.C. sub nom. Re AGRICULTURIST CATTLE INSURANCE CO., BUSH'S CASE* (1870), 6 Ch. App. 246, L. C.

Annotations:—*Apld. York Tram. Co. v. Willows* (1882), 8 Q. B. D. 685. *Mentd. Re Taurine Co.* (1883), 25 Ch. D. 118.

2860. Application of 1862 Act, s. 67—Acts affecting members as well as strangers.—Certain directors of a co. were appointed at a meeting which was convened after a notice of only thirteen days had been given of such meeting, whereas by the deed of settlement of the co. fourteen days' notice of such meeting ought to have been given. The appointment of such directors was afterwards confirmed by a confirming meeting & at the next annual general meeting. The directors made a call, which deft. resisted on the ground that it was an invalid act, as the directors had been illegally appointed. The defect in the appointment was not discovered till after the making of the call:—*Held*: the call was properly made, as the defect in the appointment of the directors had been cured, & their acts validated by the above sect., & there was nothing in that sect. to limit its operation to the validation of acts & contracts affecting persons outside, & not members of the co.—*BRITON MEDICAL, GENERAL, & LIFE ASSOCN. v. JONES* (2) (1889), 61 L. T. 384.

Annotation:—*Distd. Tyne Mutual Steamship Insee. Assocn. v. Brown* (1896), 74 L. T. 283.

2861. — Strangers dealing with company—With notice of irregularity.—By the arts. of assocn. of a co. it was provided that the qualification of every director should be the holding, in his own right, of shares of the co. of the nominal value of £100, & that the office of director should be vacated if he ceased to hold the requisite amount of shares, or did not acquire the same within two months after election or appointment. The first directors of the co. were appointed in June, 1889, but none of them acquired any shares in the co., until Oct. 1889, when shares were allotted to some of the directors, & to the vendor to the co., who was also managing director. On Oct. 28 a contract was entered into by the co. for the issue of fully paid-up shares to the vendor in satisfaction of his purchase money which was duly registered, & on Nov. 20 a previous allotment of shares to the vendor was cancelled, & a new allotment of fully paid-up shares was made to him. The co. was ordered to be wound up, & the vendor to the co. was settled by the chief clerk on the list of contributories as a holder of shares

refused to interfere by *mandamus* for a new election. *Qu.*: whether *mandamus* or *quo warranto* would be the proper remedy.—*Re MOORE & PORT BRUCE HARBOUR CO.* (1857), 14 U. C. R. 365.—*CAN.*

k. — — — — —.—By the special Act incorporating pltf. co. it was provided that the directors should be elected by ballot & that every shareholder should be entitled to one vote for every share held by him for not less than fifteen days prior to the time of voting:—*Held*: in view of the exclusion of legal votes at a meeting of shareholders the election of directors was void.—*COLONIAL ASSURANCE CO. v. SMITH* (1912), 21 W. L. R. 815.—*CAN.*

l. — — — — —.—The appointment of a chairman of directors made in contravention of the arts. of assocn. is void, & is not confirmed by mere acquiescence.—*CLARK v. WORKMAN*, [1920] 1 I. R. 107.—*IR.*

m. — — — — —.—*Appointment not in writing.*—When an original board of

directors had not been appointed in writing by the signatories to the memorandum of assocn. as required by the articles, but had acted with the full knowledge & consent of all the shareholders:—*Held*: the board had acted as a *de facto* board & its resolutions could not be impugned on the ground of the informality of its appointment by shareholders who had acquiesced in its appointment & dealt with it as a *de facto* board.—*AFRICA'S AMALGAMATED THEATRES, LTD. v. NAYLOR*, [1912] W. L. D. 107.—*S. AF.*

n. — — — — —.—*Meeting irregularly held.*—A co. incorporated under Cos. Incorporation Act, 1873, adopted a bye-law to the effect that the annual meeting should be held in July. Disregarding this bye-law, a meeting was called in Apr. at which the directors present were re-elected on the motion of the only shareholder present. On an application by a shareholder for a *mandamus* to the co. to elect legally the directors:—*Held*: no meeting for the election of new directors can be

valid during the period for which the former directors had been elected.—*Ex p. MCGIBBON* (1889), 7 Nfld. L. R. 417.—*NFLD.*

o. — — — — —.—*Appointment of disqualified person.*—The trust deed of a co. provided "that a director who shall be absent from the Colony for three months shall become disqualified & his seat become vacant." A director, who had been absent for three months from the Colony, was nominated & re-elected while still absent:—*Held*: the election was void.—*HAUPT v. DE VILLIERS* (1883), 2 S. C. 392.—*S. AF.*

p. — — — — —.—The trust deed of a co. provided that in case any director should be absent from Cape Town for a period of three months the remaining directors should forthwith call a meeting of members, at which they should elect a member duly qualified to be a director in place of any such director whose office should have become vacant. A director had been absent from Cape Town for three months, but was nominated & re-

Sect. 28.—Directors: Sub-sect. 1, D., E. & F.; sub-sect. 2, A.]

on which nothing had been paid up:—*Held*: (1) persons having notice of a defect in the appointment or qualification of directors are not within the protection afforded by the above sect. to persons dealing with the co.; (2) the vendor, as promoter & managing director of the co. must be taken to have had notice of the defect in the qualification of the directors.—*Re STAFFORDSHIRE GAS & COKE CO., LTD., Ex p. NICHOLSON* (1892), 66 L. T. 413.

Annotation:—*As to* (1) *Overd. Channel Collieries Trust v. Dover, St. Margaret's & Martin Mill Light Ry.*, [1914] 2 Ch. 506.

2862. ————.]—(1) The provisions of the above sect. for curing defects in the appointment or qualification of directors do not operate to render good the authority of former directors, who without being re-elected continue after the expiration of their term of office to discharge the duties of directors well knowing they have not been re-elected. (2) The receipt of payments made by these as directors by one aware of their true position does not estop that person from subsequently questioning their legal authority to demand as directors payments from him.—*TYNE MUTUAL STEAMSHIP INSURANCE ASSOCN. v. BROWN* (1896), 74 L. T. 283; 1 Com. Cas. 345.

Compare Part IX., Sect. 9, sub-sect. 1, *post*.

2863. ———— **What constitutes notice of irregularity.**—*Re STAFFORDSHIRE GAS & COKE CO., LTD., Ex p. NICHOLSON*, No. 2861, *ante*.

2864. ———— **Directors acting after expiration of term—With notice of irregularity.**—*TYNE MUTUAL STEAMSHIP INSURANCE ASSOCN. v. BROWN*, No. 2862, *ante*.

2865. **Application of special articles—Director appointed by directors who have ceased to hold office—Without notice of irregularity.**—No. 108 of the arts. of a co. provided that all acts done at any meeting of directors or by any person acting as a director should, notwithstanding that it should afterwards be discovered that there was some defect in the appointment of such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed, & was qualified to be a director. The art. also provided that two directors should form a quorum; that the continuing directors might act notwithstanding any vacancy in their body; that the directors might fill up any casual vacancy; that the directors might appoint one of their body to be managing director; & art. 89, that the office of director should be vacated if he accepted or held any other office under the co., or if he by notice in writing to the co. resigned his office. B., R., & M. were directors of the co. On Oct. 23, 1902, B. was appointed secretary of the co., which office he resigned on Dec. 2. At a board meeting held on Dec. 4, & attended only by B. & R., a letter was read from M. resigning his directorship, & B. & R. then passed a resolution appointing B. managing director of the co. At the next board meeting, attended only by B. & R., a resolution

was passed electing D. a director of the co. These three continued to act as directors, & on Mar. 3, 1903, issued notices convening the annual general meeting of the co. B., R. & D. acted in good faith, & the fact that B. had under art. 89 vacated his directorship on Oct. 23, & the subsequent irregularities were not brought to their attention until after Mar. 3:—*Held*: the irregularities in the appointment of B. & D., & the subsequent acts of B., R. & D. were validated by art. 108 & 1862 Act, s. 67, & they were the duly constituted board of directors.—*BRITISH ASBESTOS CO., LTD. v. BOYD*, [1903] 2 Ch. 439; 73 L. J. Ch. 31; 88 L. T. 763; 51 W. R. 667; 11 Mans. 88.

Annotations:—*Apld.* *Boschoek Proprietary Co. v. Fuke*, [1906] 1 Ch. 148; *Ellett v. Sternberg* (1910), 27 T. L. R. 127. *Apprvd.* *Channel Collieries Trust v. Dover, St. Margaret's & Martin Mill Light Ry.*, [1914] 2 Ch. 506. *Refd.* *Re Allison, Johnson & Foster, Ex p. Birkenshaw*, [1904] 2 K. B. 327; *Transport v. Schonberg* (1905), 21 T. L. R. 305.

2866. ———— **Operation as between company & members.**—*DAWSON v. AFRICAN CONSOLIDATED LAND & TRADING CO.*, No. 2823, *ante*.

2867. ———— **Director irregularly appointed—Acting in good faith—Dealings validated.**—*TRANSPORT, LTD. v. SCHONBERG* (1905), 21 T. L. R. 305.

Qualification shares parted with or not acquired.—*See* Sub-sect. 2, D., *post*.

2868. **Resolution by general meeting summoned by de facto director.**—*BOSCHOEK PROPRIETARY CO., LTD. v. FUKU*, No. 2893, *post*.

Shares declared forfeited by board invalidly constituted.—*See* No. 2144, *ante*.

E. Agreements relating to Appointment.

2869. **Whether valid—Agreement to vote for nominee of purchaser of shares—Condition of purchase.**—Exors. holding shares in a co. agreed to sell part of them to G., who stipulated that as part of the transaction he should nominate X. & W. as directors, & that the exors. should, when either X. or W. should retire by rotation, vote for & not against his re-election. The agreement extended to shares whether held by the exors. in that capacity or in their own personal capacity. W. was about to retire by rotation, & some of the exors. threatened to oppose his re-election:—*Held*: the agreement was valid as regarded shares held by the exors., either as such or as directors, & on W. undertaking to retire, if required by the ct., at the ordinary meeting next after the trial, an injunction must be granted until the trial restraining such of the exors. as threatened to do so from voting against the re-election of W. on his retirement by rotation.—*GREENWELL v. PORTER*, [1902] 1 Ch. 530; 71 L. J. Ch. 243; 86 L. T. 220; 9 Mans. 85.

F. Interference by Court.

2870. **Whether court will interfere—To force directors on company—Allegation by shareholders that directors improperly appointed.**—The ct. refused in an action by some shareholders on behalf of themselves & all other shareholders in a co., to interfere to force on the co. certain persons as directors whose position as such was questioned

electd while still so absent:—*Held*: the election was void.—*EBDEN v. ARDERNE* (1883), 2 S. C. 411.—S. AF.

q. Purchase of shares for voting purposes.—An election of officers obtained by a trick or artifice cannot be considered a *bona fide* election, but when shares have been actually purchased & paid for, the fact of their being purchased with a view to

influence the election is no objection.—*TORONTO BREWING & MALTING CO. v. BLAKE* (1882), 2 O. R. 175.—CAN.

r. Objection delayed—Effect of.—At a meeting of the shareholders of a railway co. two sets of directors were proposed & voted for, a scrutiny of the votes having been taken, the chairman decided that one of the sets had been elected & they thereupon entered upon

the discharge of their office as directors. After the lapse of a month, a suspension against their acting as directors was presented:—*Held*: the suspenders were not entitled by this means after having allowed so much time to elapse to invert the possession which resp. had been allowed to have of the office of directors.—*BLACKBURN v. FINLAY* (1848), 10 Dunl. (Ct. of Sess.) 590; 20 Sc. Jur. 194.—SCOT.

by a resolution of the co., although the resolution was not legally effectual to remove them.—**HARBEN v. PHILLIPS** (1883), 23 Ch. D. 14; 48 L. T. 741, C. A.

Annotations:—**Reid**. **Browne v. La Trinidad** (1887), 37 Ch. D. 1; **Briton Medical General & Life Assn. v. Jones** (2) (1889), 61 L. T. 384. **Mentd.** **Trevor v. Whitworth** (1887), 12 App. Cas. 409; **Marshall's Valve Gear Co. v. Manning, Wardle**, [1909] 1 Ch. 267.

2871. ——— **Against wishes of company—Managing director.**—**BAINBRIDGE v. SMITH**, No. 2888, *post*.

2872. ——— **Nominee of another company.**—**BRITISH MURAC SYNDICATE, LTD. v. ALPERTON RUBBER CO., LTD.**, No. 2845, *ante*.

— **Director prevented from acting.**—*See* Nos. 3029, 3031, 3032, *post*.

SUB-SECT. 2.—QUALIFICATION.

A. In General.

2873. Qualification required under constitution of company—Application—Provincial directors.—A co. was in process of being wound up. By the deed of settlement of the co. it was provided that no person should be or continue a director unless he was the holder of a particular amount of stock. The co. was managed by a board of directors at the chief office in L., & by boards in various towns, in the latter of which local agents or deputies, called provincial directors, had conferred upon them limited authority. C. was one of these provincial directors, but held no shares in the co., & on a question of his liability to be placed upon the list of contributories:—**Held**: the clause requiring the qualification for directors did not apply to those who held the office of provincial directors, & C. was not liable to be placed on the list of contributories.—**Re NATIONAL ASSURANCE & INVESTMENT CO., COTTERELL'S CASE** (1862), 1 New Rep. 5; 32 L. J. Ch. 66; 7 L. T. 341; 8 Jur. N. S. 1083; 11 W. R. 13, L.JJ.

Annotation:—**Reid**. **Re Waterloo Life, etc. Co., Ex p. Saunders** (1863), 3 New Rep. 58.

2874. ——— **Directors named by articles.**—A. was nominated a director of a new co. by the arts. of assocn., which provided that no person should be eligible as a director unless holding in his own right fifty shares. By the memorandum of assocn., which he signed, he agreed to take 25 shares only. He subsequently signed the arts. themselves:—**Held**: the clause respecting the qualification of directors did not apply to directors nominated by the arts. of assocn.—**Re LLANHARRY HEMATITE IRON ORE CO., LTD., RONEY'S CASE, STOCK'S CASE** (1864), 4 De G. J. & Sm. 426; 4 New Rep. 389; 33 L. J. Ch. 731; 10 L. T. 770; 10 Jur. N. S. 812; 12 W. R. 994; 46 E. R. 983, L.JJ.

Annotations:—**Consd.** **Anglo-Moravian Hungarian Junction Ry., Dent's Case, Forbes' Case** (1873), 8 Ch. App. 768. **Fold.** **Re La Mancha Irrigation & Land Co., Hamilton's Case** (1873), 8 Ch. App. 548. **Reid.** **Re Esparto Trading Co.** (1879), 12 Ch. D. 191.

2875. ——— **One of the arts. of the co. provided that F. & three other persons therein named, & any other qualified persons**

whom they might appoint, not exceeding, with themselves, ten, should be the original directors of the co. It was also provided that every member holding not less than fifty shares should be eligible as a director, & that the office of a director should be vacated if he should cease to hold its qualification. F. did not sign the memorandum of assocn., & refused to subscribe any money for shares, but accepted the offer of E. to give him fifty paid-up shares, as the qualification of a director, out of those appropriated to E., in payment of F.'s services in making inquiries & reporting concerning the value of the concession in Austria. Fifty paid-up shares were accordingly allotted to F., & he had no other shares in the co. On the co. being wound up, his name was placed on the list of contributories for fifty ordinary shares:—**Held**: F. having been named as a director in the arts., the provisions as to qualification did not apply to him; & the paid-up shares having been allotted to him for *bona fide* consideration out of those appropriated to E., he was liable to no calls upon them.—**Re ANGLO-MORAVIAN HUNGARIAN JUNCTION RY. CO., FORBES' CASE** (1873), 8 Ch. App. 768; 42 L. J. Ch. 857, L. C.

Annotations:—**Reid.** **Re Pelotas Coffee Co., Karuth's Case** (1875), 44 L. J. Ch. 622; **Re Teine Valley Ry., Forbes' Case** (1875), L. R. 19 Eq. 353; **Re Esparto Trading Co., Finch & Goddard's Cases** (1879), 48 L. J. Ch. 573.

2876. ——— **A provision in arts. of assocn. that every director should at the time of his appointment, & thenceforth during his continuance in office, hold at least four shares, & if any director should at any time cease to hold the qualification his office should thereupon become vacant:—Held**: to apply to original directors named by the arts.; & an original director who was on the register for one share only was put upon the list of contributories for four shares as having become the possessor thereof upon his appointment.—**Re ESPARTO TRADING CO.** (1879), 12 Ch. D. 191; *sub nom.* **Re ESPARTO TRADING CO., FINCH & GODDARD'S CASES**, 48 L. J. Ch. 573; 28 W. R. 146.

Annotations:—**Consd.** **Re Colombia Chemical Factory Manure & Phosphate Works, Hewitt's Case, Brett's Case** (1883), 25 Ch. D. 283. **Reid.** **Re Argyle Coal & Cannell Co., Ex p. Watson** (1885), 54 L. T. 233.

— **Whether acceptance of office implied contract to take shares.**—*See* Nos. 2903, 2916, 2952, *post*.

— **Managing directors.**—*See* Sub-sect. 9, B., *post*.

2877. ——— **Condition precedent to valid appointment.**—The arts. of a limited co. after naming the first six directors, provided that no person should be qualified to be a director who was not a holder of shares in the co. of the nominal value of £500. The board, who had power to appoint directors, purported to appoint H., who neither held nor afterwards acquired any shares. H. attended two meetings of the board, & resigned his office in two months. On an application by the official liquidator to make H. a contributory in respect of fifty shares of £10 each:—**Held**: his election as a director was void, & he could not be made a contributory.—**Re PERCY & KELLY NICKEL, COBALT, & CHROME IRON MINING CO.,**

PART III. SECT. 28, SUB-SECT. 2.—A.

a. Qualification required under constitution of company—Applicable to time of election only.—The rules of a co. provided that three directors should form a quorum. Shares were declared to be forfeited at a meeting at which three directors only attended, one of whom had previously transferred all his shares:—**Held**: the forfeiture

was not invalid for the rule as to qualification applied only to the time of election.—**REEVES v. MCCAFFERTY** (1870), 1 V. R. (Law) 190.—AUS.

t. Residence in named place.—A co. was incorporated by letters patent which contained a provision that the majority of directors should at all times, be persons resident in Nova Scotia. Subsequently the co.

took advantage of the provisions of the Nova Scotia Companies Act, 1900, & became incorporated under that Act, which did not contain this provision. Deft., who had been the secretary of the co., was removed from office, & he refused to give up to the co. the minute book & stock book of the co. on the ground that a majority of the directors were not resident in Nova

Sect. 28.—Directors: Sub-sect. 2, A. & B.]

HAMLEY'S CASE (1877), 5 Ch. D. 705; 46 L. J. Ch. 543; 37 L. T. 349; 25 W. R. 600.

Annotations:—Folld. Re Percy & Kelly Nickel, Cobalt, & Chrome Iron Mining Co., Jenner's Case (1877), 7 Ch. D. 132; *Re Elham Valley Ry., Biron's Case* (1878), 38 L. T. 501. *Distd. Re Esparto Trading Co.* (1879), 12 Ch. D. 191.

2878. ———.]—The arts. of a limited co., after naming the original directors, gave to the directors for the time being power to appoint new directors at any time before the first general meeting. It was then provided that no person should be qualified to be a director who was not a holder of shares in the co. of the nominal value of £500; & that no person except the original directors, & such persons as might be appointed by them, should be qualified to be a director who had not been a holder in his own right of such shares for at least six months. J. was appointed a director by the original directors, & attended several meetings of the board, but never applied for or acquired any shares, & when the co. was wound up his name was not on the register of shareholders:—*Held*: (1) the holding of the necessary number of shares was a condition precedent to the election of a director, & J.'s election was therefore void; (2) his acting as director was no evidence of a contract to take the shares; & his name could not be placed on the list of contributories.—*Re PERCY & KELLY NICKEL, COBALT, & CHROME IRON MINING CO., JENNER'S CASE* (1877), 7 Ch. D. 132; 47 L. J. Ch. 201; 37 L. T. 807; 26 W. R. 291, C. A.

Annotations:—As to (1) *Folld. Re Elham Valley Ry., Biron's Case* (1878), 38 L. T. 501. *Distd. Re Esparto Trading Co.* (1879), 12 Ch. D. 191; *Hampshire Co-op. Milk Co., Purcell's Case* (1880), 29 W. R. 170. *As to* (2) *Refd. Re Canadian Land Reclaiming & Colonizing Co., Coventry & Dixon's Case* (1880), 14 Ch. D. 660.

2879. ———.]—*Re EAST NORFOLK TRAMWAYS CO., BARBER'S CASE*, No. 2852, *ante*.

2880. ——— *Time for taking up.*—A co. was registered in June 1879. B. & H. signed the memorandum of assocn. as subscribers for one share each. By the arts. B. & H. were named as original directors, & it was provided that the qualification of a director should be fifty shares. B. & H. attended meetings of the directors, but no shares were allotted to them, nor did their names appear on the register for any shares except those for which they had signed the memorandum. In Sept. B. resigned his office, but H. continued a director. No business was ever done by the co., & in Nov. a resolution was passed to wind up the co. The liquidator placed B. & H. on the list of contributories for fifty shares each:—*Held*: assuming that the contract entered into by B. & H. to obtain a qualification amounted to an agreement to take fifty shares within 1862 Act, s. 23, they were entitled to a reasonable time for performing the agreement, & under the circumstances such reasonable time had not elapsed at the commencement of the winding up of the co.; & they could not be held liable as contributories in respect of the fifty shares.—*Re COLOMBIA CHEMICAL FACTORY MANURE & PHOSPHATE WORKS, HEWITT'S CASE, BRETT'S CASE* (1883), 25 Ch. D. 283; 53 L. J. Ch. 343; 49 L. T. 479; 32 W. R. 234, C. A.

Annotations:—Distd. Re Portuguese Consolidated Copper Mines, Ex p. Inchiquin, [1891] 3 Ch. 28. *Consd. Re Anglo-Austrian Printing & Publishing Union, Isaac's*

Case, [1892] 2 Ch. 158. *Refd. Re International Cable Co., Ex p. Official Liquidator* (1892), 66 L. T. 253; *Re Bread Supply Assocn., Konrath's Case* (1893), 62 L. J. Ch. 376; *Re Issue Co., Hutchinson's Case*, [1895] 1 Ch. 226.

2881. ———.]—*MOLINEAUX v. LONDON, BIRMINGHAM, & MANCHESTER INSURANCE CO.*, No. 2903, *post*.

2882. ——— *Reasonable time.*—*Re PORTUGUESE CONSOLIDATED COPPER MINES, LTD., Ex p. INCHQUIN (LORD)*, No. 2933, *post*.

2883. ——— *Power of directors to extend time.*—The arts. of assocn. of a limited co. provided that the qualification of each of the first directors should be the holding of fifty shares of £10 each, or £500 stock, & the qualification of future directors should be the holding of 100 shares or £1000 stock; & that the directors might exercise all such powers, & do all such acts as might be exercised & done by the co., & as were not required by statute or by the arts. to be exercised & done by the co. in general meeting. A. & M. were not first directors, but held only fifty shares each in the co. They accepted the office of directors on the faith of an express agreement with the directors that they should not be required to increase their holding; & that, if necessary, the arts. should be altered so as to render their holding a sufficient qualification. A. & M. acted as directors, & received fees. The co. was afterwards ordered to be wound up. On a summons taken out by the official liquidator asking that A. & M. might be ordered to repay to him the fees so received by them on the ground that, during the period in respect of which such fees were paid, they did not possess the necessary qualification:—*Held*: the directors might act before they acquired the qualification; whatever the rights of the co. might be in case they failed to acquire it, the co. might resolve that for a limited time the board of directors should abstain from allotting the qualification shares, or from insisting that the directors should not act until they had acquired them, & that in the present case the directors as a body having power to do all such acts as were not required to be done by a general meeting, they were within their powers in electing A. & M. & requesting them to act pending the submission of the question of qualification to the shareholders; A. & M. had duly acted as directors, & were entitled to their remuneration as such.—*Re INTERNATIONAL CABLE CO., LTD., Ex p. OFFICIAL LIQUIDATOR* (1892), 66 L. T. 253; 8 T. L. R. 316; 36 Sol. Jo. 293.

2884. ——— *Alteration of qualification—"Future qualification."*—*Re LA MANCHA IRRIGATION & LAND CO., HAMILTON'S (LORD CLAUD) CASE*, No. 2902, *post*.

See, also, No. 2831, *ante*.

Effect of acting as director when unqualified—Whether implied contract to take qualification shares.—*See Sub-sect. 2, C. (b), post*.

2885. *Where no qualification required by constitution of company.*—(1) The arts. of assocn. of a co. did not require that a director should be qualified by holding any shares, but the directors passed a resolution, which was not in any way confirmed by the shareholders, that the qualification should in future be 250 shares of £1 each:—*Held*: this resolution could not alter the constitution of the co., & a person who was afterwards elected a director, & who acted in that

Scotia:—Held: deft. could not set up the contention that the directors were not eligible or properly elected—they were *de facto* directors, & their eligibility could not be inquired into in this collateral way.—*MODSTOCK*

MINING CO. v. HARRIS (1902), 40 N. S. R. 336.—*CAN.*

a. Employment by company—In other capacity—Effect of.—An objection was raised to the president of an

insurance co. acting as such, because he acted as the inspector of the co. for which he was paid a salary:—*Held*: no weight could be given to it, because three directors formed a quorum of which the president need not be one,

capacity, did not thereby enter into any implied contract to take or hold shares.

(2) The directors of a co., in its name, entered into an agreement with H. that the capital of the co. should be increased, & that he should endeavour to obtain subscribers for the new shares to be issued. He was to receive, by way of remuneration, a large commission on the nominal value of the new shares taken up, & also a number of shares issued as fully paid up to him or his nominees, of which 1000 were to be issued as soon as the directors had accepted four persons to be nominated by him as directors or trustees of the co. This agreement was registered. The co. afterwards passed a special resolution to increase the capital to the extent mentioned in the agreement. R., on the nomination of H., agreed to become a director, on the understanding that he was to be qualified by holding 200 fully paid-up shares, which were to be found for him by H. R. was afterwards elected a director, & acted as such. After his election a second agreement was entered into between the co. & H., by which it was arranged that 2,000 specified shares should be allotted to him or his nominees, as part of the consideration to which he was entitled under the first agreement. The second agreement was also registered. After this 200 of the specified shares were, at the request of H., allotted to R., & were with his assent registered in his name as fully paid up. Nothing was, in fact, paid for them. The co. was afterwards ordered to be wound up:—*Held*: the arrangement with H. was fraudulent, & *ultra vires*, but as R. had never agreed to take any but paid-up shares, he could not be placed on the list of contributories in respect of the 200 shares.—*Re BRITISH PROVIDENT LIFE & GUARANTEE ASSOCN., DE RUVIGNE'S CASE* (1877), 5 Ch. D. 306; 46 L. J. Ch. 360; 36 L. T. 329; 25 W. R. 476, C. A.

Annotations:—*As to* (1) *Appld. Re Patent Davit & Boat Detaching Co., Ranken's Case* (1879), 39 L. T. 664. *As to* (2) *Reid. Re Caerphilly Colliery Co., Ormerod's Case* (1877), 37 L. T. 244; *Re Church & Empire Fire Insce., Pagin & Gill's Case* (1877), 6 Ch. D. 681; *Re Eskern Slate & Slab Quarries Co., Clarke & Helden's Cases* (1877), 37 L. T. 222; *Re Eupion Fuel & Gas Co., Aspinall's Case* (1877), 36 L. T. 362; *Re Englefield Colliery Co.* (1878), 8 Ch. D. 388; *Re Ambrose Lake Tin & Copper Mining Co., Ex p. Moss, Ex p. Taylor* (1880), 42 L. T. 604; *Re Macdonald*, [1894] 1 Ch. 89.

2886. — Effect of resolution by subscribers.]—The arts. of assocn. of a co. did not require that a director should be qualified by holding any shares but the subscribers to the memorandum of assocn. passed a resolution that the qualification of future directors should be the holding of fifty shares each, & that R. should be one of the future directors. R. subsequently became a director, & acted as chairman at some meetings. R.'s name also appeared as a director in the prospectus. R. stated that when he acted as chairman he was not aware that any qualification was necessary, & that as soon as he heard of it he took steps to get this resolution rescinded, & ultimately wrote to the secretary resigning his seat at the board.

R. had signed a proxy paper as "a member of the co.," but had never applied for any shares, nor were any ever allotted to him. The chief clerk settled R. on the list of contributories in respect of fifty qualification shares:—*Held*: a resolution of the subscribers could not alter the constitution of the co., & there being no contract on R.'s part either express or implied to take shares, his name must be removed.—*Re PATENT DAVIT & BOAT DETACHING CO., RANKEN'S CASE* (1879), 39 L. T. 664.

B. What constitutes.

2887. Effect of mortgage of qualification shares.]

—Where the qualification of a party to act as a director of a co. consists in his being the proprietor of a certain number of shares, the qualification will not be lost by a mtge. of those shares.—*CUMMING v. PRESCOTT* (1837), 2 Y. & C. Ex. 488; 160 E. R. 488.

Annotation:—*Mentd. Soc. Générale de Paris v. Tramways Union Co.* (1884), 14 Q. B. D. 424.

2888. — Shares required to be held in own right.]—By a contract between the vendors of a brewery & a trustee for a limited co. which was to be formed for the purchase & carrying on of the brewery, it was agreed that B., one of the vendors, should be a managing director for a specified time, & that on his retirement or death his son, pltf., should be managing director for a term therein mentioned, & that B. should provide a qualification for his son as managing director. By the arts. of assocn., which adopted the contract, it was provided that a director should vacate his office if he did not acquire a qualification within a month of his appointment or election, & that the qualification of a managing director should be the holding in his own right shares of the nominal value of £25,000. B. provided for pltf. shares to the amount of £5,000, & died in Aug., 1888. Pltf., who was one of his exors., & his co-exors., in Oct., 1888, transferred shares to the amount of £20,000 into pltf.'s name to complete his qualification as a managing director; but the estate had not been administered, & there was no evidence under what circumstances the shares were transferred to him or whether he was beneficially entitled to them. The board of directors refused to recognise pltf. as a director on the ground that he had not sufficient qualification, & he brought an action to restrain them from excluding him, & moved for an interim injunction:—*Held*: (1) on the construction of the arts. the provision that the office of a director should be vacated if he did not acquire a qualification within a month did not apply to those who were appointed managing directors under the contract; (2) in the absence of evidence as to the beneficial interest in the shares transferred to pltf. the ct. could not decide whether he was the holder of the shares "in his own right" within the arts., until the estate had been administered. (3) Afterwards, an extraordinary meeting of the shareholders having, at the instance of the ct., been held & a resolution

& a quorum may have acted without him; & for all that appeared it might be that he only received an additional allowance as president while discharging the duties of inspector.—*VICTORIA MUTUAL FIRE INSURANCE CO. v. THOMPSON* (1882), 32 C. P. 476.—CAN.

PART III. SECT. 28, SUB-SECT. 2.—B.

b. Shares required to be held in own right.—How far beneficial ownership necessary.]—Deft. municipality subscribed for & had issued to it 2,500 shares in the capital stock of

deft. co. Deft. municipality then transferred certain of its shares to four persons, also made defts., to qualify them as shareholders with a view to their election as directors of the co.:—*Semble*: under Railway Act, 1906 (c. 37), s. 112, the four individual defts. could not legally become directors, the contemplation of the statute being that the qualifying shares should be beneficially owned by the directors.—*LUCAS v. NORTH VANCOUVER MUNICIPALITY* (1913), 24 W. L. R. 966.—CAN.

c. Shares transferred to give qualification.]—The stock of a co. was owned exclusively by G. & W. The charter of the co. required that there should be a board of directors consisting of not less than three members, each of whom should hold stock to the amount of not less than \$100. It having become necessary to raise funds for the co., G. & W. agreed to convey to M. one share each in order to qualify him as a director. M. thenceforth acted as the third director, & the funds were obtained. By his will M.

Sect. 28.—Directors: Sub-sect. 2, B. & C. (a).]

having been passed that even if pltf. were duly qualified they did not desire him to act as a managing director, the ct. declined to interfere with the decision of the shareholders, & refused the injunction.

(4) The meaning of a shareholder holding shares "in his own right" is that he must not only have the legal right to deal with them, but must have the beneficial ownership of them; although such ownership may be incumbered (COTTON, L.J.).

(5) The expression has gained a practical conventional meaning, namely, that the shareholder holds them in such a way that the co. may safely deal with them as his shares (LINDLEY, L.J.). —BAINBRIDGE v. SMITH (1889), 41 Ch. D. 462; 60 L. T. 879; 37 W. R. 594; 5 T. L. R. 375, C. A.

Annotations:—As to (3) *Apld.* Cuff v. London & County Land & Building Co., [1912] 1 Ch. 440. *Distd.* British Murac Syndicate v. Alpertown Rubber Co., [1915] 2 Ch. 186. *Refd.* Salmon v. Quin & Axtens, [1909] 1 Ch. 311; Cory v. Reindeer S.S. (1915), 31 T. L. R. 530. As to (4) *Folld.* Cooper v. Griffin, [1892] 1 Q. B. 740; Howard v. Sadler, [1893] 1 Q. B. 1. *Refd.* *Re* Bainbridge, Reeves v. Bainbridge, [1889] W. N. 228. As to (5) *Apld.* Boschoek Proprietary Co. v. Fuke, [1906] 1 Ch. 148; Sutton v. English & Colonial Produce Co., [1902] 2 Ch. 502.

2889. Shares required to be held in own right—How far beneficial ownership necessary—Shares transferred—Transferor remaining on register.]—(1) A director of a co. can, if qualified, sustain an action in his own name against the other directors, on the ground of individual injury to himself, for an injunction to restrain them from wrongfully excluding him from acting as a director.

(2) Where the arts. of assocn. of a co. provided that no person should be eligible as a director unless he held "as registered member in his own right capital of the nominal value of £500 at least":—*Held*: beneficial ownership was not necessary for a qualification, & a registered holder of the required capital, though he had transferred his shares to another, was properly eligible.—PULBROOK v. RICHMOND CONSOLIDATED MINING CO. (1878), 9 Ch. D. 610; 48 L. J. Ch. 65; 27 W. R. 377.

Annotations:—As to (1) *Folld.* Munster v. Cammell (1882), 51 L. J. Ch. 731. *Refd.* Harben v. Phillips (1883), 23 Ch. D. 14. As to (2) *Folld.* *Re* Bainbridge, Reeves v. Bainbridge, [1889] W. N. 228. *Consd.* Bainbridge v. Smith (1889), 41 Ch. D. 462; Cooper v. Griffin, [1892] 1 Q. B. 740. *Folld.* Howard v. Sadler, [1895] 1 Q. B. 1. *Apld.* Sutton v. English & Colonial Produce Co., [1902] 2 Ch. 502. *Generally, Refd.* Dashwood v. Cornish (1897), 13 T. L. R. 337.

2890. ——— Effect of mortgage.]—BAINBRIDGE v. SMITH, No. 2888, *ante*.

2891. ———.]—*Re* BAINBRIDGE, REEVES v. BAINBRIDGE, [1889] W. N. 228.

2892. ——— Effect of notice of claim by trustee in bankruptcy.]—Although beneficial ownership is not essential to holding shares "in his own right" for the purpose of a qualification clause in arts. of assocn., yet the shareholder must hold in such a way that the co. may safely deal with the shares as his. Accordingly, a

bequeathed the two shares to S., who exercised, when necessary, the functions of director. After some time G. became dissatisfied with the manner in which S. discharged his duties as director, alleging that he acted simply as the nominee of W., & finally asserted that the shares had been originally assigned to M. for the avowed purpose of qualifying him to act, but in reality as trustee for G. & W., & that he had not a power to dispose of them by will, & filed a bill seeking to have it declared that M. during his lifetime, & S. since his

death, had held these shares simply as trustees of G. & W., & that S. might be ordered to reassign them:—*Held*: the transfer to M. was not without consideration, the agreement by G. & W. with each other to make it being sufficient, & the bill must be dismissed.

Semle: pltf. was estopped from alleging that M. was not properly qualified as a director, the effect of which would have been to injuriously affect the value of bonds of the co., to the issue of which pltf. was a party.—KIELY v. SMYTH (1879), 27 Gr. 220.—CAN.

director does not hold shares "in his own right" within a qualification clause where the trustee in his bkpcy. has given notice claiming the shares.—SUTTON v. ENGLISH & COLONIAL PRODUCE CO., [1902] 2 Ch. 502; 71 L. J. Ch. 685; 87 L. T. 438; 50 W. R. 571; 18 T. L. R. 647; 10 Mans. 101.

Annotation:—*Refd.* Boschoek Proprietary Co. v. Fuke, [1906] 1 Ch. 148.

2893. ——— Shares held as liquidator of another company.]—(1) The qualification of a director being the holding of 250 shares in his own right, F. was registered as "F. liquidator of the H. co." with a holding of 500 shares:—*Held*: he was not qualified to be a director.

(2) Apart from special provision in the arts. directors are not entitled to their fees free of income tax.

(3) The resolutions of a general meeting convened by *de facto* directors are not invalidated by any irregularity in the constitution of the board.

(4) Arts. fixing the qualification & remuneration of directors being binding on the co. as well as the directors, the co. cannot ratify an act of the directors in contravention of such arts. without first altering them by special resolution.—BOSCHOEK PROPRIETARY CO., LTD. v. FUKU, [1906] 1 Ch. 148; 75 L. J. Ch. 261; 94 L. T. 398; 54 W. R. 359; 22 T. L. R. 196; 50 Sol. Jo. 170; 13 Mans. 100.

Annotation:—As to (4) *Refd.* Nelson v. Nelson, [1914] 2 K. B. 770.

Whether shares held in own right—Within Judgments Act, 1838 (c. 110), s. 14.]—*See* No. 2648, *ante*, & generally, EXECUTION.

2894. Shares held jointly.]—A director's qualification shares may be held jointly with another person.—*Re* GLORY PAPER MILLS CO., DUNSTER'S CASE, [1894] 3 Ch. 473; 63 L. J. Ch. 885; 71 L. T. 528; 43 W. R. 164; 10 T. L. R. 669; 38 Sol. Jo. 694; 1 Mans. 438; 7 R. 456, C. A.

Annotation:—*Apld.* Grundy v. Briggs, [1910] 1 Ch. 444.

2895. Shares held as executor.]—Pltf. & others were exors. of a shareholder in deft. co. The co. on production of probate registered them as joint holders of the shares. Pltf. was afterwards appointed a director of the co. subject to his acquiring the necessary qualification. The arts. of assocn. required each director to be the registered holder of not less than twenty shares. Pltf. already held five shares in his own name. The exors. executed a transfer of fifteen of testator's 112 shares to pltf. for a nominal consideration. On the next day one of the transferors wrote to the co. revoking his signature of the transfer & notifying the co. not to register the transfer. The directors of the co. thereupon refused to register the transfer, & subsequently informed pltf. that he had ceased to be a director, not having acquired the necessary qualification within the statutory period, & thenceforth excluded him from the directors' meetings. In an action by pltf. for an injunction to restrain the directors from excluding him, & for rectification:—*Held*: pltf. was qualified to be a director of the co. by virtue of his

d. *Shares held as trustee.]—*In an action by a co. against a shareholder for payment of a call, deft. pleaded that the call had not been validly made, on the ground that the directors who made the call had not had the requisite qualification, in that their shares though registered in their own names were truly held in trust for another:—*Held*: defence was irrelevant inasmuch as the directors were, *ex facie* of the register, the holders of the shares & must be held entitled to all the privileges of shareholders as they were liable to all the obligations.—

registration as a joint holder of testator's shares.—**GRUNDY v. BRIGGS**, [1910] 1 Ch. 444; 79 L. J. Ch. 244; 101 L. T. 901; 54 Sol. Jo. 163; 17 Mans. 30.
Annotation:—**Re**ld. **Mackereth v. Wigan Coal & Iron Co.**, [1916] 2 Ch. 293.

C. Liability to take Qualification Shares.

(a) In General.

2896. Shares transferred to director—Held in trust for company—Transfer not registered.—Where important provisions of the deed of settlement & the statute with respect to the transfer of shares have been violated or disregarded by the board, in order to enable a person to qualify for the directorship of a co., that person will not be liable to be inserted on the list of contributories, even though he should, without ever paying for them, execute a transfer alleging that it is for value, to himself of the necessary shares, accept the directorship & receive fees for his attendances, unless the co. is in a position absolutely to prove that he was party or privy to the breach of trust of duty on the part of the directors. The shares transferred having been held theretofore by the manager in trust for the co., & having been by the order of the directors transferred without payment of any consideration to the alleged contributory:—**Held**: he was, as the manager had previously been, only a trustee for the co.—**Re WATERLOO LIFE, EDUCATION, CASUALTY & SELF RELIEF ASSURANCE CO., SAUNDERS'S CASE** (1864), 2 De G. J. & Sm. 101; 3 New Rep. 548; 10 L. T. 3; 10 Jur. N. S. 246; 12 W. R. 502; 46 E. R. 313, L. JJ.

Annotations:—**Distd. Re Imperial Mercantile Credit Assocn., Chapman & Barker's Case** (1867), L. R. 3 Eq. 361. **Consd. Re West Hartlepool Iron Co., Gray's Case** (1876), 1 Ch. D. 664. **Re**ld. **Re Patent Paper Manufacturing Co., Addison's Case** (1870), 5 Ch. App. 294.

2897. Application for shares by director—Shares not allotted—Memorandum subscribed for fewer shares than qualification.—**Re LLANHARRY HEMATITE IRON CO., TOTHILL'S CASE**, No. 3441, *post*.

2898. — Name inserted in list of shareholders referred to in resolution of board—Director not present at meeting.—**Re LLANHARRY HEMATITE IRON CO., TOTHILL'S CASE**, No. 3441, *post*.

2899. — Followed by invalid allotment—Subsequent repudiation.—S., who was a shareholder for twenty shares, applied for thirty more, expressly to qualify as director; & at a general meeting, confirmed by a subsequent meeting, the shares were allotted, & he was appointed director, & paid the deposit on the shares. It afterwards turned out that these proceedings were invalid. S. then repudiated the additional shares, & required that the deposit paid on them should be appropriated to his former twenty shares, which was accordingly done. He never acted as director; but on two occasions paid calls in respect of the twenty shares, for which only his name was down in the register at the joint-stock office. The co. was being wound up & the official liquidator sought to make S. a contributory for fifty shares, viz., the twenty original & the thirty qualifying shares:—**Held**: the application would be refused.—**SHAW'S CASE** (1876), 34 L. T. 715.

2900. — Application withdrawn before allotment—Though office exercised.—The arts. of

assocn. of a co. provided that a director's qualification should be 25 shares, & that the first directors should be the subscribers of the memorandum of assocn., or such of them as should be appointed by the subscribers, together with any other members of the co. appointed by the subscribers. C., who was not one of the subscribers & held no shares in the co., was appointed by the subscribers one of the first directors, was elected chairman by the board, & his name appeared as such in the prospectus shortly afterwards issued. He afterwards applied for forty shares & paid a deposit. No shares were allotted to any of the appcts. on account of the applications not being sufficiently numerous, & C., after having presided at several board meetings & signed cheques, resigned his position as director without ever having held shares or having been registered as a member of the co. He afterwards withdrew his application for shares & requested the return of his deposit, & the deposit on fifteen of the forty shares for which he had applied was returned to him, but not the deposit on the 25 qualification shares. H.'s case was similar in the material respects. The co. having been ordered to be wound up, & the names of C. & H. having been settled on the list of contributories for the 25 shares:—**Held**: their names must be removed from the list, since their applications were for allotment of shares, & their agreement was to accept the shares on allotment, & no shares had ever been allotted, & their appointment & continuance as directors, though they held no shares, was simply an irregularity, & did not constitute a contract between the co. & them for the allotment of the qualification shares.—**Re ELECTRIC & MAGNETIC CO., LTD., CARMICHAEL'S & HEWETT'S CASE** (1882), 46 L. T. 653; 30 W. R. 742.

Withdrawal of application, generally, see Sect. 17, sub-sect. 2, G., *ante*.

2901. Whether office accepted—Attendance at one meeting—Mistake as to character of meeting.—The arts. of assocn. of a co. provided that the first directors should, within two months of the date of their appointment, become the registered proprietors of 250 shares of £1 each, & that the first directors of the co. should be appointed by a meeting of subscribers to the memorandum of assocn. forthwith after registration. The co. was incorporated on Jan. 11, 1884. A meeting of the subscribers to the memorandum was held on Jan. 12, & T., who was not a subscriber, was appointed one of the first directors. A draft prospectus was then settled & signed by the directors present, including T., & T.'s name was inserted as a director. T. alleged that he did not know the co. was formed before the meeting of Jan. 12, but thought it a preliminary meeting. He never attended another meeting nor in any way acted as director, nor applied for nor was allotted any shares. The co. was ordered to be wound up on Aug. 8, 1885. The liquidator claimed to put T. on the list of contributories for 250 shares:—**Held**: T. could not be taken to have become a director, & if he had ever acted as a director, he had withdrawn during the two months allowed for qualifying, & could not be put on the list of contributories.—**Re SELF-ACTING SEWING MACHINE CO., LTD.** (1886), 54 L. T. 676; 34 W. R. 758.

GALLOWAY SALOON STEAM PACKET CO. v. WALLACE (1891), 19 R. (Ct. of Sess.) 330; 29 Sc. L. R. 264.—**SCOT**.

PART III. SECT. 28, SUB-SECT. 2.—
C. (a).

e. How satisfied.—Shares taken as

a qualification for a directorship of a co. need not be taken from the co. It is enough if they are taken in open market or from a friend within a reasonable time after acceptance of the office, & they need not be shares for which the qualifying director has paid.—**Re BOMBAY ELECTRICAL CO.,**

LTD., NUSSERVANJI DADABHOY KAT-RUCK'S CASE (1888), I. L. R. 13 Bom. 1.—**IND**.

f. — Vendor's shares.—Unless there be a special provision in the arts. of assocn. of a co. to prevent it, a director's qualifying shares may be

Sect. 28.—Directors: Sub-sect. 2, C. (a) & (b).]

2902. Alteration of qualification after appointment—Effect on continuing directors—Alteration confined to future directors.]—By the memorandum of assocn. of a co., C. & H. were named as directors, without being required to hold any particular number of shares as a qualification. The co. was regulated by Table A. of 1862 Act, clause 58 of which provides that at the first ordinary meeting the whole of the first body of directors shall retire. An extraordinary general meeting was held within four months after the registration, at which a resolution was passed, which was duly confirmed, that the future qualification of a director should be 100 shares. It was also resolved to postpone the first ordinary general meeting for three years. The co. was afterwards ordered to be wound up:—*Held*: the future qualification meant the qualification of future directors, & C. & H. were not liable for 100 shares, although they continued to act as directors till the co. was wound up.—*Re LA MANCHA IRRIGATION & LAND CO., HAMILTON'S (LORD CLAUD) CASE* (1873), 8 Ch. App. 548; 42 L. J. Ch. 465; 28 L. T. 652; 21 W. R. 518, L. JJ.

Annotations:—*Distd. Re British Colonial & Foreign Property Insee. Corp'n., Stephenson's Case* (1876), 45 L. J. Ch. 488. *Reid. Re Teme Valley Ry., Forbes' Case* (1875), L. R. 19 Eq. 353; *Re East Norfolk Tram. Co., Barber's Case* (1877), 26 W. R. 3.

2903. — Effect on existing directors—Whether office terminated.]—(1) By a special resolution of a co. incorporated under Companies Acts, 1862 to 1898, the share qualification of the directors was raised from 50 to 250 shares:—*Held*: the directors did not thereby cease to hold their qualifications, & necessarily vacate their offices under Companies Act, 1890 (c. 48), s. 3 (2).

(2) A person who accepts an appointment as director knowing that the holding of a certain number of shares in the co. is a necessary qualification, & acts as director, must be held to have contracted with the co. that he will, within a reasonable time, obtain the requisite shares either by transfer from existing shareholders or directly from the co.

(3) Where a director takes an active part in a scheme for increasing the share qualification of the directors of a co., the reasonable time may begin to run before the date of the second confirmatory resolution of the members, & ends on the first occasion when he does an important act as director after that date.—*MOLINEAUX v. LONDON, BIRMINGHAM & MANCHESTER INSURANCE CO., LTD.*, [1902] 2 K. B. 589; 71 L. J. K. B. 848; 87 L. T. 324; 51 W. R. 36; 18 T. L. R. 753, C. A.

Annotation:—*Generally, Mentd. Re Brazilian Rubber Plantations & Estates*, [1911] 1 Ch. 425.

Allotment to vendor-director.]—*See* No. 2861, *ante*.

(b) Under Implied Contract.

2904. Agreement to become director—Office never exercised.]—A. consented to become a

director of the co., & was appointed a director, but never took any active part in the affairs of the co., & after about fourteen months he resigned his office. By the terms of the deed of settlement no one could be a director who did not hold £100 capital stock. A., however, never was & never agreed to be the holder of any stock in the co.:—*Held*: A. could not be placed on the list of contributories on the ground of his having, by accepting the office of director, come under an obligation to take the stock requisite to qualify him for the office.—*Re NATIONAL INSURANCE & INVESTMENT ASSOCN., DAVIES'S CASE, ABERCORN'S (LORD) CASE* (1862), 4 De G. F. & J. 78; 31 L. J. Ch. 828; 7 L. T. 225; 8 Jur. N. S. 951; 10 W. R. 548; 45 E. R. 1112, L. JJ.

Annotations:—*Distd. Re Great Northern & Midland Coal Co., Currie's Case* (1863), 3 De G. J. & S. 367. *Follid. Re General International Agency Co., Chapman's Case* (1866), L. R. 2 Eq. 567. *Distd. Re International Contract Co., Levita's Case* (1867), 3 Ch. App. 36. *Consd. Re Metropolitan Public Carriage & Repository Co., Brown's Case* (1873), 9 Ch. App. 102; *Re Freehold & General Investment Co., Green's Case* (1874), L. R. 18 Eq. 428; *Re Colombia Chemical Factory Manure & Phosphate Works, Hewitt's Case, Brett's Case* (1883), 25 Ch. D. 283. *Reid. Re Llanharry Hematite Iron Ore Co., Roney's Case, Stock's Case* (1864), 4 De G. J. & Sm. 426; *Re Waterloo Life Assce., Saunders's Case* (1864), 10 L. T. 3; *Re Great Oceanic Telegraph Co., Harward's Case* (1871), L. R. 13 Eq. 30; *Re British Provident Life & Guarantee Asscn., De Ruvigne's Case* (1877), 5 Ch. D. 306; *Re Printing Telegraph & Construction Co. of Agence Havas, Ex p. Cammell*, [1894] 2 Ch. 392. *Mentd. Re District Savings Bank, Ex p. Official Liquidator* (1862), 6 L. T. 304; *Re National Assce. & Investment Asscn., Ex p. Cotterell* (1862), 32 L. J. Ch. 66; *Re Life Asscn. of England, Blake's Case* (1865), 34 Beav. 639; *Henderson v. Lacon* (1867), L. R. 5 Eq. 249; *Ilfracombe Rty. v. Nash* (1870), 18 W. R. 431; *Arnison v. Smith* (1889), 41 Ch. D. 348.

2905. — Memorandum & articles signed as subscriber.]—(1) Before the formation of a co., at a preliminary meeting, certain persons agreed to hold 100 shares each, & also to execute the arts. & memorandum of assocn., when ready, & act as directors of the co. A few days afterwards they signed the memorandum of assocn. for 21 shares each, & they also signed the arts. of assocn. By two of the clauses of the arts. it was provided that the subscribers of the memorandum should be directors, until directors were appointed, & that no shareholder was entitled to be a director unless he held at least 100 shares in the co. The co. was afterwards wound up in bkpcy.:—*Held*: considering the aforesaid resolution & the arts. of assocn., they were liable to be placed on the list of contributories in respect of 100 shares each, in which number the 21 shares for which they had subscribed the memorandum of assocn. would be included.

(2) The directors took a transfer of paid-up shares from an allottee who had had them allotted to him by the co. in part-payment of purchase-money in respect of property purchased by the co. The same directors were holders of other paid-up shares taken by them for attendance fees:—*Held*: their obligation to take the qualification shares could not be satisfied by their taking

shares allotted to him as nominee of the vendor who has taken fully paid-up shares in part or full payment of the price of the business sold to him.—*RUTHERFORD TOBACCO, ETC. CO. (IN LIQUIDATION) v. LUSBY* (1902), 10 S. L. T. 29.—*SCOT*.

PART III. SECT. 28, SUB-SECT. 2.—C. (b).

g. Agreement to become director—Part payment.]—C. agreed to act as a director, & gave his note for \$500, in order to obtain a qualification. The president subscribed for 50 shares for

him, on which the \$500 would pay 10 per cent. C. then acted as a director for some time without, as he alleged, knowing that any stock had been subscribed for him. Subsequently he was notified of a 5 per cent. call on 50 shares, & he at once communicated with the president, who told him not to mind, & that the secretary would be instructed, & he was not troubled again about it. During this time his note had been carried by the co., & he had paid nothing. The president then absconded, & C. was notified of a 5 per cent call, & gave a note for \$250 in payment of same, not, as he alleged,

because he was liable, but because he was told that it would settle his total liability, & he did not wish to enter into a suit:—*Held*: he was properly placed on the list of contributories.—*Re STANDARD FIRE INSURANCE CO., CHISHOLM'S CASE* (1884), 7 O. R. 448.—*CAN*.

h. Director named in articles—Office exercised.]—*Re DUBLIN & METROPOLITAN JUNCTION RY.* (1877), 1. R. 11 Eq. 294.—*IR*.

k. — — —.]—In the winding up of a co. it was sought to put the original directors, who had been

the unpaid-for shares.—*Re* GREAT NORTHERN & MIDLAND COAL CO., LTD., CURRIE'S CASE (1863), 3 De G. J. & Sm. 367; 2 New Rep. 145; 32 L. J. Ch. 421; 8 L. T. 472; 11 W. R. 675; 46 E. R. 677, L. JJ.

Annotations :—*As to* (1) *Distd.* *Re* Llanharry Hematite Iron Ore Co., Roney's Case, Stock's Case (1864), 4 De G. J. & Sm. 426. *Consd.* *Re* Pelotas Coffee Co., Karuth's Case (1875), L. R. 20 Eq. 506. *Reid.* *Re* Disderi (1870), 40 L. J. Ch. 248; *Re* Anglo-Austrian Printing & Publishing Union, Isaacs' Case, [1892] 2 Ch. 158. *Generally, Mentd.* *Re* Western of Canada Oil, Lands & Works Co., Carling, Hespeler & Walsh's Cases (1875), 1 Ch. D. 115.

2906. Conditional agreement to become director —Office exercised.]—The arts. of a limited co. provided that the necessary qualification for a director should be the being registered owner of 50 shares in the co. E. was elected a director, signed an application for 50 shares, & drew a cheque for the deposit money thereon, both of which he deposited with the chairman, & secretary of the co., to await his decision whether he would qualify as a director. Meantime, he attended meetings of the board & did certain acts as a director. Subsequently, he refused to take any shares, & his cheque was returned to him:—*Held*: on the winding up of the co., he was not a contributory of the co.

At no time was there a contract between himself & the co. that he should become a shareholder that they could enforce against him or he against the co. (GIFFORD, V.-C.).—*Re* IMPERIAL LAND CREDIT CORPN., LTD., *Ex p.* EVE (1868), 37 L. J. Ch. 844; 16 W. R. 1191.

2907. Director named in articles—Name appearing in prospectus—Prompt withdrawal on ground of misrepresentation.]—*Re* PELOTAS COFFEE CO., KARUTH'S CASE, No. 2937, *post*.

2908. — — — Acting as director—Application for shares withdrawn before allotment.]—*Re* ELECTRIC & MAGNETIC CO., LTD., CARMICHAEL'S & HEWETT'S CASE, No. 2900, *ante*.

2909. — — — Assent to articles—Articles subscribed for one share.]—*Re* COLOMBIA CHEMICAL FACTORY MANURE & PHOSPHATE WORKS, HEWITT'S CASE, BRETT'S CASE, No. 2880, *ante*.

2910. — — — Office never exercised.]—Arts. of assocn. of a co. provided that the first directors should be, amongst others, R.; that the qualification of a director should be the holding of shares in the co. of the nominal amount of £250; that the first directors might act before acquiring their qualification, but unless, within one month of their appointment, they should acquire such qualification they should be deemed to have agreed to take the same, & the same should be allotted to them accordingly. R. did not take his qualification shares within the time required by the arts., & he never in any way acted as a director, but there was evidence that he had agreed to become one:—*Held*: R. must be taken to have agreed to become a director upon the terms of the arts., & consequently to take the shares necessary for his qualification; the circumstance that he

had not acted made no difference; & he had been rightly put on the list of contributories.—*Re* HERCYNIA COPPER CO., [1894] 2 Ch. 403; 63 L. J. Ch. 567; 42 W. R. 593; 10 T. L. R. 448; *sub nom.* *Re* HERCYNIA COPPER CO., LTD., *Ex p.* RICHARDSON, 70 L. T. 709; 1 Mans. 286; 7 R. 214, C. A.

Annotations :—*Reid.* *Re* Bolton, Salisbury-Jones & Dale's Case, [1894] 3 Ch. 356; *Re* Moore, Bartholomew's Case (1899), 68 L. J. Ch. 302.

See, further, Nos. 2874, 2876, *ante*.

2911. Person holding himself out & acting as director —Eighteen months.]—Parties holding themselves out to the world for a period of eighteen months as directors of a district savings bank, & being the only parties transacting the business of the bank as directors during that period & receiving payment for their services, but who have not taken shares, must be considered as having consented to qualify for the office, & upon the bank being ordered to be wound up will be placed upon the list of contributories for the amount of such qualification.—*Re* DISTRICT SAVINGS BANK, LTD., *Ex p.* OFFICIAL LIQUIDATOR (1862), 6 L. T. 304.

2912. Person invited to become director—Attending meetings to see how company managed but office not accepted.]—In Mar. 1865, G. was asked to become a director of a co. He then attended three board meetings of the directors, & his name was entered in the minute book as attending, but he alleged he merely came as a visitor, & to see how the co. was managed. He allowed a prospectus to be issued on which his name appeared as a director. In May, 1865, he wrote to the secretary, requesting that his name might be withdrawn, & though he afterwards acted for the co. as auctioneer, he never again interfered as director. No shares were allotted to G., & his name did not appear on the register of members. In 1870 the co. was ordered to be wound up. In July, 1873, the official liquidator, for the first time, fixed G. on the list of contributories, in respect of twenty shares, the number required by G. for his qualification as director:—*Held*: having regard to the lapse of time, & as G. had entered into no actual contract to take shares, his name was improperly placed upon the list.—*Re* FREEHOLD & GENERAL INVESTMENT CO., GREEN'S CASE (1874), L. R. 18 Eq. 428; 43 L. J. Ch. 629; 30 L. T. 672; 22 W. R. 791.

Annotation :—*Reid.* *Re* Colombia Chemical Factory Manure & Phosphate Works, Hewitt's Case, Brett's Case (1883), 25 Ch. D. 283.

2913. Person described in prospectus as director —Name withdrawn.]—*Re* FREEHOLD & GENERAL INVESTMENT CO., GREEN'S CASE, No. 2912, *ante*.

2914. — — —.]—*Re* PELOTAS COFFEE CO., KARUTH'S CASE, No. 2937, *post*.

2915. Person accepting office of director—Acting as director—Whether liable to take shares from company.]—*Re* METROPOLITAN PUBLIC CARRIAGE & REPOSITORY CO., BROWN'S CASE, No. 2952, *post*.

2916. — — —.]—Arts. of assocn. provided that the qualification of a director should

nominated in the arts. of assocn. upon the list of contributories to the extent of thirty shares under the following arts.: "no person shall be eligible to or shall continue in the office of director unless he is the holder in his own right of shares representing at par the nominal sum of £300 in the capital of the co."—*Held*: the original directors, although they had acted as such, could not be put upon the list of contributories to the qualifying amount, for the clause could not be so read as to apply to directors nominated by the arts. of assocn. but merely to those who might be after-

wards formally elected by the co.—CONSOLIDATED COPPER CO. OF CANADA v. PEDDIE (1877), 5 R. (Ct. of Sess.) 393; 15 Sc. L. R. 274.—SCOT.

1. — — —.] — The arts. of assocn. provided that certain persons named should be the first directors. It was also provided that "no person shall be eligible to or shall continue in, the office of director unless he be holder in his own right of shares representing at par the nominal sum of £300 in the capital of the co."—*Held*: the provisions as to qualification only applied to directors who should be

subsequently elected by the shareholders, & not those nominated in the arts. of assocn. & consequently there was no foundation for the plea that persons so nominated, by acting as directors, came under an implied agreement to take the amount of shares required as a minimum for an elected director.—CONSOLIDATED COPPER CO. OF CANADA, LTD. v. PEDDIE (1877), 5 R. (Ct. of Sess.) 393.—SCOT.

m. — — —.] — The arts. of assocn. of a co. provided that the office of a director should be vacated, if a director should cease to hold 250

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be the holding of fifty shares. A. was elected & acted as a director, but no shares were ever allotted to him by the co., nor did he apply for any, nor did he obtain shares from any other source. In the liquidation of the co.:—*Held*: there ought to be inferred an agreement between A. & the co. that A. should serve as director on the terms provided by the arts., including a contract to take his qualification shares, within a reasonable time, from the co. itself if not obtained from any other source, & A. must be fixed on the list of contributories under 1862 Act, s. 23.—*Re BREAD SUPPLY ASSOCN., LTD., KONRATH'S CASE* (1893), 62 L. J. Ch. 376; 68 L. T. 434; 3 R. 288.

Annotation:—*Consd. Re Issue Co., Hutchinson's Case, Betzold's Case, Benjamin's Case* (1894), 71 L. T. 667.

2917. ————.]—*MOLINEAUX v. LONDON, BIRMINGHAM & MANCHESTER INSURANCE CO., No. 2903, ante.*

2918. ————.]—The arts. of assocn. of a co. provided that no person should be eligible in future as a director unless he should hold in his own right at least fifty shares in the co., & that the office of director should be vacated if he should cease to hold the requisite number of shares in the co.:—*Held*: a person who was elected & acted as a director of the co. without taking any shares therein, was liable in the winding up for the qualification number of shares.—*Re BRITISH, COLONIAL & FOREIGN PROPERTY INSURANCE CORPN., STEPHENSON'S CASE* (1876), 45 L. J. Ch. 488.

Annotation:—*Refd. Re East Norfolk Tram. Co., Barber's Case* (1877), 26 W. R. 3.

2919. ————.]—*Re PERCY & KELLY NICKEL, COBALT & CHROME IRON MINING CO., JENNER'S CASE, No. 2878, ante.*

2920. ———— *Refusal by company to allot full qualification.*]—The mere acting as a director is not sufficient evidence of a contract to take the shares required for qualification. An actual contract must be proved.

A co. was registered in Dec. 1883. O. was shortly afterwards appointed a director by the subscribers to the memorandum of assocn. The arts. of assocn. fixed a director's qualification at 25 shares. On Mar. 5, 1885, O., by letter, applied to the co. for 25 shares. On May 11, 1885, the secretary wrote to O., "In answer to your application the directors have allotted you five shares." No formal withdrawal of O.'s application, & no fresh application, was proved. In the interval between Mar. 5 & May 11, O. had desired to resign, & had only retained his seat at the board on some kind of understanding that he should be relieved of his liability for qualification shares. In June & July a special resolution was purported to be passed & confirmed that the qualification should not apply to the first directors, but this resolution was invalid for want of a quorum. The co. was ordered to be wound up on Oct. 31, 1885.

The liquidator took out a summons to put O. on the list of contributories for twenty shares in addition to the five allotted to him:—*Held*:

shares & that unless otherwise determined by the co. there should be five directors, who were named & amongst whom were A. & B. A. & B. were subscribers to the memorandum & articles of association for one share, they attended meetings of directors & acted as directors:—*Held*: there was no implied contract to take the additional shares requisite for the qualification of a director.—*Re AGRICULTURAL SHIPPING CO., LTD., [1911] S. R. Q. 34.—AUS.*

n. ———— *Name appearing in prospectus—Office exercised.*]—*Re BILTON HOTEL CO. (1881), 9 L. R. Ir. 338.—IR.*

o. ———— *To act until directors duly appointed—No appointment made.*]—By the arts. of assocn. of a co. it was provided that the qualification of a director should be the holding of £200 in shares or stock of the co., & that, until directors were appointed, the subscribers to the memorandum of

there was no evidence that the co. had ever accepted the offer contained in O.'s application for 25 shares, & he was not liable as a contributory for more than the five.—*Re MEDICAL ATTENDANCE ASSOCN., LTD., ONSLOW'S CASE* (1886), 55 L. T. 612; 3 T. L. R. 42; 31 Sol. Jo. 46; *affd.* (1887), 57 L. J. Ch. 338, n., C. A.

Annotations:—*Consd. Re Anglo-Austrian Printing & Publishing Union, Isaacs' Case, [1892] 2 Ch. 158. Refd. Re Wheal Buller Consols (1888), 38 Ch. D. 42.*

2921. ————.]—By the arts. of assocn. of a limited co. it was provided that the qualification of a director should be the holding 250 shares at least, that he might act before acquiring his qualification, but that his office should be vacated if he did not acquire it within three months after his election. J., who had subscribed the memorandum of assocn. for ten shares, was elected a director, accepted the office, & attended meetings of directors for more than three months from his election, but never applied for, nor had allotted to him, any other shares than his original ten. In the winding up of the co.:—*Held*: the acceptance of the office of director & the continuing to act after the time by which the qualification ought to have been acquired, did not amount to a contract by J. to take the additional shares requisite for his qualification, & he must be upon the list for ten shares only.—*Re WHEAL BULLER CONSOLS (1888), 38 Ch. D. 42; sub nom. Re WHEAL BULLER CONSOLS, LTD., Ex p. JOBLING, 57 L. J. Ch. 333; 58 L. T. 823; 36 W. R. 723; 4 T. L. R. 282, C. A.*

Annotations:—*Consd. Re Anglo-Austrian Printing & Publishing Union, Isaacs' Case, [1892] 2 Ch. 158; Re Printing, Telegraph & Construction Co. of Agence Havas, Ex p. Cemmell, [1894] 1 Ch. 528; Re Issue Co., Hutchinson's Case, [1895] 1 Ch. 226. Refd. Re Portuguese Consolidated Copper Mines, Ex p. Inchiquin, [1891] 3 Ch. 28; General Phosphate Corpn. v. Horrocks (1892), 8 T. L. R. 350. Mentd. Re Baring-Gould & Sharpington Combined Pick & Shovel Syndicate (1899), 6 Mans. 430.*

2922. ————.]—Where a person has accepted the office of director & acted as such, an agreement is to be inferred between him & the co., that he will serve the co. on the terms, as to qualification & otherwise, contained in the arts. of assocn.

The arts. of a co., after specifying the qualification of a director, provided that a first director might act before acquiring his qualification shares, but should, in any case, acquire the same within one month of his appointment, & unless he should do so, should be deemed to have agreed to take the said shares from the co., & the same should be forthwith allotted to him accordingly. J. & P. were appointed two of the first directors of the co., accepted the office, & acted, Neither of them ever applied for any shares, & none were allotted to them, or registered in their names. The co. was ordered to be wound up:—*Held*: they must be settled on the list of contributories in respect of the shares requisite for their qualifications.—*Re ANGLO-AUSTRIAN PRINTING & PUBLISHING UNION, ISAACS' CASE, [1892] 2 Ch. 158; 66 L. T. 593; 40 W. R. 518; 8 T. L. R. 501; sub nom. Re ANGLO-AUSTRIAN PRINTING & PUBLISHING CO., Ex p. ISAACS, Ex p. KEGAN PAUL, 61 L. J. Ch. 481; 36 Sol. Jo. 427, C. A.*

Annotations:—*Apld. Re Bread Supply Assocn., Konrath's*

assocn. should have the power of, & might act as, directors. C. subscribed the memorandum for ten £5 shares. The co. applied for powers to carry out their undertaking. The application was rejected & the co. took no further proceedings, & transacted no other business. No meeting of the co. was ever called, no directors were appointed & no shares were allotted to C., nor did he ever agree to take any, save the ten shares already mentioned, & he never acted as a director. An order

Case 1893), 62 L. J. Ch. 376. *Consd. Re Hercynia Copper Co.*, [1894] 2 Ch. 403; *Re Moore*, [1899] 1 Ch. 627. *Reid. Re Bolton, Salisbury-Jones & Dale's Case*, [1894] 3 Ch. 356; *Re Printing Telegraph & Construction Co. of Agence Havas, Ex p. Cammell*, [1894] 2 Ch. 392; *Re Issue Co., Hutchinson's Case*, [1895] 1 Ch. 226; *Baring-Gould v. Sharpington Combined Pick & Shovel Syndicate*, [1899] 2 Ch. 80; *Moriarty v. Regent's Garage & Engineering Co.*, [1921] 1 K. B. 423. *Mentd. Re Peruvian Guano Co., Ex p. Kemp*, [1894] 3 Ch. 690; *Salton v. New Beeston Cycle Co.*, [1899] 1 Ch. 775; *Molineaux v. London, Birmingham & Manchester Insee.*, [1902] 2 K. B. 589

See, also, No. 2900, *ante*, Nos. 2930, 2938, *post*.

2923. — Acceptance amounts to offer—No contract till shares allotted.]—Where the arts. of assocn. of a co. require that the directors shall hold a certain qualification in shares, merely accepting office as a director & acting as such do not constitute an agreement to become a member of the co. within 1862 Act, s. 23, but only a contract to qualify by taking the required shares within the time specified by the arts., or, if no time is named, within a reasonable time.

The lapse of the time within which the director is bound to qualify only amounts to an offer to take shares, & no agreement to take them exists until the offer has been accepted, *e.g.* by placing the director on the register of shareholders, by resolving to allot the shares to him, or by his so acting as to show that he has assumed that his offer has been accepted, & by both parties acting on that assumption. Mere lapse of time will not turn the offer into a contract; & there is no contract unless the offer is accepted before the co. goes into liquidation.—*Re Issue Co., HUTCHINSON'S CASE*, [1895] 1 Ch. 226; 64 L. J. Ch. 131; 71 L. T. 667; 43 W. R. 267; 11 T. L. R. 67; 39 Sol. Jo. 81; *sub nem. Re Issue Co., HUTCHINSON'S CASE, BETZOLD'S CASE*, 1 Mans. 534; 13 R. 56.

2924. — Application for shares implied.]—*Re HAMPSHIRE CO-OPERATIVE MILK CO., LTD., PURCELL'S CASE*, No. 2938, *post*.

2925. — Where company never goes to allotment.]—*Re YOUDE'S BILLPOSTING, LTD., CLAYTON'S CASE, CROWTHER'S CASE* (1902), 18 T. L. R. 731, C. A.

—Where no qualification required by articles.]
—*See* Nos. 2885, 2886, *ante*.

(c) *Effect of Allotment Unknown to Director.*

2926. Shares not transferred into director's name—Office never exercised—Subsequent resignation.]—*Re NATIONAL INSURANCE & INVESTMENT ASSOCN., DAVIES'S CASE, ABERCORN'S (LORD) CASE*, No. 2904, *ante*.

2927. Where application for shares made.]—B., as a qualification for the office of director of a co., signed a form of application for shares, in which was inserted, though in a different handwriting from the rest of the form, the words "fully paid-up shares." B. attended a board meeting of the co., but received no intimation that his application had been acceded to & paid no money in respect of his shares. Subsequently, on the co. being wound up, it was discovered that B. had been credited in the banker's books of the co. with the payment of the shares:—*Held*: he was a contributory.—*Re FINANCE CO., LTD.* (1868), 19 L. T. 273.

2928. — Constructive notice.]—F., with a view of qualifying himself as a director of a co., applied for shares in it *simpliciter*, without annexing any conditions to his application, & paid the

deposit money upon such shares. At a board meeting, at which he was present, a resolution was passed "that the shares in the co. now applied for be allotted & letters of allotment issued forthwith"; & he afterwards attended meetings of the board as a director. Subsequently, upon his request, the directors cancelled the allotment to him, & repaid to him his deposit. There was no evidence of there ever having been any express notice to him of the allotment:—*Held*: the contract was complete & binding, & the directors had no power to cancel the allotment.

Three things are required to establish a complete contract to take shares: application for shares, allotment, & that the allotment should be communicated to & acquiesced in by the shareholder.

—*Re SALOON STEAM PACKET CO., Ex p. FLETCHER* (1867), 37 L. J. Ch. 49; 17 L. T. 136; 16 W. R. 75.

2929. — In ignorance that shares already allotted.]—Arts. of assocn. provided that no person should be capable of serving as a director unless at the time of his appointment he should hold 25 shares. On Feb. 14, 1867, the directors of the co. were appointed, & at the same time it was resolved to allot 25 shares to each of the persons named as directors. A., one of these persons, had consented to act as director; but in ignorance, as he stated, that any shares had been allotted to him, & under the mistaken impression that the necessary qualification was twenty £25 shares, & not 25 £20 shares, applied on Mar. 1, 1867, for twenty shares, which were allotted to him. He attended meetings & continued to act as director until Oct. 1867, shortly after which the co. was ordered to be wound up:—*Held*: he was liable, not only for the twenty shares for which he had applied on Mar. 1, but also for the 25 which were allotted to him as his director's qualification, pursuant to the arts. of assocn., on Feb. 14, 1867.—*Re BRITISH & AMERICAN TELEGRAPH CO., FOWLER'S CASE* (1872), L. R. 14 Eq. 316; 42 L. J. Ch. 9; 27 L. T. 748; 21 W. R. 37.

Annotations:—*Dbtd. Re New Buxton Lime Co., Duke's Case* (1876), 1 Ch. D. 620. *Reid. Re La Mancha Irrigation & Land Co., Hamilton's Case* (1873), 8 Ch. App. 550, n.; *York Tram. Co. v. Willows* (1882), 8 Q. B. D. 685.

2930. Where no application for shares made.]—H. allowed his name to be advertised as a director of a co., & was present at a board meeting at which an allotment committee was appointed. The committee allotted him fifty shares, which was the qualification for a director; but he never applied for shares or received a notice of allotment. He subsequently signed a cheque of the co. as a director, but his signature was treated by the bank as insufficient, his name not having been sent in as authorised to sign cheques:—*Held*: (1) by acting as a director he became liable to take the number of shares required as a qualification; (2) the allotment committee were his agents for the purpose of the allotment to him, & it was not necessary to give him notice of the allotment.—*Re GREAT OCEANIC TELEGRAPH CO., HARWARD'S CASE* (1871), L. R. 13 Eq. 30; 41 L. J. Ch. 283; 25 L. T. 690; 20 W. R. 84.

Annotations:—*Folld. Re La Mancha Irrigation & Land Co., Hamilton's Case* (1873), 8 Ch. App. 550, n.; *Re British Provident Life & Guarantee Asscn., De Ruvigne's Case* (1877), 5 Ch. D. 306. *Distd. Re Colombia Chemical Factory Manure & Phosphate Works, Howitt's Case, Brett's Case* (1883), 25 Ch. D. 283. *Reid. York Tram. Co. v. Willows* (1882), 8 Q. B. D. 685; *Re Portuguese Consolidated Copper Mines, Ex p. Inchiquin* (1891), 64 L. T. 841.

having been made for winding up the co., the liquidator contended that the signatories to the memorandum, having neglected to appoint directors, must be deemed to have constituted them-

selves directors, & that C. should be on the list of contributories for forty shares:—*Held*: the acts of C. did not amount to a contract by him to take the additional shares requisite for his

qualification as director, & he should be on the list of contributories for ten shares only.—*Re BALLINA LIGHT RY. CO.* (1888), 21 L. R. Ir. 497.—IR.

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2931. —.] — *Re* WINCHAM SHIPBUILDING, BOILER & SALT CO., HALLMARK'S CASE, No. 3071, *post*.

2932. — Application form sent by company to director returned unsigned—Subsequent resignation.]—By the arts. of the co. first directors were allowed one month from the first general allotment of shares in which to acquire their qualification, & their office was to be vacated if they failed to get the shares within the prescribed time. C. was appointed a first director, & his qualification shares were allotted to him at the first general allotment, but without his knowledge. C. attended meetings during the prescribed month, but not afterwards. After the expiration of the month the secretary sent him an application form for his qualification shares, but he returned it unsigned & sent in his resignation. The co. afterwards placed his name upon the register:—*Held*: C.'s resignation, coupled with the fact that the co., by sending him an application form, had not regarded him as a shareholder at the expiration of the prescribed month, put an end to the implied authority of the co. to place his name upon the register, & it ought to be removed.—*Re* PRINTING, TELEGRAPH & CONSTRUCTION CO. OF AGENCE HAVAS, *Ex p.* CAMMELL, [1894] 2 Ch. 392; 63 L. J. Ch. 536; 70 L. T. 705; 10 T. L. R. 441; 38 Sol. Jo. 437; 1 Mans. 274; 7 R. 191, C. A.
Annotations:—*Consd.* *Re* Issue Co., Hutchinson's Case, [1895] 1 Ch. 226. *Re* Hercynia Copper Co., [1894] 2 Ch. 403; *Molineaux v. London, Birmingham & Manchester Insee.*, [1902] 2 K. B. 589.

2933. After lapse of reasonable time without acquiring shares—Shares subsequently acquired.]—On Oct. 22, 1888, I. was appointed an original director of a co. whose arts. provided that each director should hold, at least, forty shares in the co. At a meeting of some of the directors, held on Oct. 25, 1888, forty shares were, without his knowledge, allotted to him, & before he ever acted as a director his name was placed on the register in respect of those forty shares. He had never applied for these shares, & according to his evidence, he never knew until after the co. was ordered to be wound up that these shares had been allotted to him or registered in his name. He first acted as a director on Nov. 28, 1888, & he next so acted on Jan. 16 & 18, 1889. On Jan. 19, 1889, he acquired by transfer forty fully paid shares in the co. which were duly registered in his name, & on Jan. 28 he retired from the board. The co. was afterwards ordered to be wound up, & upon an application to remove I.'s name from the list of contributories in respect of the forty shares allotted to him on Oct. 25, 1888:—*Held*: (1) I. must be taken to have known that it was his duty to qualify for the office of director by taking forty shares within a reasonable time; (2) a reasonable time had elapsed, if not by Nov. 24, 1888, at all events, before Jan. 19, 1889.—*Re* PORTUGUESE CONSOLIDATED COPPER MINES, LTD., *Ex p.* INCHQUIN (LORD), [1891] 3 Ch. 28; 60 L. J. Ch. 556; 64 L. T. 841; 39 W. R. 610; 7 T. L. R. 591, C. A.

Annotations:—*Consd.* *Re* Anglo-Austrian Printing & Publishing Union, Isaacs' Case, [1892] 2 Ch. 158; *Re* Printing, Telegraph & Construction Co. of Agence Havas, *Ex p.* Cammell, [1894] 1 Ch. 528. *Re* International Cable Co., *Ex p.* Official Liquidator (1892), 66 L. T. 253; *Molineaux v. London, Birmingham & Manchester Insee.*, [1902] 2 K. B. 589; *Dibble v. Wilts & Somerset Farmers*, [1923] 1 Ch. 342.

2934. What constitutes notice of allotment—Presence when resolution for allotment passed.]—*Re* SALOON STEAM PACKET CO., *Ex p.* FLETCHER, No. 2928, *ante*.

2935. — Presence when resolution appointing allotment committee passed—Allotment committee agents of director.]—*Re* GREAT OCEANIC TELEGRAPH CO., HARWARD'S CASE, No. 2930, *ante*.

See, generally, Sect. 17, sub-sect. 3, E. (b) & F., *ante*.

(d) Effect of Resignation.

2936. Resignation before allotment.]—Where a director of a co. had signed the arts. of assocn., which required as the qualification of a director that he should hold 25 shares, & had applied for that number of shares, & attended several meetings of the board, but retired from the direction before the allotment of shares took place, & the directors afterwards refused to allot him any shares, & returned the deposit:—*Held*: he was not liable as a contributory on the winding up of the co.—*Re* GENERAL INTERNATIONAL AGENCY CO., CHAPMAN'S CASE (1866), L. R. 2 Eq. 567; 14 L. T. 752.

2937. — Name appearing in prospectus—Withdrawal on ground of misrepresentation.]—Where the holding of a certain number of shares is a necessary qualification for a director, the mere acceptance of the office only involves an agreement to have the qualifying shares within a reasonable time after becoming director; & if a person accepting the office retracts the acceptance before the reasonable time for acquiring the shares has expired, & without having acted as director, he will not be fixed with the qualification in the event of the co. being afterwards wound up. K. subscribed the memorandum of assocn. for ten shares; he also subscribed the arts., which provided that the qualification of a director should be the holding of fifty shares; that K. & two other persons named should be the first directors; & that the office of a director should be vacated if he ceased to hold the prescribed number of shares. The co. was advertised to the public, & within three days after the publication of the prospectus, in which K.'s name appeared in the list of directors, K. gave notice in writing to the secretary of his withdrawing from the co. on the ground of alleged misrepresentations made to him by the promoter as to its character & objects; & he never acted as a director, nor applied for shares, nor were any shares allotted to him. The co. was ordered to be wound up, & on an application by the official liquidator to place K. on the list of contributories for fifty shares, including the ten shares for which he signed the memorandum:—*Held*: K.'s name must be placed on the list for the ten shares only.—*Re* PELOTAS COFFEE CO., KARUTH'S CASE (1875), L. R. 20 Eq. 506; 44 L. J. Ch. 622.

Annotations:—*Re* Percy & Kelly Nickel, Cobalt & Chrome Iron Mining Co., Hamley's Case (1877), 5 Ch. D. 705; *Re* Elham Valley Ry., Biron's Case (1878), 38 L. T. 501; *Re* Colombia Chemical Factory Manure & Phosphate Works, Hewitt's Case, Brett's Case (1883), 25 Ch. D. 283; *Re* Anglo-Austrian Printing & Publishing Union, Isaacs' Case, [1892] 2 Ch. 158.

2938. — Acceptance of office as application for shares.]—By the arts. of assocn. of a dairy co., it was provided that a director's qualification should be the holding in his own right of not less than ten shares. P., a medical man, not being a shareholder, was invited by the directors to take a seat at the board & the office of medical examiner, & he accepted this offer by letter, & acted as a director during a short period, but no shares were ever allotted to him. He subsequently resigned, but his resignation was declined, & an action, afterwards dismissed for want of prosecution, was brought against him to recover calls

due on the qualification shares. The co. having gone into liquidation:—*Held*: the action for calls was no bar to the liquidator's claim to place P. on the list of contributories for the qualification shares; his acceptance of the offer was, at least, equivalent to an application for the shares, & his name must be placed upon the list.—*Re HAMP- SHIRE CO-OPERATIVE MILK CO., LTD., PURCELL'S CASE* (1880), 29 W. R. 170.

Annotation:—*Consd. Re Colombia Chemical Factory Manure & Phosphate Works, Hewitt's Case, Brett's Case* (1883), 25 Ch. D. 283.

2939. Resignation during period allowed for qualifying—Director named in articles.—*Re PAN- DORA THEATRE CO.* (1884), 28 Sol. Jo. 238.

2940. —.]—*Re SELF-ACTING SEWING MACHINE Co., LTD., No. 2901, ante.*

2941. —.]—By the arts. of assocn. of a co., the signatories thereto were to be directors until such time as six of them should nominate another director in their place; the qualification of a director was to be the holding £100 in shares, but he might act without acquiring his qualification; a director was to acquire his qualification within three months from his appointment, & unless he should do so he was to be deemed to have agreed to take the shares from the co. The six signa- tories, within three months of their appointment, signed a paper appointing a director in their place. Two of them never otherwise acted as directors, & never acquired their qualification shares:—*Held*: directors who resigned within the three months were under no obligation to take the qualification shares from the co.—*Re BOLTON (R.) & Co., SALISBURY-JONES & DALE'S CASE*, [1894] 3 Ch. 356; 64 L. J. Ch. 27; 71 L. T. 284; 10 T. L. R. 614; 1 Mans. 431; 7 R. 504, C. A.

Annotation:—*Reid. Molineaux v. London, Birmingham & Manchester Insee., [1902] 2 K. B. 589.*

2942. Resignation after allotment—Office con- ditionally accepted—Letter of allotment returned with resignation.—A., on being invited to become a director of a banking co. about to be established, gave a verbal assent, provided he should be satisfied that a certain proportion of the capital had been subscribed, & that certain persons named in the prospectus as directors would actually join the board. He attended one board meeting, & so far took part in the business as on that occasion to sign a cheque together with one of the directors. On receiving, a few days after- wards, a letter of allotment of the shares neces- sary to qualify him, he at once returned it, de- clining at the same time to act as director, as he was not satisfied upon the two points stipulated for by him. The secretary wrote back, stating that A.'s "resignation" had been accepted. A. had nothing more to do with the bank:—*Held*: he was not liable as a contributory.—*Re PENIN- SULAR, WEST INDIAN, & SOUTHERN BANK, AUSTIN'S CASE* (1866), L. R. 2 Eq. 435; 15 L. T. 140; 14 W. R. 1010.

Annotations:—*Consd. Re Freehold & General Investment Co., Green's Case* (1874), L. R. 18 Eq. 428. *Reid. Re Great Oceanic Telegraph Co., Harward's Case* (1871), L. R. 13 Eq. 30; *Re Colombia Chemical Factory Manure & Phosphate Works, Hewitt's Case, Brett's Case* (1883), 25 Ch. D. 283.

PART III. SECT. 28, SUB-SECT. 2.—D.

p. Qualification parted with — Failure to pay calls.—The arts. of assocn. of a no-liability co. provided that the co. should be under the management of a board of directors consisting of five shareholders, each of whom should hold & continue to be the holder of & be registered in the books of the co. for at least one hundred shares:—*Held*: the directors, who had not paid the calls on their

shares at the expiration of fourteen days from the time when they were made payable, ceased to be share- holders, & under the above arts. ceased to be directors; & the subse- quent payment of their calls did not reinstate them as directors.—*HADDOW v. DUKE CO., NO LIABILITY* (1892), 18 V. L. R. 155.—*AUS.*

q. —.]—It was provided by the bye-laws of pltf. co. that a director should not only be qualified when

2943. — Resignation operating as forfeiture under constitution of company.—A limited co. was registered on Nov. 6, 1874, with arts. of assocn. which provided that the share qualification of a director should be the holding of 25 shares in the co.; that M. & others should be the first directors of the co.; & that every director should vacate office by ceasing to be the registered holder of his qualifying number of shares. It was also provided that, in consideration of the services of the first directors, each of them should receive & be registered as the holder of 25 fully paid-up shares, which were to be forfeited in the event of his dying or ceasing to be a director by his own act or default. M. attended a meeting of the directors on Nov. 10, but resigned office on Nov. 12. He never applied for any shares, but he was placed on the register as the holder of 25 shares:—*Held*: the shares for which M. was placed on the register were fully paid-up shares, & as he had retired from the directorship the shares were forfeited, & his name ought to be removed from the list of contributories.—*Re AUSTRALIAN DIRECT STEAM NAVIGATION CO., MILLER'S CASE* (1877), 5 Ch. D. 70, C. A.

Annotations:—*Consd. Re Eskern Slate & Slab Quarries Co., Clarke & Helden's Cases* (1877), 37 L. T. 222. *Reid. Re Percy & Kelly Nickel, Cobalt, & Chrome Iron Co., Hamley's Case* (1877), 25 W. R. 600; *Re Esparto Trading Co., Finch & Goddard's Cases* (1879), 48 L. J. Ch. 573; *Re Colombia Chemical Factory Manure & Phosphate Works, Hewitt's Case, Brett's Case* (1883), 25 Ch. D. 283; *Re Portuguese Consolidated Copper Mines, Ex p. Inchiquin*, [1891] 3 Ch. 28; *Re Anglo-Austrian Printing & Publishing Union, Isaac's Case*, [1892] 2 Ch. 158. *Mentd. Re St. Nazaire Co.* (1879), 12 Ch. D. 88.

See, also, Nos. 2904, 2906, 2932, ante.

D. Effect of Non-Compliance.

See, now, 1908 Act, s. 74.

2944. Qualification not acquired—Whether mis- feasance under 1862 Act, s. 165.—Two gentlemen were appointed, & for some time acted, as directors of a co. in which the qualification for a director was holding 100 shares. Neither of them was the holder of any shares. No act of misfeasance was alleged against either of them for which he would have been liable if he had been a duly qualified director. The co. was now in course of being wound up. The liquidator applied under the above sect. to charge them for misfeasance in acting as directors without qualification:—*Held*: the sect. creates no new right, but merely provides a summary mode of calling directors to account for acts of impropriety, for which they are liable to an action; to make a person liable under it, he must be shown to have been guilty of some misconduct by which the co. has suffered loss; & the application must be dismissed.

Misfeasance in the sect. means something in the nature of a breach of trust.—*Re CANADIAN LAND RECLAIMING & COLONIZING CO., COVENTRY & DIXON'S CASE* (1880), 14 Ch. D. 660; 42 L. T. 559; 28 W. R. 775, C. A.

Annotations:—*Consd. Re Anglo-French Co-op. Soc., Ex p. Pelly* (1882), 21 Ch. D. 492; *Re Western Counties Steam Bakeries & Milling Co., [1897] 1 Ch. 617. Reid. Re Exchange Banking Co., Flitcroft's Case* (1882), 21 Ch. D. 519; *Re Liverpool & London Guarantee & Accident Corp'n. Insee., Gallagher's Case* (1882), 46 L. T. 54;

elected, but that he should continue to be so. The pltf. co. was managed by three directors, & one of them dis- posed of his stock:—*Held*: he there- upon ceased to be a director, & the directorate then became incomplete & incompetent to manage the affairs of the co.—*TORONTO BREWING & MALTING CO. v. BLAKE* (1882), 2 O. R. 175.—*CAN.*

r. On validity of acts of directorate —Where qualified directors form

Sect. 28.—Directors: Sub-sect. 2, D. & E.]

Re North Australian Territory Co., Archer's Case, [1892] 1 Ch. 322; *Re Kingston Cotton Mill Co. (No. 2)*, [1896] 2 Ch. 279. *Mentd. R. v. Lawson*, [1905] 1 K. B. 541.

See, now, 1908 Act, s. 215, & generally, Sect. 38, sub-sect. 10, C., *post*.

2945. — Article providing for vacation of office on ceasing to hold qualification.]—The arts. of assocn. of a co. limited by shares provided: "The qualification of a director shall be the holding of shares of the co. of the nominal amount of £250. A first director may act before acquiring his qualification, but shall in any case acquire the same within one month from his appointment, & unless he shall do so he shall be deemed to have agreed to take the shares from the co., & the same shall be forthwith allotted to him accordingly. The board shall be entitled to receive by way of remuneration in each year £5,000. Such remuneration shall be divided among the directors in such proportions & manner as they shall from time to time agree, or, in default of agreement, equally. The office of a director shall be vacated if he cease to hold the due qualification." N. was one of the first directors, & from June, 1896, to Nov. 1897, when the co. went into liquidation, he attended eight meetings of the board of directors. He did not acquire any shares within a month of his appointment; but in Mar. 1897, he acquired 25 shares of £10 each, not from the co., but from its promoter. The directors never agreed as to the proportions in which the remuneration was to be divided amongst them:—*Held*: (1) the agreement by N. to serve the co. on the terms of the arts. as to qualification & otherwise, & the agreement by the co. to remunerate him, were cross & not interdependent contracts; (2) N. could not "cease" to hold a qualification which he never possessed; (3) as a member of the board he was nevertheless entitled to remuneration; but he could only claim his share of the remuneration for one year, against which must be set off the £250 due from him to the co. for the qualification shares which he had agreed to take; (4) where arts. provide that the directors shall be entitled to receive a certain sum by way of remuneration in each year, no remuneration can be claimed except for a complete year of service.—*SALTON v. NEW BEESTON CYCLE CO.*, [1899] 1 Ch. 775; 68 L. J. Ch. 370; 80 L. T. 521; 47 W. R. 462; 16 T. L. R. 25; 43 Sol. Jo. 380; 6 Mans. 238.

Annotations:—As to (4) *Consd. Re Central De Kaap Gold Mines* (1899), 69 L. J. Ch. 18. *Folld. Inman v. Ackroyd & Best*, [1901] 1 K. B. 613; *Re London v. Northern Bank, McConnell's Claim*, [1901] 1 Ch. 728. *Consd. Moriarty v. Regent's Garage & Engineering Co.* (1920), 90 L. J. K. B. 783.

— Qualification altered after former qualification acquired.]—*See Nos. 2902, 2903, ante*.

— Recovery of remuneration improperly paid.]—*See No. 3486, post*.

quorum.]—The presence on the board of directors of a co. of three who are not qualified, by reason of being in arrears in respect of unpaid calls at the time of their election, is not sufficient to invalidate the acts of the board if done by a legal quorum of properly qualified directors.—*MORDEN WOOLLEN MILLS CO. v. HECKELS* (1908), 17 Man. L. R. 557.—*CAN.*

a. — Done before defective appointment discovered—Where articles provide for validating measures.]—Shareholders in a co. in the arts. of assocn. of which there is the usual provision validating acts of *de facto* directors, & probably even when there is no such art., are not entitled to object to any act of such directors

done before the defect is discovered, on the ground of such defect, & the co. is entitled to enforce acts done by such directors even when the other party wishes to evade his obligation on the ground that the directors with whom he dealt were not validly appointed.—*TRADERS TRUST CO. v. GOODMAN*, [1917] 2 W. W. R. 1235; 37 D. L. R. 31.—*CAN.*

t. Whether defence—To action for negligence.]—By the contract of co-partnership of a joint-stock banking co. it was declared that no shareholder could be legally a director who resided permanently more than 10 miles distant from the head office & that a director ceased to be one if he had not attended a meeting of directors for

2946. Qualification parted with—Reacquired in a few days—No express reappointment but treated as director.]—*DAWSON v. AFRICAN CONSOLIDATED LAND & TRADING CO.*, No. 2823, *ante*

— Transferor remaining registered owner.]—*See No 2889, ante*.

— By way of mortgage.]—*See Nos. 2887, 2888, ante*.

2947. — Duration of disqualification.]—*Re BODEGA CO., LTD.*, No. 3465, *post*.

E. Qualification accepted from Promoters.

2948. Where price of shares provided—Out of purchase money due to vendor—Whether liable as for unpaid shares.]—A co. was formed to carry on the business of D. The shares were of £10 each, & were to be paid up in full on acceptance. The qualification of the directors was 25 shares, & the directors were empowered to purchase the business for £170,000 in shares. At D.'s request eight persons agreed to become directors on having their qualification found. They were appointed directors, & their names were entered on the register for 25 shares each. They then passed a resolution to buy the business for £168,000 in shares & £2,000 in cash, & eight cheques were drawn on behalf of D. for £250 each, & one of them handed to each of the directors, who indorsed them, & handed them to the secretary, by whom they were passed on to D. The shares were then entered as fully paid up, & a receipt for £2,000 was given by D., & entered upon the books of the co.:—*Held*: it was necessary to the validity of the contract to purchase the business that the directors should be previously qualified; what had occurred subsequently did not amount to payment; & the directors were properly on the list of contributories for unpaid shares.—*Re DISDERI & CO.* (1870), L. R. 11 Eq. 242; 40 L. J. Ch. 248; 23 L. T. 694; 19 W. R. 175.

Annotations:—*Reid. Re Great Oceanic Telegraph Co., Harward's Case* (1871), L. R. 13 Eq. 30; *Re Metropolitan Carriage & Repository Co., Brown's Case* (1873), 22 W. R. 171; *Re Elham Valley Ry., Biron's Case* (1878), 38 L. T. 501.

2949. — — —.]—*Re CANADIAN OIL WORKS CORPN., HAY'S CASE*, No. 3202, *post*.

2950. — — — Director ignorant of payment to him by promoter.]—A director paid up his subscription shares in a co. by a cheque on his bankers for £1,000, the day after he found that a larger sum had been paid into his account, £1,000 of which was, in fact, so paid on behalf of the vendor, out of the purchase-money of property sold to the co. under a contract approved by the director, for the purpose of providing the director's share qualification. It being assumed that the co. could reclaim the £1,000 so paid in, but it being shown to the satisfaction of the ct. that the director had refused an offer on the part of the

six months. In an action by the bank & its liquidators against a shareholder who had been elected & occasionally acted as a director for loss said to have been caused by his gross negligence:—*Held*: defender having assumed the position of a director & acted as such could not plead these clauses of the contract in bar of the action.—*WESTERN BANK OF SCOTLAND v. BAIRDS' TRUSTEES* (1872), 11 Macph. (Ct. of Sess.) 96.—*SCOT.*

PART III. SECT. 28, SUB-SECT. 2.—E.

a. Where fully-paid shares allotted—Liability of director.]—Where the directors of a co. had each secretly agreed with the promoters to get their qualification shares from the promoters

vendor to find his share qualification & that he was ignorant that the £1,000 was paid in for such qualification, & it appearing that his balance, apart from the £1,000, was sufficient to answer his cheque:—*Held*: his shares could not be treated as unpaid. *Qu.*: whether it would have been so held if his balance had not been sufficient, apart from the £1,000, to answer the cheque.—*Re CANADIAN OIL WORKS CORPN., EASTWICK'S CASE* (1876), 45 L. J. Ch. 225; 34 L. T. 84, C. A.

Annotation:—*Refd.* *Re Wedgwood Coal & Iron Co., Anderson's Case* (1877), 37 L. T. 560.

— **Liability to account to company.**—*See* Sub-sect. 6, C. (a), *post*.

2951. — Out of promotion money—Director no party to payment—Exercise of office.—*L.*, a director of an old co. which was agreed to be sold to a promoter, on behalf of a new co., was named in the arts. of the new co. as a director; & fifty shares, the qualification of a director, were allotted to him, & registered in his name as paid-up shares. The nominal value of the shares was paid by the promoter by cheques given him on account of his promotion money, under an agreement between him & some of the directors of the old co. *L.* never attended the board meetings, & was no party to the agreement for the payment of the promotion money; & he did not sign any application for or acceptance of the shares which were allotted to him. But he attended an extraordinary general meeting of the co., in which he spoke of himself as nominal chairman, & excused himself on the score of ill-health from taking part in the affairs of the co. A proxy was used on his behalf, which he denied having signed. The co. was afterwards wound up:—*Held*: *L.* was a contributory for fifty unpaid shares.—*Re EMPIRE ASSURANCE CORPN., LEEKE'S CASE* (1871), 6 Ch. App. 469; 40 L. J. Ch. 254; 19 W. R. 664, L. JJ.

Annotations:—*Expld.* *Re Metropolitan Public Carriage & Repository Co., Brown's Case* (1873), 9 Ch. App. 102. *Refd.* *Re Great Oceanic Telegraph Co., Harward's Case* (1871), L. R. 13 Eq. 30; *Re La Mancha Irrigation & Land Co., Hamilton's Case* (1873), 8 Ch. App. 550, n.; *Re Pen' Allt Silver Lead Mining Co., Fothergill's Case* (1873), 8 Ch. App. 270; *Re Pelotas Coffee Co., Karuth's Case* (1875), L. R. 20 Eq. 506; *Re Australian Direct Steam Navigation, Miller's Case* (1876), 3 Ch. D. 661; *British Provident Life & Guarantee Assn., De Ruvigne's Case* (1877), 5 Ch. D. 306; *Colombia Chemical Factory Manure & Phosphate Works, Hewitt's Case, Brett's Case* (1883), 25 Ch. D. 283; *Re Portuguese Consolidated Copper Mines Co., Ex p. Inchiquin* (1891), 60 L. J. Ch. 556; *Re Wragg*, [1897] 1 Ch. 796. *Mentd.* *Re Empire Assn. Corp., Dougan's Case* (1873), 8 Ch. App. 540.

— **After qualification—Liability to account to company.**—*See* No. 3201, *post*.

2952. Where fully-paid shares allotted—On nomination of promoter—Implied contract to take shares satisfied.—Where the holding of a certain number of shares is a necessary qualification for a director, merely acting as a director does not amount to a contract by the person so acting to take that number of unpaid shares directly from the co.

Each of the directors of a co. was obliged to hold fifty shares. *B.*, at the request of the promoter of the co., assented to become a director & attended a meeting. By the direction of the promoter, who was entitled to a large number of paid-up shares in the co., paid-up shares sufficient for the qualification of a director were registered in *B.*'s name:—*Held*: (1) any implied contract

by *B.* to take shares was fulfilled by his acquiring shares in that manner; (2) the shares registered in his name must be taken to have been so registered in order to qualify him as a director, or else that the agreement under which he became a director was not complied with, & he was not a shareholder.—*Re METROPOLITAN PUBLIC CARRIAGE & REPOSITORY CO., BROWN'S CASE* (1873), 9 Ch. App. 102; 43 L. J. Ch. 153; 29 L. T. 562; 22 W. R. 171, L. C. & L. JJ.

Annotations:—*As to* (1) *Consd.* *Re Pelotas Coffee Co., Karuth's Case* (1875), L. R. 20 Eq. 506; *Re Australian Direct Steam Navigation, Miller's Case* (1876), 3 Ch. D. 661; *Re Portuguese Consolidated Copper Mines, Ex p. Inchiquin*, [1891] 3 Ch. 28. *Refd.* *Re Percy & Kelly Nickel Cobalt & Chrome Iron Mining Co., Hamley's Case* (1877), 5 Ch. D. 705; *Re Percy & Kelly Nickel Cobalt & Chrome Iron Mining Co., Jenner's Case* (1877), 7 Ch. D. 132; *Re Anglo-Austrian Printing & Publishing Union, Isaac's Case*, [1892] 2 Ch. 158; *Re Printing Telegraph & Construction Co. of Agence Havas, Ex p. Cammell*, [1894] 2 Ch. 392; *Mollineux v. London, Birmingham & Manchester Insee. Co.*, [1902] 2 K. B. 589. *As to* (2) *Consd.* *Re Australian Direct Steam Navigation, Miller's Case* (1876), 3 Ch. D. 661. *Refd.* *Re Western of Canada Oil Lands & Works Co., Carling, Hespeler & Walsh's Cases* (1875), 1 Ch. D. 115; *Portal v. Emmens* (1876), 1 C. P. D. 201; *Re Colombia Chemical Factory Manure & Phosphate Works, Hewitt's Case, Brett's Case* (1883), 25 Ch. D. 283. *Generally, Mentd.* *Re Frechold & General Investment Co., Green's Case* (1874), L. R. 18 Eq. 428; *Poole Firebrick & Blue Clay Co., Hartley's Case* (1875), 32 L. T. 106; *Re Teme Valley Ry., Forbes' Case* (1875), L. R. 19 Eq. 353; *Re Wincham Shipbuilding Boiler & Salt Co., Hallmarks' Case* (1878), 26 W. R. 824; *Re Esparto Trading Co.* (1879), 12 Ch. D. 191.

2953. — — ——*W.* entered into an agreement with a person as trustee of an intended co. for the sale to the co. of a property for a certain sum in cash & a certain number of fully paid-up shares. The agreement was not to be binding unless adopted by the co. when formed. The co. was formed, & the agreement was set out in the arts. *W.* applied to applts. to become directors, which they agreed to do upon his promising to transfer to them fully paid-up shares to qualify them. They acted as directors, & adopted the agreement for sale. The number of shares requisite for the qualification of a director was five, but after the completion of the purchase thirty paid-up shares were, by the direction of *W.*, allotted to each of applts., & they were entered on the register as holders each of thirty fully paid-up shares, & received certificates to that effect. An order was afterwards made for winding up the co., & they were settled on the list of contributories for thirty unpaid shares each:—*Held*: applts., as to the shares allotted to them, stood in the same position as if those shares had been allotted to *W.* & transferred to them by him; & as there was no contract between them & the co. that they would take shares independently of their accepting certificates stating them to be the holders of these fully paid-up shares, they could not be placed on the list of contributories as holders of unpaid shares.—*Re WESTERN OF CANADA OIL, LANDS, & WORKS CO., CARLING, HESPELER, & WALSH'S CASES* (1875), 1 Ch. D. 115; 45 L. J. Ch. 5; 33 L. T. 645; 24 W. R. 165, C. A.

Annotations:—*Consd.* *Re Eupion Fuel & Gas Co., Aspinall's Case* (1877), 36 L. T. 362; *Re Newport & South Wales Shipowners Co., Rowland's Case* (1880), 42 L. T. 785. *Fold.* *Re Innes*, [1903] 2 Ch. 254. *Refd.* *Re Church & Empire Fire Insee., Pagin & Gill's Case* (1877), 6 Ch. D. 681; *Re Wedgwood Coal & Iron Co., Anderson's Case* (1877), 26 W. R. 442; *British Farmers' Pure Linseed*

out of shares to be issued to the latter as fully paid up in consideration of the transfer of certain property to be made to the co., & such shares had afterwards been allotted under these secret agreements:—*Held*: those directors

who had approved of the allotment of such qualification shares with knowledge of the secret agreements were jointly & severally liable to account to the co. for the value thereof, but that a director without such knowledge was

only liable to account for the value of the shares so issued to him.—*BALMORAL DIAMOND SYNDICATE, LTD. (IN LIQUIDATION) v. LIDDLE*, [1907] T. H. 89.—S. AF.

b. *Effect on director—Public ex-*

Sect. 28.—Directors: Sub-sect. 2, E.; sub sect. 3, A. & B. (a).]

Cake Co., Potter & Brown's Cases (1878), 38 L. T. 757; *Re Dominion of Canada Plumbago Co., Kirby's Case* (1882), 46 L. T. 682; *Christchurch Gas Co. v. Kelly* (1887), 3 T. L. R. 634; *Re Howatson Patent Furnace Co.* (1887), 4 T. L. R. 152; *Re Railway Time Tables Publishing Co., Ex p. Sandys* (1889), 42 Ch. D. 98; *Re Macdonald*, [1894] 1 Ch. 89; *Re Common Petroleum Engine Co., Elsner & McArthur's Case*, [1895] 2 Ch. 759; *Re Alkaline Reduction Syndicate* (1896), 45 W. R. 10; *Re Building Estates Brickfields Co., Parbury's Case*, [1896] 1 Ch. 100; *Re African Gold Concessions & Development Co., Markham & Darter's Case*, [1899] 1 Ch. 414; *Re Jubilee Cotton Mills*, [1923] 1 Ch. 1.

2954. ———.]—*Re BRITISH PROVIDENT LIFE & GUARANTEE ASSOCN., DE RUVIGNE'S CASE*, No. 2885, *ante*.

2955. ———.]—Two brothers, who carried on the business of working a steam-boiler patent in partnership, arranged with six shipowners to form a private co. to take over the business & patent rights in consideration of £6,000 payable half in cash & half in shares, the capital of the co. to be £25,000 in 2,500 shares of £10 each, which were to be distributed as follows: The six shipowners were each to take fifty shares & pay for them in cash for the purpose of raising the £3,000 payable in cash to the vendors, & the vendors were to take 300 fully-paid shares as the balance of their purchase-money. Of the remaining 1,900 shares, each of the six shipowners was to take 300 fully-paid shares for his own benefit, & 100 fully-paid shares were to be placed in the joint names of three of them, who eventually, on the formation of the co., became directors, to be applied in rewarding persons who should bring business to the co. The co. was incorporated, & the only shareholders were the vendors & the six shipowners. In order to give effect to the above arrangement, an agreement was entered into between the vendors & the co. whereby the vendors purported to sell their business & patent rights to the co. for £25,000, as to £3,000 in cash & as to £22,000 by the allotment to the vendors or their nominees of 2,200 fully-paid shares, & this agreement was duly registered. Of these 2,200 shares, 300 were allotted to the vendors, & on the nomination of the vendors, the remaining 1,900 were allotted, as to 100 to the three directors jointly for the purpose above mentioned, & as to 1,800 to the three directors & the other three shipowners in equal shares for their own benefit, the whole of the 2,200 shares being so allotted as fully-paid.

Upon a summons by the liquidator in the winding up of the co. against the three directors to render them liable as contributories for payment of the full amount of all the shares allotted to them:—*Held*: the directors could not be placed

upon the list of contributories as holders of unpaid shares.—*Re INNES & Co., LTD.*, [1903] 2 Ch. 254; 72 L. J. Ch. 643; 89 L. T. 142; 51 W. R. 514; 19 T. L. R. 477; 47 Sol. Jo. 513, C. A.

2956. Transfer of shares taken by promoter as fully-paid—Whether liable as for unpaid shares.]—

(1) The first five directors of a co. being bound by the arts. of assocn. to hold twenty shares each as a qualification, accepted, with the knowledge & approval of each other, twenty fully paid shares each from the promoter, who had received them as cash from the co.:—*Held*: all the directors were jointly & severally liable to pay the full value of the shares.

(2) One only of the five directors, upon finding that he was not justified in receiving the shares without payment, offered to pay the full sum due from him, & gave a cheque for the amount, which, however, was accepted as an advance to the co., & was added to previous advances made by him for preliminary expenses:—*Held*: this director was not at liberty to set off the value of his shares against the amount paid in respect of advances, though he would have a claim against the co. for those advances.

The co. is entitled to say "you accepted £500 of our money from [the promoter] & divided it among yourselves & you must repay it, & we will treat the shares as fully paid up; or we will treat the shares as unpaid, & you, who have divided them among yourselves, must pay what is due upon them" (PEARSON, J.).—*Re CARRIAGE CO-OPERATIVE SUPPLY ASSOCN.* (1884), 27 Ch. D. 322; 53 L. J. Ch. 1154; 51 L. T. 286; 33 W. R. 411.

Annotation:—As to (1) *Reid. Gluckstein v. Barnes* (1900), 69 L. J. Ch. 385.

——— **Liability to account to company.]—See Sub-sect. 6, C. (a), post.**

——— **Shares held in trust for promoter.]—See No. 3211, post.**

2957. Transfer of shares allotted to company's vendor.]—Re GREAT NORTHERN & MIDLAND COAL Co., LTD., CURRIE'S CASE, No. 2905, *ante*.

SUB-SECT. 3.—REMUNERATION.

A. In General.

2958. Power of company—To fix—Past & future remuneration.]—LAMBERT v. NORTHERN RY. OF BUENOS AYRES Co., LTD., No. 3021, *post*.

2959. ——— To pay remuneration for past services.]—HUTTON v. WEST CORK RY. Co., No. 4080, *post*.

2960. ——— To increase or decrease.]—FOSTER v. FOSTER, No. 2856, *ante*.

2961. ——— To vary as between directors.]—FOSTER v. FOSTER, No. 2856, *ante*.

amination.—The acceptance by directors of qualification shares from the vendor of the co. constitutes a fraud on the co., & the ct. will order the public examination of such directors under Act 31 of 1909 s. 152 (1), notwithstanding that the facts are admitted.—*Re NIAGARA, LTD., Ex p. MASTER*, [1912] T. P. D. 896.—S. AF.

PART III. SECT. 28, SUB-SECT. 3.—A.

2958 i. Power of company—To fix.]—Pltf., a large shareholder in deft. co., was in June, 1918, appointed by two of its directors as manager & worked as such till Dec. 1918. At the annual general meeting of shareholders in Sept. 1918, he was elected a director, but no mention was made of his position as manager nor of any salary being paid to him. On Dec. 2, 1918, pltf. as manager sent out notices of a

special meeting of shareholders for Dec. 17 "to discuss matters of importance pertaining to the cos. affairs." At the meeting a resolution was passed authorising payment to pltf. of six months' salary at \$200 per month or \$1,200 to Dec. 1, "to be paid by the co. when the finances of the co. will warrant so doing":—*Held*: (1) there was no expressed contract upon which pltf. could recover remuneration for his services as manager of the co. (2) A contract for payment should not be implied: pltf. was a large shareholder in the co. & was during half the time for which he claimed remuneration one of the directors; the services rendered were not more than might reasonably be expected from a large shareholder in the interests of the co. & so indirectly for his own benefit, without salary or other remuneration; there are statutory provisions against

payment to directors of cos. unless expressly provided for as required by the statute; & a bye-law of the co. gave power to the directors to grant & fix the amount of salaries & remuneration of the officers, including those of such officers as might be directors whether paid to them as directors or otherwise. (3) A resolution passed at a general meeting of the shareholders of the co. giving pltf. a salary of \$200 per month but payable only "when the finances of the co. will warrant so doing" could not avail pltf. in the absence of evidence that when this action was brought the finances of the co. warranted payment; & at any rate, there was no power in the shareholders at that meeting to pass such resolution so as to bind the co.—*MARKS v. ROSCAND Co., LTD.* (1921), 64 D. L. R. 254; 49 O. L. R. 137.—CAN

2962. Out of what funds payable—Whether profits only.]—The arts. of assocn. of a limited co. provided that the directors might yearly distribute among themselves, as remuneration for their services, such sum as should be equal to one-tenth of the profits of the co. for the last preceding year, provided always that there should be yearly distributed among the directors, as such remuneration, a sum which should not be less than £100 yearly for each director, & such remuneration should be divisible among the directors as they might think proper. No profits were ever made by the co., but the directors distributed among themselves, out of the capital, sums amounting to £100 a year for each director. On an application by the official liquidator that one of the directors might be ordered to refund the amount thus received by him:—*Held*: the remuneration of the directors was not payable out of profits; profits were mentioned in the arts. only as the measure of the amount of remuneration to be received by the directors; & the directors were entitled to a minimum salary of £100 a year, whether any profits were made or not.

There is no general presumption that the fees of directors of cos. are to be paid out of profits only.—*Re LUNDY GRANITE CO., LTD., LEWIS'S CASE* (1872), 26 L. T. 673; 20 W. R. 519, L. J. J. *Annotation*:—*Refd. Re Liverpool & London Guarantee & Accident Insee., Gallagher's Case* (1882), 46 L. T. 54.

2963. — Where no profits earned—Construction of articles.]—*Re LUNDY GRANITE CO., LTD., LEWIS'S CASE*, No. 2962, *ante*.

Compare Sect. 29, sub-sect. 1, C., sub-sect. 3, B., *post*.

Calculation of profits, generally, *see* Sect. 30, sub-sect. 8, A., *post*.

B. Right to.

(a) In General.

2964. General rule.]—*Re NEWMAN (GEORGE) & Co.*, No. 3257, *post*.

2965. Remuneration authorised by general meeting—Though company unsuccessful.]—In winding up a co. the directors will, as against the shareholders, be allowed their fees for attendance at board & other meetings, when the same have been sanctioned at the general annual meetings of the shareholders, though in the result the dealings of the co. were unfavourable.—*Re COMMERCIAL & GENERAL LIFE ASSURANCE, ANNUITY, FAMILY ENDOWMENT & LOANS ASSOCN., Ex p. JOHNSON* (1857), 27 L. J. Ch. 803.

2966. Director acting although not properly appointed.]—*Re PUBLIC SUPPLY ASSOCN.*, No. 2851, *ante*.

2967. Director appointed as representative of stranger as condition of finding capital—Remunera-

tion payable by stranger—Whether agreement corrupt.]—A co. having spent all its money, applied to deft. to supply additional capital by taking shares. Deft. agreed to do so on terms, one of which was that he should have representatives on the board. The co. having approved this agreement in general meeting, deft. appointed pltf. to act as his representative to look after his interests, for which services deft. was to pay pltf. £200 a year out of his own pocket so long as pltf. remained a director. In an action brought by pltf. to recover remuneration calculated at the rate of £200 a year, the jury found that deft. had agreed to pay pltf. £200 a year so long as he remained a director, & they further found that the agreement did not contemplate that pltf. should promote the interests of deft. even though such interests were not identical with those of the whole body of shareholders:—*Held*: the bargain was not corrupt, the co.'s assent to & approval of the agreement between pltf. & deft. being sufficient to divest the transaction between the parties of any character of illegality & pltf. was entitled to recover his remuneration.—*KREGOR v. HOLLINS* (1913), 109 L. T. 225, C. A.

2968. Resolution of directors to dispense with fees—Subsequent rescission.]—(1) Arts. of assocn. of a co. provided that general meetings should be held once in every year at such time & place as might be prescribed by the directors; that at the ordinary meeting in 1906 all the directors should retire from office; & that the directors should be remunerated at a certain rate *per annum*. 1862 Act, s. 49, provided that a general meeting should be held once in every year. No general meeting was held or called in the year 1906 or 1907, but the directors continued to act as such:—*Held*: the directors vacated office on Dec. 31, 1906, being the last day on which a general meeting for that year could have been held, & were not thereafter entitled to any remuneration until they were re-elected.

(2) On Feb. 12, 1906, the directors passed a resolution that they should not accept any fees for their services rendered thereafter; but on Jan. 17, 1907, they passed another resolution that from that date onwards the directors should be entitled to their fees:—*Held*: a director appointed after Jan. 17, 1907, was entitled to remuneration under the arts.

(3) In 1905 the co. agreed to sell all its undertaking & assets to another co., the consideration being fully-paid shares in a third co. & the payment by the purchasing co. to the selling co. of the latter's debts up to £25,000. These shares were allotted to the selling co. which gave a charge on them to the purchasing co. to secure repayment of what had been paid by it in discharging the debts of the selling co. beyond

PART III. SECT. 28, SUB-SECT. 3.— B. (a).

2964 i. General rule.]—Directors have no right to be paid for their services & cannot pay themselves or each other unless authorised so to do by the instrument which regulates the co. or by the shareholders at a properly convened meeting.—*RORAY v. HOWE SOUND MILLS & LOGGING CO.* (1915), 31 W. L. R. 409.—CAN.

2964 ii. —.]—In the absence of provision by statute or in the arts. of assocn. or bye-laws, directors of a co. are not entitled to remuneration for their services without the sanction of the shareholders.—*HUGGARD v. PRUDENTIAL LIFE INSURANCE CO.*, [1923] 1 W. W. R. 556.—CAN.

2964 iii. —.]—Directors of a co.

are not entitled to remuneration, salary or payment except as specifically & clearly provided by the co.'s bye-laws, & this applies not only to directors as such but also to payments which they may claim as employees or officers of the co. A director claiming in any capacity is only entitled to what has been duly authorised. Provisions in a co.'s constitution as to remuneration to persons who are directors must be strictly complied with.—*CAMERON v. GALLAGHER-HOLMAN, LTD.*, [1923] 3 W. W. R. 1324.—CAN.

2964 iv. —.]—A director of a joint stock co. is not entitled to any remuneration for his services to the co. unless there is special provision to that effect in the arts. of assocn.—*M'NAUGHTAN v. BRUNTON* (1882), 10

R. (Ct. of Sess.) 111; 20 Sc. L. R. 75.—SCOT.

2964 v. —.]—There is no implication in law that a person who acts as a managing director of a co. is entitled to payment of his services as such.—*PHILLIPS v. BASE METALS EXPLORATION SYNDICATE, LTD. (IN LIQUIDATION)*, [1911] T. P. D. 403.—S. AF.

c. Services as workmen & clerks.—The principle that "no bye-law for the payment of any director shall be valid or acted upon until the same has been confirmed at a general meeting applies to all cases in which a bye-law is necessary for the payment" does not extend to cases where a director has acted as a mere workman or clerk & has been remunerated at a rate not exceeding the value of the services

Sect. 28.—Directors: Sub-sect. 3, B. (a) & (b) i.]

£25,000:—*Held*: the fact that after the sale the directors' duties were diminished did not disentitle them to receive the same remuneration in the future.—*Re CONSOLIDATED NICKEL MINES, LTD.*, [1914] 1 Ch. 883; 83 L. J. Ch. 760; 111 L. T. 243; 30 T. L. R. 447; 58 Sol. Jo. 556; 21 Mans. 273.

2969. Duties decreased—But not terminated—Sale of business.]—*Re CONSOLIDATED NICKEL MINES, LTD.*, No. 2968, *ante*.

Compare No. 3038, *post*.

(b) Under Provisions in Articles.**i. In General.**

Whether articles constitute a contract.]—*See* Nos. 345, 346, 347, *ante*.

2970. Whether provision intra vires—Company registered under 1856 Act.]—A joint-stock co., registered under 1856 Act, may, by their arts. of assocn., agree to pay a remuneration to each of their directors, & an action is maintainable on such an agreement.

Declaration by a director of a joint-stock co. registered under the above Act against the co. on the arts. of assocn. of the co., whereby it was agreed that each director should receive £50 *per annum* as his remuneration, besides his travelling expenses:—*Held*: this was a sufficient agreement to render the co. liable, as the intention of the parties plainly was to charge the funds of the co.—*ORTON v. CLEVELAND FIRE BRICK & POTTERY CO., LTD.*, (1865), 3 H. & C. 868; 11 Jur. N. S. 531; 13 W. R. 869; 159 E. R. 776.

Annotation:—*Dbtd. Re Peruvian Guano Co., Ex p. Kemp*, [1894] 3 Ch. 690.

2971. Remuneration expressly payable out of company's funds—Whether shareholders personally liable in winding up.]—The deed of settlement of a co., formed in 1850, provided that in all contracts entered into on behalf of the co., for the supply of goods, or the performance of any work or services, or on any other account, the directors should expressly stipulate that the funds & property of the co. should alone be liable. In the winding up of the co., all the assets having been exhausted:—*Held*: the shareholders were not personally liable to satisfy a claim by directors for unpaid salary, such salary having been expressly made payable out of the funds & property or annual profits of the co.—*Re ANGLO-CALIFORNIAN GOLD MINING CO.* (1867), 37 L. J. Ch. 78; 16 W. R. 245; *sub nom. Re ANGLO-CALI-*

rendered. If the statute renders the contract of hiring invalid, a *quantum meruit* must be paid for services rendered, & if directors have not received more they are not guilty of misfeasance.—*Re MATTHEW GUY CARRIAGE & AUTOMOBILE CO.* (1912), 22 O. W. R. 34; 3 O. W. N. 1233; 26 O. L. R. 377; 4 D. L. R. 764.—**CAN.**

PART III. SECT. 28, SUB-SECT. 3.—B. (b) i.

2972 i. Effect of provision—Whether contract between company & director—Subject to alteration.]—Under the arts. of assocn. of deft. co. which was registered on July 19, 1915, & pltf. & four other persons were appointed directors & were entitled at their option to hold office for a period of five years. The arts. further provided that the directors should receive a salary of £480 *per annum*, that half of any surplus remaining on the working of any year after payment of a dividend of 8 per cent should be payable to the directors, who should divide it among

themselves in such manner as the majority of them might decide, & that the arts. might be rescinded, altered or added to by special resolution of the co. In Jan. 1919, at a special general meeting of the co. a resolution was duly passed deleting the sects. of the arts. referring to the payment of the directors & substituting a provision that the remuneration of the directors should from time to time be settled by the co. at its annual general meeting. On Feb. 24, 1919, pltf. resigned his directorship on ground that the co. had broken its contract with him:—*Held*: the portions of the arts. of assocn. relating to the remuneration of directors could properly be amended by a majority vote of the shareholders & though the arts. of assocn. admittedly constituted a contract between the shareholders & the directors & as there was nothing in the agreement which prohibited any change in the directors' remuneration during the pltf.'s period of service, pltf. could not claim damages founded on diminution of

FORNIAN GOLD MINING CO., Ex p. WILLIAMSON & DAWSON, 17 L. T. 164.

See, further, Sect. 36, sub-sect. 11, A. (c), *post*.

2972. Effect of provision—Whether contract between company & director—Subject to alteration.]

—A co., whose arts. of assocn. provided that the directors' remuneration should be at a certain rate, altered these arts. by special resolution, which purported to make the altered rate of remuneration effective from a date prior to the special resolution:—*Held*: though the arts. did not constitute a contract between the co. & the directors but only pointed out the terms on which the directors were serving, & though these terms could be altered by a special resolution altering the arts., still the alterations could have effect only for the future, & the directors were entitled to remuneration at the old rate until the arts. were altered.—*SWABEY v. PORT DARWIN GOLD MINING CO.* (1889), 1 Meg. 385, C. A.

Annotations:—*Consd. Moriarty v. Regent's Garage Co.*, [1921] 2 K. B. 766. *Re Anglo-Austrian Printing & Publishing Union, Isaacs' Case*, [1892] 2 Ch. 158; *Re International Cable Co., Ex p. Official Liquidator* (1892), 66 L. T. 253; *Allen v. Gold Reefs of West Africa*, [1900] 1 Ch. 656; *Inman v. Ackroyd & Best*, [1901] 1 K. B. 613.

2973. — Nature of right.]—The arts. of assocn. of a co. required its directors to possess a share qualification; & provided that the remuneration of the board "shall be an annual sum of £1,000 to be paid out of the funds of the co.":—*Held*: (1) although these provisions in the arts. were only part of the contract between the shareholders *inter se*, the provisions were, on the directors being employed & accepting office on the footing of them, embodied in the contract between the co. & the directors; (2) the remuneration was not due to the directors in their character of members, but under the contract so embodying the provisions; & in the winding up of the co., the directors were entitled to rank as ordinary creditors in respect of the remuneration due to them at the commencement of the winding up.—*Re NEW BRITISH IRON CO., Ex p. BECKWITH*, [1898] 1 Ch. 324; 67 L. J. Ch. 164; 78 L. T. 155; 46 W. R. 376; 14 T. L. R. 196; 42 Sol. Jo. 234; 5 Mans. 168.

Annotations:—*As to* (1) *Appld. Foster v. Foster*, [1916] 1 Ch. 532. *As to* (2) *Folld. Re Dover Coalfield Extension*, [1907] 2 Ch. 76.

2974. Alteration of articles fixing remuneration—Whether breach of contract with director.]—*SWABEY v. PORT DARWIN GOLD MINING CO.*, No. 2972, *ante*.

See, generally, Sect. 30, sub-sect. 2, C. (b), *post*.

remuneration after the date of alteration of the arts.—*Ross & Co. v. COLEMAN* (1920), App. D. 408.—**S. AF.**

d. Alteration of articles fixing remuneration.]—A number of butchers made over their businesses to P., who in consideration therefor undertook to float a co., the object of which was to take over these businesses & run them as a butchers' "combine," the butchers agreeing not to carry on business in competition with the co., & P. undertaking on behalf of the co. that they should be employed by the co. when formed at a salary of £30 *per month* from the date of the registration until liquidation. The co., of whom the shareholders were the butchers to the number of seventeen, was registered & duly adopted the agreement, & on formation they, including appets. & resps. entered the co.'s employ. Under the arts., the directors, the resps. herein, were given practically all the powers of the co., provided they did nothing inconsistent with the arts. or any resolution of shareholders. In

2975. — Whether retrospective.]—SWABEY v. PORT DARWIN GOLD MINING Co., No. 2972, *ante*.

2976. — Necessity for—Must be effected before ratification of acts in contravention.]—BOSCHOEK PROPRIETARY Co., LTD. v. FUKU, No. 2893, *ante*.

2977. — Sufficiency of notice summoning meeting.]—Deft. co. held nearly all the shares in a subsidiary co. Four of the five directors of the deft. co. were also directors of the subsidiary co. In 1907 the subsidiary co. increased their directors' remuneration from £2,500 a year to £2,500 a year & a sum equal to 20 per cent. of the net profits, after paying 10 per cent. to the ordinary shareholders. The directors of deft. co. exercised its voting powers to pass the art. giving this increased remuneration without obtaining the sanction of the shareholders of deft. co. In 1914, deft. co. issued notice of an extraordinary general meeting to pass resolutions ratifying the payments which had been made to the directors of the subsidiary co., & to insert an art. authorising their directors, as directors of subsidiary cos., to receive remuneration without accounting for it, & to exercise the voting power of deft. co. as they should think fit. The notice stated the art. of the subsidiary co. giving the increased remuneration, but gave no information as to the amount which had been received thereunder. At the meeting, the chairman stated that the directors' fees from the two cos. since 1881 had averaged £320 *per annum* for each director. The statement was untrue. The total amount for fees & percentages received by the directors of the subsidiary co. for the previous seven years was £44,876. The resolutions were duly passed & confirmed as special resolutions. Pltf., a shareholder of the deft. co., in an action on behalf of himself & all other shareholders for a declaration that these special resolutions were not binding upon deft. co., moved for an injunction to restrain the directors of the subsidiary co. from acting upon them:—*Held*: the notice was misleading & was not such a satisfactory statement of the facts as the shareholders were entitled to, & pltf. could maintain the action without joining the co. as pltf., & the injunction must be granted.—

BAILLIE v. ORIENTAL TELEPHONE & ELECTRIC Co., LTD., [1915] 1 Ch. 503; 84 L. J. Ch. 409; 112 L. T. 569; 31 T. L. R. 643, C. A.

Annotation:—*Refd.* Sidebottom v. Kershaw, Leese, [1920] 1 Ch. 154.

2978. Right to sue for—Whether resolution a condition precedent—Remuneration by fixed sum.]—NEILL v. ATLANTA GOLD & SILVER CONSOLIDATED MINES (1895), 11 T. L. R. 407, C. A.

Annotations:—*Refd.* Caridad Copper Mining Co. v. Swallow, [1902], 2 K. B. 44. *Mentd.* Dashwood v. Cornish (1897), 13 T. L. R. 337.

2979. — Time of payment to be fixed by board.]—Where the art. of assocn. of a co. provided that there should be allowed to each of the directors out of the funds of the co. as a remuneration for his services a certain sum *per annum* to be paid at such times as the directors might determine:—*Held*: it was a condition precedent to the right of a director to sue for remuneration in respect of a year's service that the directors should have determined a time for payment thereof.—CARIDAD COPPER MINING Co. v. SWALLOW, [1902] 2 K. B. 44; 71 L. J. K. B. 601; 86 L. T. 699; 50 W. R. 565; 18 T. L. R. 601; 9 Mans. 336, C. A.

Annotations:—*Refd.* *Re* Bodega Co., [1904] 1 Ch. 276; Boschhoek Proprietary Co. v. Fuku, [1906] 1 Ch. 148; Morrell v. Oxford Portland Cement Co. (1910), 26 T. L. R. 682; Moriarty v. Regent's Garage Co., [1921] 1 K. B. 423.

2980. — Remuneration of board a fixed sum—Proportions to be fixed by board decision necessary.]—By the arts. of assocn. of a co. the directors were entitled by way of remuneration for their services to the sum of £500 *per annum*, "such remuneration to be divided amongst them as they should decide":—*Held*: a decision by the directors as to how the remuneration was to be divided amongst them was a condition precedent to the right of a director to sue for his remuneration.—MORRELL v. OXFORD PORTLAND CEMENT Co., LTD. (1910), 26 T. L. R. 682.

Annotation:—*Fold.* Joseph v. Sonora (Mexico) Land & Timber Co. (1918), 34 T. L. R. 220.

2981. — By the arts. of assocn. of a co., the fixed remuneration of the directors in each year was to be an aggregate sum

Jan. 1909, appcts., though remaining shareholders, left the co.'s employ, & following thereon the directors on petition raised the salaries of the remaining employes, including their own, to £40 per month. In proceedings for an interdict:—*Held*: the directors' action was neither illegal nor improper; it was not *ultra vires*, as it was neither inconsistent with the arts. nor with the agreement.—WOLFOWITZ v. STEIN, [1909] T. H. 120.—S. AF.

2977 i. — Sufficiency of notice summoning meeting.]—Directors who by resolution of the co. in general meeting seek to obtain a benefit for themselves, & to bind both dissentient & absent shareholders in respect thereof, cannot be allowed, under colour of such resolution, to retain such benefit unless they have given to the shareholders a fair & reasonably full statement of the facts, so as to give sufficient information & notice to enable the shareholders to determine whether they will or will not attend any meeting at which such resolution is to be proposed, or whether they will or will not oppose it.—COLHOUN v. GREEN, [1919] V. L. R. 196.—AUS.

2977 ii. — By the arts. of association of a banking co., formed under 1862 Act, it was provided that the remuneration of the directors should be determined by the co. in general meeting; & that the co. should not make any advance or allow any credit to a director, or to any firm of

which a director should be partner, on his or their personal guarantee or security only, or otherwise than on adequate security. Complaints were made by certain shareholders that these provisions of the arts. had not been adhered to; & a report of the co.'s auditor as to directors' overdrafts stated that in some instances, these were inadequately secured. Private meetings of shareholders were held, at which they expressed their dissatisfaction, & on Jan. 10, 1884, a sub-committee was appointed at one of these meetings to require the directors to give full information as to advances to directors, & the securities held for same, & the directors declined to accede to the request. On Jan. 24, 1884, a circular was issued convening an extraordinary general meeting of the co. for Jan. 31, 1884, at which resolutions were to be proposed altering the arts. of assocn. by authorising advances to directors on their personal security, subject to certain restrictions, & by increasing the remuneration of directors, & leaving to the discretion of the directors the future remuneration of the chairman and vice-chairman, as well as the remuneration of the former for past services. Proxy forms, drawn in favour of two of the directors, accompanied the circulars. An action having been commenced on Jan. 23, 1884, by shareholders, seeking to have it declared that advances to the directors, or to firms in which they were partners, on inadequate security

was a breach of trust on the part of the board of directors, an inquiry whether any & what sums were paid & allowed to deft. directors out of the funds of the co. by way of remuneration, over & above what they would be respectively entitled to under the regulation of the co., & an injunction to restrain deft. from holding the meeting convened by the circular, or from proposing the resolutions mentioned in the circular; & pltf. having moved for an interlocutory injunction:—*Held*: the ct., being of opinion that the circular had a misleading tendency & was one by which the great body of the shareholders might be misled, statements contained in it were calculated to have the effect of obtaining proxies from the shareholders without their having the information which would enable them to form a correct judgment as to who were the proper persons to whom the votes should be entrusted, & the shareholders had not been fully & fairly informed & instructed upon what was proposed to be done, an interlocutory injunction should be granted against proposing the resolutions objected to at the extraordinary general meeting.—JACKSON v. MUNSTER BANK (1884), 13 L. R. Ir. 118.—IR.

2980 i. Right to sue for — Whether resolution a condition precedent—Remuneration of board a fixed sum.]—FIFE LINOLEUM & FLOORCLOTH Co., LTD. (LIQUIDATOR) v. LORNE (1905), 13 S. L. T. 670.—SCOT.

Sect. 28.—Directors: Sub-sect. 3, B. (b) i. & ii., & (c) i.]

equivalent to £150 for the chairman & £100 for each other director, such aggregate sum to be divided amongst the directors in such proportion & manner as the directors should determine:—*Held*: no individual director could sue the co. for his fees until the directors had made a formal division of the amount available.—*JOSEPH v. SONORA (MEXICO) LAND & TIMBER CO., LTD.* (1918), 34 T. L. R. 220.

2982. Where articles provide for division—Right to compel division.]—An action is not maintainable by a director against his brother directors for a *mandamus* to compel them to divide the directors' remuneration in accordance with the arts. of assocn.—*DASHWOOD v. CORNISH* (1897), 13 T. L. R. 337, C. A.

2983. — “In proportion to attendances or as they might determine” — Construction of article.]—*GILMAN v. GÜLCHER ELECTRIC LIGHT CO.* (1886), 3 T. L. R. 133, C. A.

Annotation:—Reid. Re Wood's Ships' Woodite Protection Co. (1890), 62 L. T. 760.

— Necessity for division—As condition precedent to right of action.]—*See* Nos. 2980, 2981, *ante*.

ii. Where Remuneration Conditional.

2984. Remuneration dependent on payment of dividend—Minimum dividend improperly paid.]—The arts. of assocn. of a limited co. provided that no dividends should be payable except out of “realised profits,” & that no remuneration should be paid to the directors until a dividend of 7 per cent. had been paid to the shareholders. The business of the co. consisted chiefly in lending money to builders on mtges. payable by instalments, & the directors treated, as part of the profits available for dividends, the value for the time being of the instalments of principal & interest remaining unpaid by each mtgor. Upon this footing the directors paid for several years, out of the floating capital from time to time in their hands, dividends of 7½ per cent. & upwards & remuneration to themselves. Upon a summons taken out in the winding up of the co. by a creditor:—*Held*: (1) “realised profits” must be taken in its ordinary commercial sense as meaning at least “profits tangible for the purpose of division;” (2) the directors having treated estimated profits as realised profits, & having in fact paid dividends out of capital on the chance that sufficient profits might be made, were jointly & severally liable, as upon a breach of trust, to repay & must repay, the sums improperly paid as dividends; (3) they must repay the remuneration they had respectively received, with interest in each case at 4 per cent.—*Re OXFORD BENEFIT BUILDING & INVESTMENT SOCIETY* (1886), 35 Ch. D. 502; 55 L. T. 598; 35 W. R. 116; 3 T. L. R. 46; *sub nom. Re OXFORD BUILDING SOCIETY, Ex p. SMITH*, 56 L. J. Ch. 98.

Annotations:—As to (1) Reid. Leeds Estate Building & Investment Co. v. Shepherd (1887), 36 Ch. D. 787; *Municipal Freehold Land Co. v. Pollington* (1890), 63 L. T. 238; *Re London & General Bank* (1894), 72 L. T. 227. *As to (2) Follid. Leeds Estate Building & Investment Co. v. Shepherd* (1887), 36 Ch. D. 787. *Appl. Re Kingston Cotton Mill Co. (No. 2)*, [1896] 1 Ch. 331. *Reid. Lee v. Neuchatel Asphalte Co.* (1889), 41 Ch. D. 1; *Re National Bank of Wales*, [1899] 2 Ch. 629. *As to (3) Follid. Leeds Estate Building & Investment Co. v. Shepherd* (1887),

36 Ch. D. 787. *Generally, Mentd. Cullerne v. London & Suburban General Permanent Bldg. Soc.* (1890), 25 Q. B. D. 485; *Re Liverpool Household Stores Assocn.* (1890), 59 L. J. Ch. 616.

2985. — No dividend paid—Remuneration voted by general meeting.]—It was provided by one of the arts. of assocn. of a co. that the directors should not receive any remuneration for their services in any year until the members should have received a dividend for that year of 5 per cent. on the amount paid on their shares, & that then the directors should be paid for that year such sum as the co. should in general meeting determine. The arts. also provided that the directors should be indemnified out of the funds of the co. all expenses incurred by them as directors. The co. never paid any dividend, & was on Apr. 17, 1886, ordered to be wound up. Before the order for winding up, at a general meeting held on Feb. 9, 1885, at which some of the directors were present, a resolution was passed allotting a sum of £1,000 to the directors for their services for the year ending Dec. 31, 1884. On Feb. 17, 1885, four of the seven directors held a meeting & passed a resolution dividing the £1,000 among the body of directors in certain proportions. At another meeting in Mar. the directors passed a resolution sanctioning certain bills for their expenses “as settled by the resolution of Feb. 7.” On summons by the official liquidator asking that the seven directors might be held jointly & severally liable to refund the £1,000 & for an order for payment:—*Held*: the art. of assocn., saying that the directors were to receive no remuneration until a dividend had been paid, had been broken, & the directors were jointly & severally liable to repay the money with interest at 4 per cent.—*Re WHITEHALL COURT, LTD.* (1887), 56 L. T. 280; 3 T. L. R. 402.

2986. — Dividends paid but not earned—Balance sheet adjusted to show profits.]—*LEEDS ESTATE BUILDING & INVESTMENT CO. v. SHEPHERD*, No. 3668, *post*.

— Exceeding certain amount—Extra remuneration.]—*See* No. 3010, *post*.

2987. Remuneration based on net profits—Sale of business at profit.]—Arts. of assocn. provided that the directors should be paid in each year as remuneration for their services a sum equal to 3 per cent. on the “net profits” of the co. of such year. The co. resolved on a voluntary winding up, for the purpose of selling its undertaking & assets to a new co. A very large profit was made by this sale. On an action by one of the directors for his proportion of the 3 per cent. on the profits so made:—*Held*: (1) “net profits” in the art. in question was intended to apply to profits made by the co. as a going concern, & not to profits made by a sale of the whole undertaking & assets in a winding up; (2) the directors' remuneration was intended to be a return for their services, to which the present sale was not attributable, & accordingly pltf.'s claim failed.—*FRAMES v. BULFONTEIN MINING CO.*, [1891] 1 Ch. 140; 60 L. J. Ch. 99; 64 L. T. 12; 39 W. R. 134; 7 T. L. R. 129; 2 Meg. 374.

Annotation:—As to (1) Consd. Re Spanish Prospecting Co., [1911] 1 Ch. 92.

Calculation of net profits, generally, *see* Sect. 30, sub-sect. 8, A., *post*.

2988. — Residue after payment of dividend—Value of assets bonâ fide overestimated.]—By the

PART III. SECT. 28, SUB-SECT. 3.—B. (b) ii.

e. Remuneration based on profits—Whether confined to profits of year of service.]—The arts. of assocn. of a co. provided that £500 per annum should

be paid to the directors as remuneration for their services & the sum should be distributed amongst the directors in such manner as the board should from time to time determine provided that the sum should be paid out of realised

profits only & should be a first charge thereon:—*Held*: the word “profits” was not to be construed as “profits of their year of service,” but the remuneration was a first charge on future profits as well as those of their year of office.—

arts. of the co. after certain dividends had been paid out of net profits, 10 per cent. of the residue was to be paid to the directors as remuneration. In 1883 resolutions declaring a dividend were approved by the directors & auditor of the co. & passed at a general meeting of the shareholders. This dividend was chiefly payable out of a balance made up of the estimated value of certain claims which eventually turned out to be worthless. The proceedings were perfectly regular, & no wrong motive was attributed to any of the persons concerned. The directors claimed under the arts. a remuneration of 10 per cent. on the balance. On a summons by the voluntary liquidator of the co. :—*Held* : at this distance of time, & in consideration of the circumstances that no improper conduct was suggested, & that at the time the estimate was a reasonable one, the directors were entitled to the remuneration.—*Re PERUVIAN GUANO Co., Ex p. KEMP*, [1894] 3 Ch. 690 ; 63 L. J. Ch. 818 ; 71 L. T. 611 ; 43 W. R. 170 ; 10 T. L. R. 585 ; 38 Sol. Jo. 664 ; 1 Mans. 423 ; 8 R. 544.

(c) *In Respect of What Periods Payable.*
i. *In General.*

2989. Before qualification acquired.]—The arts. of assocn. of a co. provided that no person should be eligible as a director unless he held fifty shares at least in the co., & had held such shares for one month previously. A. was appointed a director on Mar. 21, 1864. On Apr. 1, he applied for 25 shares, & on the following day paid the deposit of £25. On Apr. 22, these shares were allotted to him, & on Aug. 9 he paid the £75 due in respect of the allotment. He had received certain fees for his attendances as a director before the actual allotment of his shares. On an application by the official liquidator of the co. to have the amount of the fees so received by him returned :—*Held* : the amount of fees should not be returned by him.—*Ex p. EUROPEAN CENTRAL RY. Co., WALFORD'S CASE* (1869), 20 L. T. 74.

2990. — Office accepted on special terms as to qualification.]—*Re INTERNATIONAL CABLE Co., LTD., Ex p. OFFICIAL LIQUIDATOR*, No. 2883, *ante*.

2991. — Qualification acquired after time limited by articles.]—*SALTON v. NEW BEESTON CYCLE Co.*, No. 2945, *ante*.

2992. Before remuneration fixed—Remuneration fixed at first general meeting.]—The subscribers to the memorandum of assocn. of a co. which was registered under the Cos. Acts, & whose arts. of assocn. were those contained in Table A. of 1862 Act, appointed the first directors of the co. in accordance with art. 52 of Table A. At the next, the first, general meeting of the co. the same directors were elected directors & a resolution was passed fixing their remuneration at £400 *per annum*, divisible as they might determine. In the

balance-sheet submitted to & passed at the second general meeting of the co., the remuneration of the directors appeared as commencing at a date previous to the first general meeting of the co. The co. having gone into liquidation :—*Held* : the directors' remuneration commenced at the date of the first general meeting when the resolution was passed fixing the remuneration, & the directors were liable to refund the remuneration received for the period before that date.—*Re LONDON GIGANTIC WHEEL Co., LTD.* (1908), 24 T. L. R. 618, C. A.

2993. Before allotment—Payment inconsistent with first prospectus—No allotment on first prospectus.]—The arts. of assocn. of a co. provided that the remuneration of the directors should be by way of annual salary. The directors issued a prospectus which contained a statement that "the vendor pays all expenses up to allotment." An insufficient number of applications for shares having been received, no allotment was made on the faith of that prospectus. The directors, however, continued to carry on the business of the co. to the best of their ability, & issued a second prospectus which did not contain the statement in question. Before allotment, & before the expiration of a year from the incorporation of the co., the directors voted themselves certain sums in respect of their quarter's salary, which were applied in payment of the amounts uncalled up on the shares which they had agreed to take. Six months later the co. was ordered to be wound up :—*Held* : the directors, having acted *bona fide* in the interests of the co., were entitled to vote themselves remuneration before the expiration of the year.—*Re WOOD'S (A. M.) SHIPS' WOODITE PROTECTION Co., LTD.* (1890), 62 L. T. 760 ; 6 T. L. R. 301 ; 2 Meg. 164.

2994. Director continuing to act though automatically disqualified—Disqualification not known to company.]—*Re BODEGA Co., LTD.*, No. 3465, *post*.

2995. — Director automatically retiring & not re-elected—No annual general meeting held.]—*Re CONSOLIDATED NICKEL MINES, LTD.*, No. 2968, *ante*.

2996. After appointment to other office carrying remuneration—Receiver & manager in debenture-holders' action.]—The directors of a co. were entitled under its arts. of assocn. to be paid at the rate of a certain sum a year to be divided amongst them as they should agree amongst themselves. In pursuance of their agreement the remuneration was paid to the directors in certain proportions. In a debenture-holders' action against the co. two of the directors were appointed by the ct. to be receivers & managers of the co.'s assets & business, & the ct. allowed them a remuneration for so acting. Subsequently the co. went into voluntary winding up :—*Held* : the fact of the

KELLY v. BROKEN HILL SOUTH SILVER MINING Co. (1893), 14 N. S. W. L. R. 119.—AUS.

PART III. SECT. 28, SUB-SECT. 3.—
B. (c) i.

1. Directors absent from meetings without leave.]—A co. was formed & registered under the Co.'s Act, 1882, in 1897. One of its arts. of assocn. provided that "the future remuneration of the directors . . . shall be determined by the co. in general meeting." The arts. contained no provision as to how often or at what times the directors were to meet, but provided that they were to "meet together for the despatch of business, adjourn, & otherwise regulate their meetings as

they shall think fit." Up till 1903 the directors' fees were voted annually in "general meeting." The arts. contained in Jan. 1903, the following resolution was passed : "That the directors' fees be £30 *per annum* until altered." Up to Oct. 1904, the fees were actually paid to the directors. From then a sum of £30 was in each year credited in the co.'s books to a Directors' Fees Account, & debited to the "Profit & Loss Account." Before the co. went into voluntary liquidation in July, 1907, the meetings of directors had been held at irregular intervals, a period of three months sometimes passing without a meeting being held. In some instances meetings were called, but lapsed for want of a quorum. Some of the directors

were absent from certain of the meetings, sometimes with leave, sometimes without :—*Held* : (1) under Companies Act, s. 73, that at the end of each year a right had accrued to each director who had not been absent without leave for a period of three months or upwards in that year to receive his share of the fixed fee for that year, & his right was not affected by absences without leave in a preceding or succeeding year. (2) Absence for three months or upward in any one year was a bar to any remuneration for that year, even though it were absence from a meeting which lapsed for want of a quorum. (3) If no meeting were called for a period of three months there could be no absence without leave in that period. (4) Where in any year any

Sect. 28.—Directors: Sub-sect. 3, B. (c) i. & ii. & (d).]

two directors being remunerated as receivers & managers did not disentitle them to their remuneration in addition as directors from the time when they were appointed receivers & managers until the commencement of the winding up.—*Re SOUTH WESTERN OF VENEZUELA (BARQUISIMETO) RY.*, [1902] 1 Ch. 701; 71 L. J. Ch. 407; 86 L. T. 321; 50 W. R. 300; 46 Sol. Jo. 281; 9 Mans. 193.

Annotations:—*Consd. Re British Consolidated Oil Corp., Howell v. British Consolidated Oil Corp.*, [1919] 2 Ch. 81. *Refd. Re Piccadilly Hotel, Paul v. Piccadilly Hotel*, [1911] 2 Ch. 534; *Re Consolidated Nickel Mines*, [1914] 1 Ch. 883.

2997. After liquidation begun—Period between presentation of petition & order—In discretion of court.]—*Re INTERNATIONAL CABLE CO., LTD.* (1892), 8 T. L. R. 307.

ii. Whether Apportionable.

2998. Remuneration by way of annual salary—Quarter's remuneration voted before end of year.]—*Re WOOD'S (A. M.) SHIPS' WOODITE PROTECTION CO., LTD.*, No. 2993, *ante*.

2999. Where a fixed sum per annum.]—Arts. of assocn. of a co. incorporated under Cos. Acts, 1862 to 1890, provided that "the directors shall be paid out of the funds of the co. as follows, namely, a sum of £150 *per annum* to the chairman; & a sum of £100 *per annum* to each ordinary director by way of remuneration for their ordinary services":—*Held*: the fees were for a whole year's services, & were not apportionable.—*Re CENTRAL DE KAAP GOLD MINES* (1899), 69 L. J. Ch. 18; 7 Mans. 82.

Annotations:—*Consd. Moriarty v. Regent's Garage Co.*, [1921] 1 K. B. 423. *Refd. Inman v. Ackroyd & Best*, [1901] 1 K. B. 613; *Morrell v. Oxford Portland Cement Co.* (1910), 26 T. L. R. 682.

3000. — "In each year."]—*SALTON v. NEW BEESTON CYCLE CO.*, No. 2945, *ante*.

3001. — Absence during part of year.]—By the arts. of assocn. of a co. each of its directors was to be paid out of its funds by way of remuneration £300 *per annum*, & the office of a director was to be vacated if he absented himself from directors' meetings during a period of three calendar months without special leave of absence from the directors. M. was appointed a director on Aug. 3, 1898, & attended meetings of directors down to Feb. 3, 1899, on which last named date he attended a meeting at which they, including himself, passed a resolution "that no remuneration be received by the directors for their services until a dividend is declared on the ordinary shares of the bank." There was no further meeting from Feb. 3 to Mar. 3, 1899. From Feb. 3 he absented himself without leave until after May 7, 1899, on which another directors' meeting was held, & on May 8, 1899, received a written notice from the board stating that he had ceased to be a director pursuant to the arts., & that the fact of his non-attendance for

three months had been ordered to be entered on the minutes. M. did not insist on being reinstated & did not attend a meeting of directors on June 3. The co. went into liquidation on Dec. 29, 1899, & no dividend was declared on the ordinary shares. M. claimed to prove for remuneration from the date of his appointment until the winding up:—*Held*: (1) the remuneration not being due until the end of a year, & the agreement to pay it being on Feb. 3 only partially performed & not broken, the resolution was effective; (2) the period of absence only began to run from Mar. 3, 1899, terminating on June 3; (3) the remuneration was not apportionable, & the claim of M. failed.

Although there is a difference between the act of "absenting oneself," which is purely voluntary, & the fact of "being absent," which is voluntary or involuntary as the case may be; yet the fact that a person is absent under some strong compulsion, which does not amount to physical necessity, does not necessarily negative the voluntary aspect of his act, or show that he has not "absented himself." Where, accordingly, the director of a co., though not actually physically prevented by present ill-health from attending the meetings of his fellow directors, was yet induced to stop away from them because his remaining at that season in England might have been injurious to his health, his absence was treated by the ct. as being voluntary, & he was deemed to have "absented himself" within the arts. of assocn.—*Re LONDON & NORTHERN BANK, MCCONNELL'S CLAIM*, [1901] 1 Ch. 728; 70 L. J. Ch. 251; 84 L. T. 557; 17 T. L. R. 188; 45 Sol. Jo. 222; 9 Mans. 91.

Annotation:—*As to (3) Consd. Moriarty v. Regent's Garage Co.*, [1921] 1 K. B. 423.

3002. — Resignation during year.]—Arts. of assocn. of a limited co. provided that the directors should be paid out of the funds of the co. by way of remuneration for their services "the sum of £125 *per annum*, per director, & such further sums as shall from time to time be determined by the co. in general meeting, & the same shall be divided among them in such proportion & manner as the directors by agreement may determine & in default of such determination equally." In an action by a director, who had resigned after serving for a part of a year, to recover remuneration in respect of his services during that period:—*Held*: the arts. of assocn. did not entitle a director to recover remuneration for any less period than a year.—*INMAN v. ACKROYD & BEST, LTD.*, [1901] 1 K. B. 613; 70 L. J. K. B. 450; 84 L. T. 344; 49 W. R. 369; 17 T. L. R. 293; 45 Sol. Jo. 310; 8 Mans. 291, C. A.

Annotations:—*Consd. Moriarty v. Regent's Garage Co.*, [1921] 2 K. B. 766. *Refd. Morrell v. Oxford Portland Cement Co.* (1910), 26 T. L. R. 682.

3003. — Where director has substantially acted for a year.]—*Re SHAW'S, BRYANT & CO., LTD.* (1901), 45 Sol. Jo. 580.

3004. — What constitutes "substantial"

director had forfeited his remuneration through absence, the share of that director ought to be divided among the directors who had not forfeited their remuneration.—*Re UNIVERSAL SUPPLY CO.* (1908), 17 N. Z. L. R. 961.—N.Z.

PART III. SECT. 28, SUB-SECT. 3.—B. (c) ii.

2999 i. Where a fixed sum per annum.]—A co. was formed & registered under the Cos. Act, 1882, in 1897. One of its arts. of assocn. provided that "the future remuneration of the directors . . . shall be determined by the co.

in general meeting." Up till 1903 the directors' fees were voted annually in "general meeting." The arts. contained in Jan. 1903, the following resolution was passed: "That the directors' fees be £30 *per annum* until altered." Up to Oct. 1904, the fees were actually paid to the directors. From then a sum of £30 was in each year credited in the co.'s books to a Directors' Fees Account, & debited to the "Profit & Loss Account." The co. went into voluntary liquidation in July, 1907, & for that year the sum of £15 was credited to the Directors' Fees Account. There was a balance

remaining in the liquidators' hands after payment to the creditors in full:—*Held*: (1) the resolution fixing the directors' fees was a valid resolution speaking from year to year; (2) if the co. had been a going concern, the remuneration fixed being one sum for the year, & not "at the rate" of that sum per year, the directors would not have been entitled to receive payment for part of a year; but the liquidation having supervened before the close of the year they were entitled to payment for that year.—*Re UNIVERSAL SUPPLY CO.* (1908), 27 N. Z. L. R. 961.—N.Z.

completion of year.]—*KEMPF v. OFFIN RIVER GOLD ESTATES, LTD.* (1908), *Times*, Apr. 10.

3005. Remuneration at rate "per annum"—Whether apportionment implied.]—In Nov. 1919, pltf. agreed with an agent for an intended co. to sell his business to that co., the payment to be partly in cash & the balance in debenture stock of the co. The agreement contained a clause providing "that the vendor shall be, & act as, one of the directors of the said co., & that his fees for so acting shall be £150 *per annum*." The arts. of the co. when formed, deft. co., provided that the remuneration of the directors should be "at the rate of" £150 *per annum*, & such further sum as should be voted to them by the co. in general meeting, & that such remuneration should be divided amongst the directors as they should determine, or failing agreement, equally. The co. on incorporation adopted the agreement & pltf. received the debentures, which contained a condition entitling the co. to pay them off at the expiration of six months. In Dec. 1919, pltf. was duly appointed a director to hold office so long as he held a certain amount of debentures in the co. Disputes having arisen between pltf. & the co., pltf. agreed to accept payment of all money due to him upon his debentures, & on May 14, 1920, the debentures were paid off, & thereupon he ceased to be a director. In an action by pltf. to recover a proportionate part of the £150, as his fees for the period from Dec. 1919, to May, 1920, when he acted as director:—*Held*: (1) neither under the agreement nor under the arts. was pltf. entitled to the sum he claimed; (2) the ct. would not imply a term in the agreement that a proportionate part of the remuneration should be paid if pltf.'s services terminated during a broken period of a year.—*MORIARTY v. REGENT'S GARAGE CO.*, [1921] 2 K. B. 766; 90 L. J. K. B. 783; 125 L. T. 560; 37 T. L. R. 531; 65 Sol. Jo. 474, C. A.

Annotation:—Generally, *Mentd. Re Rosse, Parsons v. Rosse* (1923), 129 L. T. 592.

Implied terms generally, see *CONTRACT*, Vol. XII., pp. 607 *et seq.*

(d) *Extra and Special Remuneration.*

3006. What extra payments may be made—Gratuity—Not by way of remuneration for services.]—At an extraordinary general meeting of a co. incorporated under 1862 Act, resolutions were passed that the co. should be wound up voluntarily, & that a sum of money should be distributed among the officers & servants of the co. This sum was in the nature of a gratuity & not a remuneration for past or future services. These resolutions were confirmed at a subsequent meeting:—*Held*: the resolution as to the payment of the sum to the officers & servants of the co. was *ultra vires*.—*STROUD v. ROYAL AQUARIUM & SUMMER & WINTER*

GARDEN SOCIETY, LTD. (1903), 89 L. T. 243; 19 T. L. R. 656; 47 Sol. Jo. 727.

Annotation:—*Reid. Moriarty v. Regent's Garage Co.*, [1921] 1 K. B. 423.

3007. — Travelling expenses—To & from directors' meetings.]—Directors who are remunerated for their services are not entitled, in the absence of a resolution of the co. or a provision in the arts., to be paid out of the assets of the co. their travelling expenses incurred in attending board meetings.

One of the arts. of a limited co. provided for the payment of £200 a year to each director by way of remuneration for his services; another art. declared that no director should vote on any matter in which he was interested; & a further art. provided that every director & other officer should be indemnified by the co. against, & it should be the duty of the directors out of the funds of the co. to pay, all costs & expenses which any officer of the co. might incur in the discharge of his duties. In Apr. 1902, A. was elected a director of the co. In May, 1902, the directors passed a resolution that all reasonable travelling expenses should be reimbursed to the directors from time to time. At the date of his election A. was residing at W., & remained so resident until his resignation in Jan. 1903, & during his directorship was paid out of the co.'s assets his travelling expenses to & from L. incurred in attending the board meetings:—*Held*: (1) the resolution was *ultra vires* the directors, & A. must refund to the co. the moneys paid him for his travelling expenses whilst a director; (2) A. was not personally liable for the sums paid to his co-directors for their travelling expenses, except to the extent that he had signed cheques for that purpose.—*YOUNG v. NAVAL, MILITARY & CIVIL SERVICE CO-OPERATIVE SOCIETY OF SOUTH AFRICA*, [1905] 1 K. B. 687; 74 L. J. K. B. 302; 92 L. T. 458; 53 W. R. 447; 21 T. L. R. 293; 49 Sol. Jo. 332; 12 Mans. 212.

Annotation:—Generally, *Mentd. Carter v. United Soc. of Boilermakers* (1915), 85 L. J. Ch. 289.

3008. — Income tax on fees—Not entitled unless articles provide.]—*BOSCHOEK PROPRIETARY CO., LTD. v. FUKU*, No. 2893, *ante*.

3009. — Pensions—Under power to grant to persons in employment of company.]—*NORMANDY v. IND, COOPE & CO.*, No. 3536, *post*.

3010. Provision in articles for extra remuneration—On dividend exceeding certain amount—Right of retiring director—Dividend paid in respect of last year of office.]—*DIAMOND v. ENGLISH SEWING COTTON CO., LTD.*, [1922] W. N. 237, C. A.

3011. Provision in articles for special remuneration—For extra services—Construction of article.]—*LOCKHART v. MOLDACOT POCKET SEWING MACHINE CO., LTD.* (1889), 5 T. L. R. 307.

3012. — — Negotiating sale of business—Whether debited to capital or profit & loss.]—One

PART III. SECT. 28, SUB-SECT. 3.—
B. (d).

g. What extra payments may be made—Director also solicitor to company—Profit costs of work in court.]—Where a director, who was also president, of a co. was appointed by the board of directors & acted as solr. for the co.:—*Held*: he was entitled to profit costs in respect of causes in ct. conducted by him as solr. for the company, but not in respect of business done out of ct.—*Re MIMICO SEWER PIPE & BRICK MANUFACTURING CO., PEARSON'S CASE* (1895), 26 O. R. 289.—CAN.

h. — Additional services.]—Pltfs. sought to recover from L. money received by him from & for pltfs.: these sums L. claimed as salary, but

pltfs. set up that he was not entitled to any wages, being a director, without a bye-law authorising the payment, & there was no bye-law:—*Held*: although there must be a bye-law, & approval thereof by the shareholders, before a director can be entitled to pay as such, there is no reason why one who happens to be a director should not serve the co. in another capacity, & receive reasonable remuneration therefor, without a bye-law authorising the payment; *aliter*, if the services are such that only a director can perform them.—*CANADA BONDED ATTORNEY & LEGAL DIRECTORY v. LEONARD-PARMITER, LTD.*, *CANADA BONDED ATTORNEY & LEGAL DIRECTORY, LTD. v. LEONARD* (1918), 42 O. L. R. 141.—CAN.

k. — Outlay incurred on behalf of company.]—A public co., owing to want of success, resolved to wind up voluntarily & appointed one of the directors to attend to the collection of all money owing to the co., & as far as possible to discharge all obligations due by it. In a state of intromissions with the funds of the co., which was submitted by this director, a sum of £72 was entered by him as retained for time & expenses in attending to & settling the co.'s business. In a petition against him at the instance of the liquidator appointed in the voluntary liquidation for payment of the sum so retained:—*Held*: he was not entitled to retain any sum as remuneration, but any claim which he might have for outlay incurred on behalf of the co. reserved

Sect. 28.—Directors: Sub-sect. 3, B. (d), (e) & (f), C. & D.; sub-sect. 4, A.]

of the arts. of assocn. of a co. provided that, if any of the directors should be called upon to perform extra services on behalf of the co., the directors or the co. might remunerate him or them by a fixed sum or by a percentage of profits or otherwise as might be determined. By another art. the directors were empowered to give to any director a commission or a fixed sum on any particular business or transaction, or a share in the general profits of the co., which should be treated as working expenses or capital outlay of the co. The co. in general meeting passed a resolution to pay to each of the directors for their services in effecting the sale of the co.'s business to another co. the sum of £250 as a commission or fixed sum to be treated as capital outlay:—*Held*: the sums ought to be debited to profit & loss account, & not treated as a capital outlay.—*ASHTON & Co., LTD. v. HONEY* (1907), 23 T. L. R. 253; 51 Sol. Jo. 211.

(e) Right to Prove in Winding up.

See Sect. 36, sub-sect. 11, A. (c); Sect. 37, sub-sect. 8, *post*.

(f) Where Director a Trustee.

3013. Right to retain—No specific power to retain under trust instrument.]—Where trustees hold shares belonging to the trust, & they are appointed directors in respect of such holding, & there is no provision in the will enabling them to retain their remuneration as such directors for their own benefit, they must account for such remuneration to the trust, & the remuneration is to be treated as capital & will go to the remaindermen as an accretion to their shares.—*Re FRANCIS, BARRETT v. FISHER* (1905), 74 L. J. Ch. 198; 92 L. T. 77.

3014. — Director qualified & appointed in order to watch interests of beneficiaries.]—The D. Co. transferred certain shares which it held in the K. Co. to C., one of its directors, in order to qualify him to become a director of the K. Co., the intention being that C. should represent the interests of the D. Co. on the board of the K. Co., & C. executed a declaration of trust of the shares in favour of the D. Co.:—*Held*: the remuneration received by C. as director of the K. Co. was not profit received by him from the use of the property of the D. Co., & C. was under no liability to account for that remuneration to the D. Co.—*Re DOVER COALFIELD EXTENSION, Ltd.*, [1908] 1 Ch. 65; 77 L. J. Ch. 94; 98 L. T. 31; 24 T. L. R. 52; 52 Sol. Jo. 43; 15 Mans. 51, C. A. *Annotations*:—*Consd. Re Lewis, Lewis v. Lewis* (1910), 103 L. T. 495. *Reid. Bath v. Standard Land Co.*, [1911] 1 Ch. 618.

Whether remuneration capital or income.]—See No. 3013, *ante*, & generally, SETTLEMENTS; TRUSTS & TRUSTEES.

to him.—*McNAUGHTAN v. BRUNTON* (1882), 10 R. (Ct. of Sess.) 111; 20 Sc. L. R. 75.—*SCOT*.

1. — Bonus.]—A resolution by shareholders of a co. voting a bonus to the managing director for special services is not *ultra vires* one of the arts. of assocn. that "the directors shall be entitled to receive a sum of one guinea for each meeting they attend & also such sum or sums as the shareholders shall by resolution or vote determine."—*GOODMAN v. SUBURBAN ESTATES, LTD. (IN LIQUIDATION)*,

[1915] W. L. D. 15.—*S. AF.*

PART III. SECT. 28, SUB-SECT. 3.—C.

3015 i. Nature of liability—Whether liability joint or several.]—It is a breach of trust for directors to pay themselves remuneration not voted by the shareholders, for which they are jointly & severally liable.—*NORTHERN TRUST Co. v. BUTCHART*, [1917] 2 W. W. R. 405.—*CAN.*

3019 i. Loss of right to enforce—Shareholders with notice.]—The presi-

C. Refund of Remuneration Wrongly Paid.

3015. Nature of liability—Whether liability joint or several.]—*LEEDS ESTATE BUILDING & INVESTMENT Co., LTD. v. SHEPHERD*, No. 3668, *post*.

3016. — — —.]—*Re WHITEHALL COURT, LTD.*, No. 2985, *ante*.

— — —.]—*See, generally*, Sub-sect. 6, *post*.

3017. Extent of liability.]—*YOUNG v. NAVAL, MILITARY & CIVIL SERVICE CO-OPERATIVE SOCIETY OF SOUTH AFRICA*, No. 3007, *ante*.

3018. — Interest.]—*Re OXFORD BENEFIT BUILDING & INVESTMENT SOCIETY*, No. 2984, *ante*.

3019. Loss of right to enforce—Shareholders with notice.]—*HADLEY (FELIX) & Co., LTD. v. HADLEY*, No. 3254, *post*.

D. Forgoing Remuneration.

3020. What amounts to—Failure to claim for a number of years.]—Where a director was, under the co.'s deed, entitled to a remuneration for his attendance:—*Held*: non-claim for a number of years, amounted to a waiver of his rights & of his lien on the funds of the co.—*Re ARIGNA IRON MINING Co.* (1853), 1 Eq. Rep. 269; *sub nom. Re ARIGNA IRON MINING Co.*, *Ex p. PARKER* 21 L. T. O. S. 206.

3021. Whether agreement binding—Nudum pactum.]—(1) A promise by directors of a co. to perform their services gratuitously is a mere *nudum pactum*, & does not prevent them from recovering the salaries allotted to them under a previous binding agreement.

(2) The question of remuneration of directors for past as well as future services is within the powers of a co., & the ct. will not interfere in such a matter.—*LAMBERT v. NORTHERN RY. OF BUENOS AYRES Co., LTD.* (1869), 18 W. R. 180.

Annotations:—*As to* (1) *Distd. Re London & Northern Bank, McConnell's Claim*, [1901] 1 Ch. 728. *Reid. Morrell v. Oxford Portland Cement Co.* (1910), 26 T. L. R. 682.

Necessity for consideration generally, see CONTRACT, Vol. XII., pp. 173 *et seq.*

3022. — Agreement among directors.]—At a meeting of the directors of a co. in liquidation at which the liquidator of the co. was present, all the directors mutually agreed to forgo their claims to directors' fees then owing to them, & the liquidator was a party to this agreement on the part of the co. Subsequently, the co. sued one of the directors for goods sold & work done, & the director counterclaimed for the director's fees due to him previously to the agreement:—*Held*: the agreement by the directors to forgo directors' fees was binding not only as between the directors themselves, but also as between the co. & each director, although the co. had done nothing more than assent to the agreement as a party to it, & therefore deft. could not sustain his counterclaim in respect of his fees due to him as director.—*WEST YORKSHIRE DARRACQ AGENCY, LTD., v. COLERIDGE*, [1911] 2 K. B. 326; 80 L. J. K. B. 1122; 105 L. T. 215; 18 Mans. 307.

dent & vice-president of a co. drew for several years, without proper authority but with the acquiescence of their co-directors, elected by, & closely connected with, the majority of the shareholders, large sums, ostensibly as salaries as general manager & managing director respectively:—*Held*: the propriety of the payments could be inquired into at the instance of dissatisfied shareholders, although the majority were prepared to ratify them.—*EARLE v. BURLAND* (1900), 27 A. R. 540.—*CAN.*

3023. By resolution—Balance of fees to be credited in company's books—Right to recover balance on retirement.]—MILBURN v. CHAFFERS EXTENDED, LTD., (1899), 43 Sol. Jo. 550.

3024. — Under articles—What constitutes resolution—Informal agreement not entered on minutes.]—KEMPF v. OFFIN RIVER GOLD ESTATES, LTD. (1908), *Times*, April 10.

3025. — Effect of cancelling resolution.]—Re CONSOLIDATED NICKEL MINES, LTD., No. 2968, *ante*.

SUB-SECT. 4.—GENERAL PRINCIPLES AFFECTING POWERS, DUTIES AND LIABILITIES.

A. In General.

3026. Right to inspect documents—Instruction of predecessors to officers of company abroad—Not privileged as private letters in individual capacity.]—Observations of COCKBURN, C.J. in address to jury.—HUDSON v. SLADE (1862), 3 F. & F. 390, N. P.

3027. — Entitled to inspect all company's documents.]—BURN v. LONDON & SOUTH WALES COAL CO. & RISCA INVESTMENT CO. (1890), 7 T. L. R. 118.

3028. Right to act as director—Attendance of meetings.]—PULBROOK v. RICHMOND CONSOLIDATED MINING CO., No. 2889, *ante*.

3029. — Right to injunction—Though alleged to be unfit to act.]—An injunction will be granted in an action by a director of a co. against his co-directors to restrain them from excluding him from acting as director, although, in the opinion of the directors, he is unfit to be a director of the co. by reason of alleged misconduct.—KYSHE v. ALTURAS GOLD CO. (1888), 36 W. R. 496; 4 T. L. R. 331.

3030. — —.]—MUNSTER v. CAMMELL CO., No. 2834, *ante*.

3031. — —.]—FOSTER v. GREENWICH FERRY CO., LTD. (1888), 5 T. L. R. 16.

3032. — — When interlocutory injunction granted.]—Circumstances in which the ct. will grant an interlocutory injunction restraining interference with the director of a limited co. in the performance of his duties as such director.—GRIMWADE v. B. P. S. SYNDICATE, LTD. (1915), 31 T. L. R. 531.

— — — Whether application to restrain dispute between company & member.]—See No. 3359, *post*.

— Interference by court—To force director on company.]—See Nos. 2845, 2870, 2888, *ante*.

3033. Right to vote in respect of shares held—In own interest.]—Although a director is precluded from entering into engagements in which his personal interest may conflict with that of the co. of which he is director, yet the fact that he is a director will not deprive him of his right to vote

as a shareholder at a meeting of the co., in support of any resolution which he may deem favourable to his own personal interests.—NORTH-WEST TRANSPORTATION CO. v. BEATTY (1887), 12 App. Cas. 589; 56 L. J. P. C. 102; 57 L. T. 426; 36 W. R. 647; 3 T. L. R. 789, P. C.

*Annotations:—*Apld. *Castello v. London General Omnibus Co.* (1912), 107 L. T. 575; *Ving v. Robertson & Woodcock* (1912), 56 Sol. Jo. 412. *Consd. Transvaal Lands Co. v. New Belgium (Transvaal) Land & Development Co.*, [1914] 2 Ch. 488. *Reid. Salomon v. Salomon, Salomon v. Salomon*, [1897] A. C. 22; *Burland v. Earle*, [1902] A. C. 83; *Dominion Cotton Mills Co. v. Amyot*, [1912] A. C. 546; *Cook v. Deeks*, [1916] 1 A. C. 554; *Phillips v. Manufacturers' Securities* (1917), 86 L. J. Ch. 305. *Mentd. Bath v. Standard Land Co.*, [1911] 1 Ch. 618.

3034. — — Issue of new shares at less than market price.]—By a resolution passed at an extraordinary general meeting of the co., it was resolved that certain unissued shares should be issued to the directors at par, though the true value of the shares was much greater. The directors held a majority of the shares in the co. & the resolution was carried by their votes:—*Held*: although the value of the portion of the assets of the minority was decreased, & the value of the portion of the assets of the majority was increased, by an amount greater than the sum paid for the new shares, the resolution was binding on the minority, & could not be set aside.—*VING v. ROBERTSON & WOODCOCK, LTD.* (1912), 56 Sol. Jo. 412.

Right to transfer shares.]—See Sect. 23, sub-sect. 1, *ante*.

3035. Death of directors — Offer "to the directors"—Acceptance by survivors & executors of deceased directors.]—A firm of cotton brokers acted under contract as brokers to a cotton spinning co., & purchased shares in the co., & in 1911 agreed to take up more shares, & pay in advance of calls, upon the terms of receiving interest for the advance. At the same time they wrote & sent a letter addressed "to the directors" informing them that should they at any time while the writers remained the brokers of the co. wish to take over the shares the latter had taken up as fully-paid at par, they would transfer those shares. The letter was acknowledged, but the offer was not accepted until 1919, when the co.'s shares had greatly risen in value, & the co.'s solrs. wrote accepting the offer on behalf of three directors, survivors of the six original directors of 1911, & the exors. of three directors who had died.

In an action brought by the brokers claiming a declaration that there was no enforceable contract between them & defts. upon whose behalf the offer purported to have been accepted:—*Held*: the offer was an offer to the directors for the time being as a board & not one to the directors in existence at the time it was made personally, & therefore it was not completed by acceptance. The brokers were accordingly entitled to the declaration claimed.—*REYNOLDS v. ATHERTON* (1922), 127 L. T. 189; *sub nom. ATHERTON v. REYNOLDS*, 66 Sol. Jo. 404, H. L.

PART III. SECT. 28, SUB-SECT. 4.—A.

m. Right to inspect documents — Employment of agent.]—A director is entitled as of right to inspect the books & accounts & to take copies, & having that right he may exercise it personally or may employ an agent to make the examination. But where the circumstances justify it, the agent may be required to give an undertaking that the knowledge he acquires will not be used for any other purpose than that of giving confidential advice in regard to his interests to the director so

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employing him.—*EDMAN v. ROSS* (1922), 22 S. R. N. S. W. 351.—AUS.

n. Right to act as director — Enforced by mandamus.]—The High Ct. has jurisdiction to enforce by *mandamus* the right of a person duly elected director of a co. to exercise the functions of a director of such co., if such rights are interfered with by the co. acting through its other directors.—*Re ALBERT MILLS CO., LTD., NASAR-VANJI ASPANDIARJI, MANIKJI HOR-MASJI & GOKALDAS MADANJI v.*

SHIVJI MANIKBHAI (1872), 9 Bom. 438.—IND.

o. Must exercise powers bona fide.]—As fiduciary donees of their power, the directors of a co. are bound to exercise them *bona fide* for the purposes for which they were conferred & generally the corporate body to which they owe this duty is entitled, in the case of a breach of it, to invoke the remedial action of the ct.—*MADDEN v. DIMOND, RUDOLPH v. MACEY* (1905), 12 B. C. R. 80; 3 W. L. R. 49, 52.—CAN.

*Sect. 28.—Directors: Sub-sect. 4, B.]**B. Position as Agent or Trustee.*

3036. As agent.]—*Re* GERMAN MINING CO., BALL'S CASE, *Ex p.* CHIPPENDALE, No. 3094, *post*.

3037. —.]—Pltf. by his bill prayed the specific performance of a resolution passed by the board of directors of a railway co., under which he alleged that he was entitled to have a certain number of shares allotted to him; & he also prayed that if it should appear that all the shares had been allotted to other shareholders, the directors might indemnify him out of their own shares, or might be charged with damages. All the shares had been allotted before the filing of the bill:—*Held*: as no relief by way of specific performance was possible, pltf.'s claim for damages under (21 & 22 Vict. c. 27), Chancery Amendment Act, 1858 (c. 27), failed also. In such a case pltf.'s claim against the directors to be indemnified out of their shares was only a claim for damages in another form.

Directors are agents of the co., & their personal liability in a suit, upon a contract made by them, must be governed by the ordinary law of principal & agent. But a shareholder may sustain a bill against directors personally, where he charges them as trustees, & seeks redress against them for a breach of duty to the co. of which he is a member.—FERGUSON *v.* WILSON (1866), 2 Ch. App. 77; 15 L. T. 230; 30 J. P. 788; 12 Jur. N. S. 912; 15 W. R. 80, L. JJ.

*Annotations:—**Re*ld. Daimler Co. *v.* Continental Tyre & Rubber Co. (Great Britain), [1916] 2 A. C. 307. *Mentd.* Lewers *v.* Shaftesbury (1867), 16 L. T. 135; Hilton *v.* Tipper (1868), 16 W. R. 888; Turner *v.* Moy (1875), 32 L. T. 56; Wilson *v.* Bury (1880), 5 Q. B. D. 518; Elmore *v.* Pirrie (1887), 57 L. T. 333; Slack *v.* Leeds Industrial Co-op. Soc., [1923] 1 Ch. 431.

See, also, Sub-sect. 5, C. (a), post, & generally, AGENCY, Vol. I., pp. 620 et seq.

3038. As trustee—Property put at disposal of directors.]—A directorship of a co. is an office of trust, & property of the co. placed at the disposal of the directors is entrusted to them as trustees, & is not to be treated as a gift to them for their individual advantage, unless from clear & unambiguous expressions to that effect, however great the services of the directors may have been, & however scantily rewarded.—YORK & NORTH MIDLAND RY. CO. *v.* HUDSON (1845), 16 Beav. 485; 22 L. J. Ch. 529; 22 L. T. O. S. 29; 1 W. R. 187, 510; 51 E. R. 866.

*Annotations:—**Consd.* *Re* Faure Electric Accumulator Co. (1888), 40 Ch. D. 141. *Re*ld. Bluck *v.* Mallaloe (1859), 27 Beav. 398; *Re* Anglo-Greek Steam Co. (1866), L. R. 2 Eq. 1; Parker *v.* McKenna (1874), 10 Ch. App. 107, n.; *Re* Newman, [1895] 1 Ch. 674; Percival *v.* Wright, [1902] 2 Ch. 421. *Mentd.* *Re* Newcastle-upon-Tyne Marine Insee., *Ex p.* Brown (1854), 19 Beav. 97; Bank of London *v.* Tyrrell (1859), 5 Jur. N. S. 924.

3039. —.]—(1) A co. was provisionally registered & a managing committee appointed, who resolved that no payments should be made for sums over £10 unless by cheques signed by three

directors, countersigned by the secretary. The same committee subsequently resolved that all cheques should be signed by three of the five constituting the committee of management. M. was a director, a member of the committee of management, & a member of the allotment committee, & attended the meeting at which the above resolutions were passed. On Aug. 14, cheques were drawn, & M. was present on that day for the last time, & on Aug. 22, he wrote saying "he withdrew"; on Aug. 24, he desired the secretary to withhold his name from future prospectuses; on Aug. 26, the chairman asked him to reconsider his determination; on Aug. 28, the solr. to the co. wrote to a similar effect, & on the same day M. declined compliance. The whole amount of deposits paid was above £40,000, £35,000 of which only was paid up to Aug. 22, out of which, sums had been withdrawn leaving a balance of above £33,000 in the bankers' hands on that day. The co. was ordered to be wound up, & the master charged M. with the whole £40,000 on the ground that he had not retired on Aug. 22. On appeal:—*Held*: M. had retired, whether his resignation was accepted or not, & ought not to have been charged with any part of the £40,000 unless for sums drawn out if any, before Aug. 22.

(2) Where directors of joint-stock cos. are appointed they are trustees. After deposits are paid, & not before, there are trust funds, & those funds are held by the directors upon the trusts & terms of the subscribers' agreement, & if by that document the directors have power to bind by a majority all the members of the co., they have authority to resolve that a smaller number shall be a managing committee & the latter may determine how many of their number may by cheque deal with the funds & so bind the whole body of subscribers.—*Re* GLOUCESTER, ABERYSTWITH & SOUTH WALES RY. CO., MAITLAND'S CASE (1853), 4 De G. M. & G. 769; 2 Eq. Rep. 53; 23 L. J. Ch. 140; 22 L. T. O. S. 202; 18 Jur. 815; 43 E. R. 708, L. JJ.

*Annotation:—**Generally, Mentd.* Finch *v.* Oake, [1896] 1 Ch. 409.

3040. —.]—*Re* GERMAN MINING CO., BALL'S CASE, *Ex p.* CHIPPENDALE, No. 3094, *post*.

3041. —.]—GREAT LUXEMBOURG RY. CO. *v.* MAGNAY (No. 2), No. 3224, *post*.

3042. —.]—FERGUSON *v.* WILSON, No. 3037, *ante*.

3043. —.]—*Re* IMPERIAL LAND CO., OF MARSEILLES, *Ex p.* LARKING, No. 3073, *post*.

3044. —.]—The difference between "a trustee" & "a director" is, that a trustee is the owner of the property & the principal who deals with the property as such, & as master, subject only to an equitable obligation to account to his *cestuis que trust*; & that a director, as between himself & the co., is a paid servant.—SMITH *v.* ANDERSON (1880), 15 Ch. D. 247; 50 L. J. Ch. 39; 43 L. T. 329; 29 W. R. 21, C. A.

*Annotations:—**Re*ld. Crowther *v.* Thorley (1884), 50 L. T. 43; *Re* Faure Electric Accumulator Co. (1888), 40 Ch. D.

PART III. SECT. 28, SUB-SECT. 4.—B.

3036 i. As agent.]—An application for shares to provisional directors of a co. before its incorporation appoints them agents for the debt. to apply for shares on the formation of the co.—NORTH WEST CO-OPERATIVE FREEZING & CANNING CO., LTD. *v.* EASTON (1915), 11 Tas. L. R. 65.—AUS.

p. —.]—The directors of a co. are agents of the co.—RAMASWAMI IYER *v.* MADRAS TIMES PRINTING & PUBLISHING CO., LTD. (1915), 1 L. R. Mad. 991.—IND.

q. — Where not acting in official character.]—Representations by an individual director of a joint stock co., not as the timeacting in his official character, are not representations by the co.—NATIONAL EXCHANGE CO. OF GLASGOW *v.* DREW & DICK (1860), 23 Dunl. (Ct. of Sess.) 1; 33 Sc. Jur. 357.—SCOT.

3039 i. As trustee.]—Although a director of a co. is always clothed with a fiduciary character in regard to any dealings with property of the co. in his capacity of director, the rule that a

trustee is not allowed to make a profit of his trust does not apply to such a director, *qua* director only.—*Re* PORT CANNING LAND INVESTMENT RECLAMATION & DOCKING CO., LTD. (1871) 6 B. L. R. 278.—IND.

r. — For shareholders—Purchase of judgment debt—Sale at profit.]—A director of a co., having a judgment & execution of his own against the property of the co., acting *bond fide* purchased the same at a sale by mtgees. under a power of sale, & subsequently sold it at a profit:—*Held*

141; *Re Macfadyen, Ex p. Vizianagaram Mining Co.*, [1908] 2 K. B. 817. *Mentd.* *Wigfield v. Potter* (1881), 45 L. T. 612; *Re Padstow Total Loss & Collision Assce. Asscn.* (1882), 20 Ch. D. 137; *Re Siddall* (1885), 29 Ch. D. 1; *Re Governments Stock Investment Co.*, [1891] 1 Ch. 649; *Re Jones, Clegg v. Ellison*, [1898] 2 Ch. 83; *Kirkwood v. Gadd*, [1910] A. C. 422; *Kensington & Knightsbridge Electric Lighting Co. v. Notting Hill Electric Lighting Co.* (1918), 87 L. J. K. B. 565.

3045. —.]—Directors are the managing partners. At the same time they stand in a fiduciary relation towards their co., & in cases of fraud, *ultra vires*, & the like, when they deal with the co.'s money under their control, they are chargeable on the same principle as trustees are charged. But they are not trustees; they are not chargeable for mere negligence, but they are chargeable for gross negligence.—*GRIMWADE v. MUTUAL SOCIETY* (1884), 52 L. T. 409.

3046. —.]—*Re FAURE ELECTRIC ACCUMULATOR Co.*, No. 3342, *post*.

3047. — For shareholders.]—Directors of a co. are trustees of their powers for the shareholders, but not for the creditors.

Where directors had given a personal guarantee to the co.'s bankers &, before the winding up, paid up the amount due upon their shares & paid it to the bankers:—*Held*: they had not made a fraudulent preference within 1862 Act, s. 164, although they had relieved themselves of a liability to the detriment of the creditors.—*Re WINCHAM SHIPBUILDING, BOILER & SALT Co.*, *POOLE, JACKSON & WHYTE'S CASE* (1878), 9 Ch. D. 322; 48 L. J. Ch. 48; 38 L. T. 659; 26 W. R. 823, C. A.

Annotations:—*Consd.* *Re Exchange Banking Co.*, *Ramwell's Case* (1881), 50 L. J. Ch. 827; *Re Wood's Ships' Woodite Protection Co.* (1890), 62 L. T. 760. *Reid.* *Re Liverpool & London Guarantee & Accident Insce.*, *Gallagher's Case* (1882), 46 L. T. 54; *Re Pyle Works* (1890), 44 Ch. D. 534; *Re Blackpool Motor Car Co.*, *Hamilton v. Blackpool Motor Car Co.*, [1901] 1 Ch. 77. *Mentd.* *Re Washington Diamond Mining Co.*, [1893] 3 Ch. 95.

3048. — Purchase of shares—Negotiation for sale of business not disclosed.]—The directors of a co. are not trustees for individual shareholders, & may purchase their shares without disclosing pending negotiations for the sale of the co.'s undertaking.—*PERCIVAL v. WRIGHT*, [1902] 2 Ch. 421; 71 L. J. Ch. 846; 51 W. R. 31; 18 T. L. R. 697; 46 Sol. Jo. 616; 9 Mans. 443.

Annotations:—*Distd.* *Allen v. Hyatt* (1914), 30 T. L. R. 444. *Mentd.* *Re Macfadyen, Ex p. Vizianagaram Mining Co.* (No. 2) (1908), 52 Sol. Jo. 727.

3049. — Misrepresentation as to purpose.]—*ALLEN v. HYATT*, No. 3239, *post*.

3050. — For creditors.]—*Re WINCHAM SHIPBUILDING, BOILER & SALT Co.*, *POOLE, JACKSON & WHYTE'S CASE*, No. 3047, *ante*.

3051. — Limitation of action.]—*Re EXCHANGE BANKING Co.*, *FLITCROFT'S CASE*, No. 3284, *post*.

3052. — Trustee Act, 1888 (c. 59), s. 8.]—*Re LANDS ALLOTMENT Co.*, No. 3444, *post*.

See, generally, LIMITATION OF ACTIONS; TRUSTS & TRUSTEES.

he could not purchase for his own benefit, but held the land as trustee for the co. & was accountable for any profit received, & by reason of his refusing to pay over or account for such profits, & in fact by his appearing as a bidder at the sale & so damping the bidding, was guilty of a breach of trust within R. S. C. c. 129, s. 83.—*Re IRON CLAY BRICK MANUFACTURING Co.*, *TURNER'S CASE* (1889), 19 O. R. 113.—CAN.

s. —.]—The directors of a co. are trustees for the shareholders of the power committed to them.—*RAMASWAMI IYER v. MADRAS TIMES PRINTING & PUBLISHING Co., LTD.* (1915), 1 L. L. R. 38 Mad. 991.—IND.

t. —.]—*HENDERSON v. HUNTINGTON COPPER & SULPHUR Co.* (1877), 5 R. (Ct. of Sess.) 1; 15 Sc. L. R. 217.—SCOT.

a. — Not to individual shareholders.]—A director of a co., though he may occupy a fiduciary position with regard to the shareholders collectively, holds no such position with regard to individual shareholders.—*WILSON v. MACAULIFFE* (1896), 1 L. L. R. 18 All. 56.—IND.

b. — Transfer of shares.]—The directors of a co. must act strictly as trustees in carrying through transfers of shares, unfettered by any undertaking or promise to any intend-

3053. — Where company in a fiduciary position.]—A co. had been formed for the purpose of receiving money from depositors & investing it upon security. Defts. were directors of the co. Pltf. deposited with the co. £1,000 upon the terms that it should remain in their hands for five years, that they should meanwhile pay him interest at the rate of 6 per cent., that by way of security they should transfer to him a mtge. made to them, & that if the mtge. should become ineffective before the expiration of the five years they would replace it by another. The mtge., upon which the £1,000 belonging to pltf. was secured, was paid off before the expiration of the five years, but the co. did not replace it by another, & dealt with the proceeds as part of the funds of the co. The co. ultimately went into liquidation, & pltf. then sued defts. to recover from them the sum of £1,000 paid by him to the co., on the ground that it was lost to him by reason of defts.' gross negligence:—*Held*: (*BRAMWELL, L.J.*) if a trust had been created between pltf. & the co., defts., as directors, could not be held personally responsible for a breach of it; (*BRETT, L.J.*) a contract, & not a trust, existed between pltf. & the co., & defts. could not be held liable as constructive trustees for aiding & abetting in the breach of a trust; (*BAGGALLAY, L.J.*) the relation of trustee & *cestui que trust* existed between the co. & pltf., a breach of trust had been committed by the co., & defts. were parties to the breach of trust.—*WILSON v. BURY (LORD)* (1880), 5 Q. B. D. 518; 50 L. J. Q. B. 90; 44 L. T. 454; 45 J. P. 420; 29 W. R. 269, C. A.

Annotation:—*Reid.* *Re Barney, Barney v. Barney*, [1892] 2 Ch. 265.

3054. — Profits made by directors in dealing with company's *cestui que trust*.]—By an agreement of Apr., 1893, a co. arranged with pltf. to manage, develop, & realise his estates on certain terms as to remuneration, & in the course of such management employed one of its directors, who was a solr., to act professionally for the estates & paid his bill of costs, which included profit items; another director, who was an estate agent, to manage at a salary a business connected with the estates; another director, who was an auctioneer, to act as auctioneer on all sales of the estates at the usual commission; & gave its secretary, who was a chartered accountant, an additional salary for keeping the books of the estates, which were of a complex nature:—*Held*: the directors stood in a fiduciary relation to the co., but not to pltf. & the profit costs, salary, & commission paid to the directors in their professional capacity might be allowed in taking the accounts between pltf. & the co. under the agreement.—*BATH v. STANDARD LAND Co., LTD.*, [1911] 1 Ch. 618; 80 L. J. Ch. 426; 104 L. T. 867; 27 T. L. R. 393; 55 Sol. Jo. 482; 18 Mans. 258, C. A.

3055. — Benefits of contract diverted to

ing purchaser.—*CLARK v. WORKMAN*, [1920] 1 I. R. 106.—IR.

c. — Promoting own interests.]—If directors truly & reasonably believe that they are acting in the interests of the co., they are not chargeable with *dolus malus* or breach of trust merely because in promoting the interests of the co. they are also promoting their own, or because they afterwards sell shares at prices which give them large profits.—*ORANGE RIVER LAND & ASBESTOS Co.'s TRUSTEES v. HIRSCH* (1892), 10 S. C. 71.—S. AF.

d. — Director a solicitor—Recovery of profit costs.]—The directors

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directors.]—Directors of a co. are not at liberty to divert in their own individual favour business which should properly belong to the co. of which they are directors but must be regarded as holding the benefit of such contract on behalf of the co.—*COOK v. DEEKS*, [1916] 1 A. C. 554; 85 L. J. P. C. 161; 114 L. T. 636, P. C.

Liability in respect of secret profits.]—See Sub-sect. 6, D., *post*.

See, also, No. 3058, *post*.

C. Standard of Diligence and Knowledge Required.

3056. Standard of diligence—Liable only for gross negligence.]—Facts which may show imprudence in the exercise of powers undoubtedly conferred upon directors will not subject them to personal responsibility. The imprudence must be so great & manifest as to amount to *crassa negligentia*.

In a co. formed for the purchase of a business, where the power to make the purchase was distinctly conferred on the directors, though the character of the business turned out to be ruinous, unless that character was obviously apparent when the purchase was made, the directors will not be personally responsible for making it.—*OVEREND & GURNEY Co. v. GIBB* (1872), L. R. 5 H. L. 480; 42 L. J. Ch. 67, H. L.

Annotations:—*Consd. Parker v. Lewis* (1873), 28 L. T. 91; *Leeds Estate Building & Investment Co. v. Shepherd* (1887), 36 Ch. D. 787. *Reid. Phosphate Sewage Co. v. Hartmont* (1877), 5 Ch. D. 394; *Re Ry. & General Light Improvement Co., Marzetti's Case* (1880), 42 L. T. 206; *Grimwade v. Mutual Soc.* (1884), 52 L. T. 409; *Re Faure Electric Accumulator Co.* (1888), 40 Ch. D. 141; *Lagunas Nitrate Co. v. Lagunas Syndicate*, [1899] 2 Ch. 392; *Re National Bank of Wales*, [1899] 2 Ch. 629; *Re Brazilian Rubber Plantations & Estates*, [1911] 1 Ch. 425. *Mentd. New Sombrero Phosphate Co. v. Erlanger* (1877), 5 Ch. D. 73.

3057. ———.] — *GRIMWADE v. MUTUAL SOCIETY*, No. 3045, *ante*.

3058. ——— Reasonable diligence — Whether governed by standard applicable to trustees.]—(1) A director of a co. voted, without inquiry, for a payment for brokerage & commission, being preliminary expenses, which was, in fact, for fraudulently raising the price of the co.'s shares in the market. The payment was included in a much larger item on the annual balance sheets & passed without objection:—*Held*: the director was liable to repay the amount on the ground of misfeasance, & the co. had not ratified the payment, there being no notice of it on the balance-sheets sufficient to put persons of ordinary care upon inquiry.

(2) A director's liability is not governed by the strict rules applied in the case of trustees but he

must show reasonable diligence. A director would not be liable for an improper payment sanctioned by him *bonâ fide* on the report of a finance committee that it was proper.—*Re RAILWAY & GENERAL LIGHT IMPROVEMENT CO., MARZETTI'S CASE* (1880), 42 L. T. 206; 28 W. R. 541, C. A.

Annotations:—*As to (2) Apld. Re Faure Electric Accumulator Co.* (1888), 40 Ch. D. 141. *Reid. London Financial Asscn. v. Kelk* (1884), 53 L. J. Ch. 1025; *Sheffield & South Yorkshire Permanent Bldg. Soc. v. Aizlewood* (1889), 44 Ch. D. 412; *Re Liverpool Household Stores Asscn.* (1890), 59 L. J. Ch. 616; *Re New Mashonaland Exploration Co.*, [1892] 3 Ch. 577; *Lagunas Nitrate Co. v. Lagunas Syndicate*, [1899] 2 Ch. 392; *Re Macfadyen, Ex p. Vizianagaram Mining Co.*, [1908] 2 K. B. 817.

See, further, No. 3037, *ante*.

3059. ——— Reasonable care having regard to knowledge & experience.]—If directors act within their powers & with such care as is reasonably to be expected from them, having regard to their knowledge & experience, & if they act honestly for the benefit of the co. which they represent, they discharge both their legal & equitable duty to the co., & will not be liable for mistakes or errors of judgment committed, even though such mistakes or errors affect the relations of their co. to another co. of which they are also members, & though the interests of the two cos. may conflict.—*LAGUNAS NITRATE Co. v. LAGUNAS SYNDICATE*, [1899] 2 Ch. 392; 68 L. J. Ch. 699; 81 L. T. 334; 48 W. R. 74; 15 T. L. R. 436; 43 Sol. Jo. 622; 7 Mans. 165, C. A.

Annotations:—*Reid. Re National Bank of Wales*, [1899] 2 Ch. 629; *Merchants' Fire Office v. Armstrong* (1901), 17 T. L. R. 709; *Exploring Land & Minerals Co. v. Kolckmann* (1905), 94 L. T. 234; *Ammonia Soda Co. v. Chamberlain*, [1918] 1 Ch. 266; *Piercy v. Mills*, [1920] 1 Ch. 77.

See, also, No. 3066, *post*.

3060. ——— Reliance on company's officials—Accuracy of balance-sheet.]—The chairman of a co. gave directions to depts., the manager & secretary, as to the preparation of the balance-sheets, to make a true, faithful, & uncoloured report of the state of the bank's affairs. The balance-sheets were prepared by the manager & the secretary from the books. The directors never interfered with the books. The balance-sheets were submitted to the board, but the board never altered or interfered with them in any way. They simply directed them to be printed, & examined them by reading them & seeing the details therein expressed, but took no steps to verify the entries, & depended entirely on the manager & secretary & on the auditors, & never tested the balance-sheets with any of the books:—*Held*: it was part of the duty of the directors to have investigated the accounts further from time to time, more particularly the weekly

of a co. are its agents for the purpose of carrying on its business, but they are also trustees of the money & property for the shareholders. The rule, forbidding a trustee solr. from recovering profit costs applies to a director-solr. It applies even though the work was done pursuant to express instructions, from the directors' executive committee & the co. received the benefit of the services.—*HUGGARD v. PRUDENTIAL LIFE INSURANCE Co.*, [1923] 1 W. W. R. 557.—CAN.

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3056 i. Standard of diligence—Liable only for gross negligence.]—Directors who had not used fair & reasonable diligence in the management of the co.'s affairs:—*Held*: liable to refund money entrusted by them to an agent without proper knowledge as to

whether it was needed, & without any subsequent investigation of a serious character with respect to its disposal. Such conduct amounted to gross negligence. All the directors were equally responsible, as all attended the directors' meetings, and all gave the same blind sanction to every act & proposal of the agent.—*NEW FLEMING SPINNING & WEAVING Co. v. KESSOWJI NAIK* (1885), 1 L. R. 9 Bom. 373.—IND.

3059 i. ——— Reasonable care having regard to knowledge & experience.]—Arts. of asscn. provided that none of the directors should be answerable for the acts of the other or others of them or for any other loss, misfortune or damage which might happen in the execution of their respective offices or trusts or in relation thereto except the

same should happen "by or through their own wilful default respectively":—*Held*: "wilful default" meant a course of conduct consciously pursued in circumstances which would indicate to a reasonable man that he was not performing with due care for the co.'s interests the duty which he had undertaken towards the co.—*GOULD v. MOUNT OXIDE MINES, LTD., BIRKBECK v. MOUNT OXIDE MINES, LTD., BACON v. MOUNT OXIDE MINES, LTD.* (1916), 22 C. L. R. 490.—AUS.

3059 ii. ———.]—Directors in accepting such a position impliedly undertake that they have reasonable skill & ordinary ability for the discharge of the business in which they are engaged.—*STAVERT v. LOVITT* (1908), 42 N. S. R. 449; 5 E. L. R. 33.—CAN.

statements & the half-yearly balance-sheets.—*R. v. BURCH* (1865), 4 F. & F. 407.

3061. ——— Omission of liability in.]—

(1) In Feb. 1881, a co. was formed for the purpose of acquiring & developing landed estates, & the arts. of 1862 Act, Table A., were incorporated. Table A. contained no art. dealing with the resignation of a director. On June 17, 1884, deft., who was one of the directors of the co., sent a letter to the board of directors resigning his office. The letter was considered at the next board meeting, on July 15, & stood over until after a general meeting of the co., on Dec. 31, 1884, when the resignation was accepted:—*Held*: the director in question could not resign to his colleagues, & must be held responsible as a director up to Dec. 31, 1884.

(2) From 1881 onwards reports & balance sheets of the co. were issued in the names of the directors, & dividends & bonuses paid upon alleged profits, but in reality out of capital. As a fact, no profits were at first made, as a certain large liability to a building society did not appear in the balance sheets from 1881 to 1884. From the evidence it appeared that the directors did not personally go into the accounts, or take any guiding part in administering the affairs of the co., but trusted to the secretary, & adopted what was laid before them by him. Auditors & accountants were employed in the preparation of the accounts & reports, but no proper valuations of the assets were made. The writ in the action was issued in Nov. 1888, & Stat. Limitations was pleaded:—*Held*: all the directors of the co. were liable for the dividends & bonuses paid from the year 1881 to 1884 with interest at 4 per cent., inasmuch as by the omission of the liability to the building society, no proper balance sheets had been placed before the shareholders, & they had failed to justify the payment of dividends; the secretary of the co. was liable for negligence, but, as Stat. Limitations applied in this case, he was only responsible by way of damages to repay the amount improperly paid out of capital within six years from the date of the writ.—*MUNICIPAL FREEHOLD LAND CO., LTD. v. POLLINGTON* (1890), 59 L. J. Ch. 734; 63 L. T. 238; 2 Meg. 307.

3062. ——— Where no ground for suspicion—Examination of company's books.]—The director of a co. is bound to give his attention to the matters brought before him at meetings of the board, & to exercise his judgment as a man of business upon them. In the absence of ground for suspicion he is entitled to rely upon the judgment, information, & advice of the officials of the co., & is not bound to examine entries in the co.'s books, but is entitled to rely on the examination of those whose special duty it is to attend to such details.—*DOVEY v. CORY*, [1901] A. C. 477; 70 L. J. Ch. 753; 85 L. T. 257; 50 W. R. 65; 17 T. L. R. 732; 8 Mans. 346, H. L. *affg.* S. C. *sub nom.* *Re NATIONAL BANK OF WALES, LTD.*, [1899] 2 Ch. 629, C. A.

Annotations:—*Consd.* *Ammonia Soda Co. v. Chamberlain*, [1918] 1 Ch. 266. *Refd.* *Merchants' Fire Office v. Armstrong* (1901), 17 T. L. R. 709; *Bond v. Barrow Hematite*

3066 i. ——— Exercise of discretion given by articles.]—Where under the arts. of assocn. the discretion of the directors of a co. to refuse to register a transfer of shares is absolute, the ct. will nevertheless control such discretion even though the directors in refusing the transfer believe themselves to be acting in the best interests of the co., & not actuated by any ill feeling towards the transferor or the trans-

feree. Such discretion, though in terms absolute, is in the nature of a trust, & therefore must not be exercised capriciously or unjustly, where directors refuse the cross-examination on their affidavits to give their reason for declining to transfer a register of shares the ct. may infer the true reasons for such refusal from the evidence before it.—*Re SHAW & CO., LTD., HUGHES' CASE* (1896), 21 V. L. R.

Steel Co., [1902] 1 Ch. 353; *Re Crichton's Oil Co.*, [1902] 2 Ch. 86; *Lucas v. Fitzgerald* (1903), 20 T. L. R. 16; *Exploring Land & Minerals Co. v. Kolckmann* (1905), 94 L. T. 234; *Préfontaine v. Grenier*, [1907] A. C. 101. *Mentd.* *Re Welsbach Incandescent Gas Light Co.*, [1904] 1 Ch. 87.

3063. ———.]—In the liquidation of a co. a director cannot be made personally liable on the ground that he has trusted the regularly authorised officers of the co. & has failed to detect, & been misled by, misrepresentation or concealment by such officers when there was no reason for doubting their fidelity.

Resp. was president of a bank which became insolvent, & was specially remunerated for his services. The shareholders at the annual general meeting appointed three of their number to constitute a board of audit to look into the operations of the bank, to examine its books & papers, & to report thereon, but these had failed to discover the irregularities which caused the failure of the bank:—*Held*: *resp.* was not personally liable for the loss sustained by the bank.—*PRÉFONTAINE v. GRENIER*, [1907] A. C. 101; 76 L. J. P. C. 4; 95 L. T. 623; 23 T. L. R. 27; 13 Mans. 401, P. C.

3064. ——— Certificate of manager—As to value of stock-in-trade.]—*Re KINGSTON COTTON MILL CO. (No. 2)*, No. 3661, *post*.

3065. ——— Time to be devoted to company.]—*LONDON & MASHONALAND EXPLORATION CO., LTD. v. NEW MASHONALAND EXPLORATION CO., LTD.*, [1891] W. N. 165.

3066. ——— Exercise of discretion given by articles.]—(1) When a co. is formed to carry out a particular contract, a director who has a discretion given to him by the articles is bound to exercise his discretion before adopting the contract.

(2) A director is not bound to bring any special qualifications to his office. He may undertake the management of a rubber co. in complete ignorance of everything connected with rubber, without incurring responsibility for the mistakes which may result from such ignorance. He is not bound to take any definite part in the conduct of the co.'s business, but so far as he does undertake it he must use reasonable care in its dispatch.—*Re BRAZILIAN RUBBER PLANTATIONS & ESTATES, LTD.*, [1911] 1 Ch. 425; 80 L. J. Ch. 221; 103 L. T. 697; 27 T. L. R. 109; 18 Mans. 177; *subsequent proceedings*, 103 L. T. 882, C. A.

3067. ——— Whether bound to take part in company's business.]—*Re BRAZILIAN RUBBER PLANTATIONS & ESTATES, LTD.*, No. 3066, *ante*.

3068. ——— Signature of cheques to company's prejudice.]—*JOINT STOCK DISCOUNT CO. v. BROWN*, No. 3434, *post*.

3069. Standard of knowledge—Contents of company's books—Entries in minutes prior to appointment.]—*BURT v. BRITISH NATION LIFE ASSURANCE ASSOCN.*, No. 3172, *post*.

3070. ——— Invalid purchase of shares by manager.]—*Re COUNTY PALATINE LOAN & DISCOUNT CO., CARTMELL'S CASE*, No. 3158, *post*.

3071. ——— Register of shareholders.]—In Apr., 1877, H. became a director of a co., which was subject to 1862 Act, Table A., by which no share qualification was necessary for a director.

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e. ——— Intelligence & attention.]—More than honesty is required of a director, intelligence & diligent attention to business are also essential.—*Re OWEN SOUND LUMBER CO.* (1915), 34 O. L. R. 528; 9 O. W. N. 103.—**CAN.**

f. ——— Provision of charter & regulations.]—Directors are bound to know the provisions of their charter &

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On May 1, a resolution was passed by the board, H. not being present, "that the 608 shares applied for be allotted, & that letters of allotment be at once sent out." Fifty of these 608 shares were subsequently entered in the name of H. on the register of shareholders. H. never applied for any shares, & never received any letter of allotment, & never knew that his name was on the register until after the commencement of the winding up of the co., when he at once repudiated his liability:—*Held*: H. was not bound, *qua* director, to know the contents of the register of the shareholders, & his name must be removed from the list of contributories.—*Re* WINCHAM SHIPBUILDING, BOILER & SALT CO., *HALLMARK'S CASE* (1878), 9 Ch. D. 329; 47 L. J. Ch. 868; 38 L. T. 660; 26 W. R. 824, C. A.

Annotations:—*Re* Patent Davit & Boar Detaching Co., *Ranker's Case* (1879), 39 L. T. 664; *Re* Denham (1883), 25 Ch. D. 752; *Re* Printing, Telegraph & Construction Co. of Agence Havas, *Ex p. Cammell*, [1894] 1 Ch. 528 *Dovey v. Cory*, [1901] A. C. 477.

3072. ——— **Whether affected by constructive notice.]—***Re* DENHAM & Co., No. 3285, *post*.

3073. ——— **Knowledge acquired by due discharge of duties—Whether imputed.]—**A director of a co. is also a trustee for it; & in any transaction between him & the co., all that knowledge of its affairs which, as a director, he could in the due discharge of his duty have acquired, will be imputed to him; & as a trustee, he will not be allowed to make a profit out of a purchase by him, after he has ceased to be a director, of a portion of the property of the co.—*Re* IMPERIAL LAND CO. OF MARSEILLES, *Ex p. LARKING* (1877), 4 Ch. D. 566; 46 L. J. Ch. 235, C. A.

3074. ——— **Particular knowledge of business undertaken by company—Liability for mistakes due to ignorance.]—***Re* BRAZILIAN RUBBER PLANTATIONS & ESTATES, LTD., No. 3066, *ante*.

D. Contracts with Company.

3075. Capacity to contract—General rule.]—A director of a co. cannot enter into a contract with such co. for his own advantage. Where, therefore, S., a director of a co., had entered into an agreement to occupy certain refreshment rooms at a railway station at a certain rent:—*Held*: he was incompetent to maintain a suit for specific performance against the co.—*FLANAGAN v. GREAT WESTERN RY. CO.* (1868), L. R. 7 Eq. 116; 38 L. J. Ch. 117; 19 L. T. 345.

Annotation:—*Mentd. County Hotel & Wine Co. v. L. & N. W. Ry.*, [1919] 2 K. B. 29.

3076. ——— **Subject to disclosure of interest—Sufficiency of disclosure.]—**IMPERIAL MERCANTILE CREDIT ASSOCN. (LIQUIDATORS) *v. COLEMAN*, No. 3225, *post*.

Compare Nos. 3258, 3259, *post*.

regulations, & disregard of a provision of a co.'s act of incorporation declaring that corporate & trust moneys should be kept separate will, if loss results therefrom, support an action for misfeasance against the directors.—*Re* DOMINION TRUST CO. & MCKAY, [1917] 1 W. W. R. 618; 23 B. C. R. 401.—CAN.

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3076 i. Capacity to contract—Subject to disclosure of interest.]—A purchase by directors of the restaurant premises of a co. which was in financial difficulties, made *bona fide* to relieve such difficulties, & after failure to find any outside purchaser is not a valid transaction, but should be confirmed & ratified by the shareholders.—*GRAMMAS v. KENSINGTON CAFE, LTD.*, [1919] 3 W. W. R. 301.—CAN.

3076 ii. ——— **—.]—**A mine owner in S. entered into an agreement with a firm of merchants there to pay them half of any profit upon the sale of the mine in Great Britain. B., a partner of the firm, introduced the seller to purchasers in Great Britain, & although he took no part in deciding as to the purchase, his name appeared on the prospectus of a co. which was formed for the purpose of buying & working the mine as a provisional director, & in the memorandum & arts. of assocn., as an original director & he subsequently acted as a director. The agreement between his firm & the seller was never communicated to the shareholders, & the firm's share in the purchase price to the extent of £7,000 was applied by the co. as payments on account of shares which the firm agreed to take:—

Capacity to vote—On contracts in which interested.]—*See* Sub-sect. 7, C. (c), *post*.

3077. Whether contract enforceable—Under 7 & 8 Vict. (c. 110), s. 29—Contract with "honorary director."]—Pltf. entered into a contract with a gas co. to lay down the mains, & to do all work necessary to the undertaking. At the time the contract was entered into he was elected an "honorary director," & sat at the board, & acted generally as a director. Pltf. brought his action upon this contract, to which defts. pleaded by equitable pleas that the contract was a contract by pltf., a director within sect. 29 of the above Act, & therefore did not create a debt which could be enforced against the co. under its winding up:—*Held*: the defence was a good one.—*STEARS v. SOUTH ESSEX GAS-LIGHT & COKE CO.* (1860), 9 C. B. N. S. 180; 30 L. J. C. P. 49; 3 L. T. 472; 7 Jur. N. S. 447; 9 W. R. 533; 142 E. R. 70.

3078. ——— **Company provisionally registered.]—**Sect. 29 of the above Act only applies to contracts between a co. completely registered & any of the directors, & not to contracts between a co. provisionally registered & any of its promoters.—*Re* WATERLOO LIFE, ETC., ASSURANCE CO., *PAUL & BERESFORD'S CASE* (1864), 33 Beav. 204; 3 New Rep. 353; 33 L. J. Ch. 545; 9 L. T. 749; 10 Jur. N. S. 692; 12 W. R. 503; 55 E. R. 345.

3079. ——— **Subject of the proper business of the company.]—**1844 Act, s. 29, does not authorise a director without the sanction of the shareholders, to sell any article or service to the co., but only to deal with them in the way of their business.—*POOLE v. NATIONAL ASSURANCE CO.* (1858), 2 H. & N. 687; 27 L. J. Ex. 219; 30 L. T. O. S. 260; 4 Jur. N. S. 54; 6 W. R. 211; 157 E. R. 283.

3080. ——— **—.]—***FLANAGAN v. GREAT WESTERN RY. CO.*, No. 3075, *ante*.

3081. ——— **Contract under special powers in articles.]—***Re* ALEXANDER'S TIMBER CO., No. 3493, *post*.

3082. Right of company to repudiate.]—*GREAT LUXEMBOURG RY. CO. v. MAGNAY* (No. 2), No. 3224, *post*.

Liability in respect of profits.]—*See* Sub-sect. 6, D., *post*.

Whether office vacated.]—*See* Sub-sect. 8, C. (f), *post*.

Compare No. 8339, *post*.

E. Relations inter se.

3083. Legal expenses—Incurred on instructions of all—Paid by one—Contribution.]—Four persons who had acted as directors of a proposed railway co., being sued for debts contracted on account of the concern, jointly retained an attorney to

Held: as B. had with the knowledge of his firm occupied a fiduciary position towards the co. in the purchase of the mine, his firm were bound to repay the £7,000 to the co.—*SCOTTISH PACIFIC COAST MINING CO., LTD. v. FALKNER, BELL & CO.* (1888), 15 R. (Ct. of Sess.) 290; 25 Sc. L. R. 226.—SCOT.

g. Breach of contract by company—By act of director.]—The mere concurrence of a director of a co., in acts which render such co. unable to perform a contract then existing between him & the co., does not amount to a waiver by him of his personal rights in respect of the breach of contract by the co. resulting from such acts.—*GLASS v. PIONEER RUBBER WORKS OF AUSTRALIA, LTD.*, [1906] V. L. R. 754.—AUS.

defend them on their personal responsibility:—*Held*: one of the four, who had paid the attorney's bill, was entitled to sue the others for contribution.—*EDGER v. KNAPP* (1843), 5 Man. & G. 753; 1 Dow. & L. 73; 6 Scott, N. R. 707; 1 L. T. O. S. 109; 7 Jur. 583; 134 E. R. 763.

Annotations:—*Mentd.* *Tharpe v. Stallwood* (1843), 5 Man. & G. 760; *Gethin v. Gethin*, & *Queen's Proctor intervening* (1862), 31 L. J. P. M. & A. 57.

3084. — Incurred on instructions of one—Whether others bound.—(1) A pltf. who puts in & reads a minute of a board, which confirms certain other minutes of a preceding day, is not bound to put in the minutes so confirmed.

(2) Instructions given by one director, not a party to the action, to the solr. of a co., are not evidence to fix the other directors with liability for his bill of costs.—*BURCHALL v. SPOTTISWOODE* (1853), 3 Car. & Kir. 302.

3085. Guarantee given by some only—No adoption by remainder.—Where some only of a body of directors have given a guarantee, they are primarily liable, unless the other directors adopt it.—*Re DOVER & DEAL RY., CINQUE PORTS, THANET & COAST JUNCTION CO., LONDESBOROUGH'S (LORD) CASE* (1854), 4 De G. M. & G. 411; 23 L. J. Ch. 738; 23 L. T. O. S. 33; 18 Jur. 863; 1 W. R. 472; 43 E. R. 567, L.J.J.

Annotation:—*Mentd.* *Re Dover, Deal, & Cinque Ports Ry., Ex p. Clifton, Ex p. Hook, Ex p. Thompson* (1854), 24 L. J. Ch. 83.

3086. Indemnity given to retiring director—Not ratified by absent director aware of transaction.—H. & W. were two of the directors of a banking co. It was agreed at a meeting of the directors that H. should retire from being a director & shareholder on the terms embodied in a minute as follows: "H.'s shares to be taken at par. Release & indemnity may be arranged by the solrs. of the parties. (Signed) F. K. Chairman." H. retired & his shares were cancelled. W. was not present at the meeting at which this minute was passed, but was aware of the transaction, & expressed no disapprobation, though he did not act to ratify it. It was subsequently determined under the winding up of the co., that the cancellation of H.'s shares was invalid & that he was a contributory:—*Held*: W. was not under any liability to indemnify H. against liabilities of the co. arising after H.'s retirement.—*Re ST. MARY-LEBONE JOINT STOCK BANKING CO., WALKER'S CASE* (1856), 8 De G. M. & G. 607; 26 L. J. Ch. 261; 28 L. T. O. S. 151; 2 Jur. N. S. 1216; 5 W. R. 26; 44 E. R. 524, L. J.J.

Annotation:—*Mentd.* *Re Brampton & Longtown Ry., Addison's Case* (1875), L. R. 20 Eq. 620.

3087. Liability for fraud or misconduct—Suit against all directors compromised—On payment of lump sum—Right of contribution.—A suit was instituted against the directors of an abortive co. to make them liable for acts of mismanagement & for the misapplication of its funds. This was compromised by an order on debts. to pay a fixed sum. One of them having paid more than his share:—*Held*: he could sustain a suit simply for

contribution in respect of the compromise, & the co-directors were not entitled, without a cross-bill, to make pltf., at the same time, account for his general liabilities to the co.—*PROLE v. MASTERMAN* (1855), 21 Beav. 61; 52 E. R. 781.

3088. — Of co-director—Made possible by negligence of others.—S. & B., two of the directors of a joint-stock co., were associated with F., the managing director, as a committee to exercise the general powers of the board of directors, under a provision to that effect contained in the arts. of assocn. Acting in that capacity, S. & B. signed a cheque for £8,000, & handed it over to F., who applied it for purposes forbidden by the arts. of assocn., by which a considerable part of the £8,000 was lost to the co.:—*Held*: as between themselves & the co. S. & B. were liable to make good the loss, & could not excuse themselves on the ground that they had implicit confidence in F. & had no suspicion that he intended to use the money for an illegal purpose.—*OTTOMAN CO. v. FARLEY* (1869), 17 W. R. 761.

3089. — Co-director invested by articles with supreme control.—*Re DENHAM & Co., No. 3285, post.*

3090. — Improper allotment of shares.—*BURTON v. BEVAN, No. 3270, post.*

Misrepresentation in prospectus.—*See Sect. 8, sub-sect. 3, ante.*

Misfeasance under 1908 Act, s. 215.—*See Sect. 36, sub-sect. 10, C., post.*

As a whole—Whether liability joint or several.—*See, generally, Sub-sect. 6, post.*

3091. Liability for ultra vires act—Purchase by company of its own shares—Transfer to director—Contribution.—(1) Shares of a co. were, pursuant to an *ultra vires* resolution of the board, purchased & transferred into the name of A., a director, in trust for the co.:—*Held*: A. was entitled to contribution from the directors who concurred in the transaction, for calls which he had paid.

(2) Where a local director was present at a meeting in London, at which the minutes of the last meeting, when it was resolved to transfer the shares to a trustee for the co., were read & confirmed, though he was not present until after the commencement of the proceedings, & denied all knowledge of the resolution or transaction:—*Held*: he had been affected with notice, & was liable in respect of the transaction.

(3) Another local director was present only at a subsequent meeting, at which the formal minute of approval of a transfer to A. was confirmed:—*Held*: he had not been affected with notice, & was not liable.—*ASHHURST v. MASON, ASHHURST v. FOWLER* (1875), L. R. 20 Eq. 225; *sub nom.* *ASHURST v. MASON, ASHURST v. FOWLER*, 44 L. J. Ch. 337; 23 W. R. 506.

Annotations:—*As to* (1) *Reid. Ramskill v. Edwards* (1885), 31 Ch. D. 100; *Jackson v. Dickinson*, [1903] 1 Ch. 947. *As to* (2) *Reid. Re National Bank of Wales*, [1899] 2 Ch. 629.

3092. — Payment of dividends out of capital—Liability of estate of deceased director.—*Re*

PART III. SECT. 28, SUB-SECT. 4.—E.

3088 i. Liability for fraud or misconduct—Of co-director—Made possible by negligence of others.—A director of a co. from the time that he becomes aware of breaches of trust by his co-directors incurs liability, even though he did not directly sanction them, & may be held personally answerable for any losses sustained thereby, if he remains passive & omits to take proper steps to prevent such misconduct, & to institute if necessary, proceedings against his colleagues in default.—

JACKSON v. MUNSTER BANK (1885), 15 L. R. Ir. 356.—IR.

h. ——When a number of directors have jointly committed a breach of trust imperilling trust property they are not obliged to wait till they are sued by their *cestuis que trustent*, before they apply for contribution *inter se* to make good the existing deficiency, & they are bound to make good this deficiency without waiting to see whether any actual loss to the trust will eventually result.—*POWER v. O'CONNOR* (1871), 19 W. R.

923.—IR.

k. — Contribution.—*WESTERN BANK OF SCOTLAND v. BAIRDS* (1862), 34 Sc. Jur. 435.—SCOT.

l. — Act done in ordinary course of business.—The director of a co. is liable in tort for the act of his co-director done in the ordinary course of business.—*BARLOW v. FRIEND P. & P. CO.* (1909), O. R. C. 110.—S. AF.

m. — Remedy against co-director—Not against company.—Where appt., one of the directors of a

Sect. 28.—Directors: Sub-sect. 4, E. & F.]

SHARPE, Re BENNETT, MASONIC & GENERAL LIFE ASSURANCE CO. v. SHARPE, No. 3377, post.

Acts at meetings at which not present.]—See Sub-sect. 7, E., post.

F. Right to Indemnity.

3093. Contract sanctioned by company—Resulting in loss.]—A co. having been formed for the manufacture of glass, the directors entered into a contract to purchase a licence to use a patent for certain improvements in making glass, & constituted themselves trustees for the co. The purchase was subsequently sanctioned by a general meeting of the shareholders. The speculation proving unsuccessful:—*Held*: the co. by reason of their having sanctioned the contract, were bound to indemnify the original directors against their liabilities in respect of the purchase.—**GLEADOW v. HULL GLASS CO. (1849), 19 L. J. Ch. 44; 13 Jur. 1020.**

3094. Money borrowed to carry on company's business—Right to repayment—No authority to pledge company's credit.]—The G. co. was an unincorporated co., regulated by deed & formed for the purpose of working mines abroad, & the affairs of the co. were put under the control of the directors. The capital was limited, but there was a power in the directors to create new shares. The whole capital being exhausted, & more money being required, to save the property from being seized by the creditors & the whole undertaking from being ruined, the directors borrowed money & applied it for the purposes of the undertaking. It having been held at law that the lenders of the money were not entitled to recover against the co., the directors repaid the money out of their own pockets, & upon the affairs of the co. being wound up, claimed to be creditors of the co. for the money so paid:—*Held*: they were entitled to be repaid the money so advanced, it having been advanced *bonâ fide*, & for the purposes of the undertaking.

Although the directors of a co., as agents, may not be authorised to pledge the credit of the co. to third persons, yet as trustees they are entitled to be indemnified for any expenses incurred by them in the due execution of their trusts.—**Re GERMAN MINING CO., BALL'S CASE, Ex p. CHIPPENDALE (1854), 4 De G. M. & G. 19; 2 Eq. Rep. 983; 24 L. J. Ch. 41; 23 L. T. O. S. 200; 18 Jur. 710; 2 W. R. 543; 43 E. R. 415, L. JJ.**

*Annotations:—***Consd. Re Norwich Equitable Fire Insee., Brasnett's Case (1885), 53 L. T. 569. Refd. Darke v. Williamson (1858), 22 J. P. 705; Re Magdalena Steam**

Navigation Co. (1860), John. 690; Selwyn v. Harrison (1862), 2 John. & H. 334; Re Saxon Life Assce. Soc., Anchor Assce. Co.'s Case, Era Assce. Soc.'s Case, Re Era Assce. Soc., Williams's Case, Anchor Assce. Co.'s Case (1863), 32 L. J. Ch. 206; Re Catholic Publishing & Book-selling Co. (1864), 3 New Rep. 551; Lowndes v. Garnett & Moseley Gold Mining Co. of America (1864), 3 New Rep. 601; Re Cork & Youghal Ry. (1869), 4 Ch. App. 752, n.; Martin v. Powning (1869), 4 Ch. App. 356; Re National Permanent Benefit Bldg. Soc., Ex p. Williamson (1869), 5 Ch. App. 309; Re Durham County Permanent Investment, Land, & Bldg. Soc., Davis' Case, Wilson's Case (1871), L. R. 12 Eq. 516; Crampton v. Varna Ry. (1872), 41 L. J. Ch. 817; Yorkshire Ry. Wagon Co. v. Maclure (1881), 19 Ch. D. 478; Blackburn Bldg. Soc. v. Cunliffe, Brooks (1882), 22 Ch. D. 64, n.; Re Pumfrey, Worcester City & County Banking Co. v. Blick (1882), 22 Ch. D. 255; Strickland v. Symons (1884), 26 Ch. D. 245; Re Wrexham, Mold & Connah's Quay Ry., [1899] 1 Ch. 440; Hardoon v. Belilios, [1901] A. C. 118. *Mentd. Re Norwich Yarn Co., Ex p. Bignold (1856), 22 Beav. 143; Electric Telegraph Co. of Ireland, Troup's Case (1860), 29 Beav. 353; Re Companies Acts, Ex p. Watson (1888), 21 Q. B. D. 301.*

3095. ——— Borrowing not forbidden by constitution of company.]—Directors of a trading co., incurred a large debt to the bankers beyond the subscribed capital:—*Held*: they were entitled to be repaid by the co., by means of a call, with simple, but not compound, interest, or with rests as charged by the bankers.

So far as money was obtained from the bankers *bonâ fide*, for the use of the trade, & so applied, the proprietors are bound to make good to the directors the amount paid by them in respect of such debt. It appears also to me to be indifferent whether it be called a debt or a loan; in substance it is the same thing, & it is not only not forbidden by the deed, but permitted by it, & by the nature of the trade they had to conduct (*ROMILLY, M.R.*).—**Re NORWICH YARN CO., Ex p. BIGNOLD (1856), 22 Beav. 143; 25 L. J. Ch. 601; 27 L. T. O. S. 323; 2 Jur. N. S. 940; 4 W. R. 619; 52 E. R. 1062.**

*Annotations:—***Refd. Darke v. Williamson (1858), 22 J. P. 705; Re Catholic Publishing & Bookselling Co. (1864), 3 New Rep. 551. Mentd. Electric Telegraph Co. of Ireland, Troup's Case (1860), 29 Beav. 353; Re Professional Life Assce. (1867), 17 L. T. 631.**

3096. Money advanced to company—Right to repayment—Advance to company's use—General rule.]—Where directors of a co. have made a loan to the co., the terms on which the loan has been made are not binding on the co. under 1844 Act, s. 29, unless they have been confirmed by a general meeting of the co., ordinary or special. The terms of the loan must be brought clearly to the attention of the meeting. But where the directors have advanced money for the use of the co. they will be allowed to claim that money from the co.—**Re NATIONAL PATENT STEAM FUEL CO., BAKER'S CASE (1860), 1 Drew. & Sm. 55; 1 L. T. 526; 6 Jur. N. S. 240; 8 W. R. 268; 62 E. R.**

registered co., was excluded by other directors from directors' meetings, & applied for an interdict against the co.:—*Held*: appcts. remedy was not against co. but against the co-directors, who wrongfully prevented him from performing his duties.—**WAYNE v. EGNEP, [1921] W. L. D. 91.—S. AF.**

PART III. SECT. 28, SUB-SECT. 4.—F.

3094 i. Money borrowed to carry on company's business—Right to repayment—No authority to pledge company's credit.]—The directors of a ry. co., whose borrowing powers had been fully exercised, procured advances from a bank on their own personal security. The money so advanced was within the limit of the capital of the co., & was applied in the payment of contractors, or otherwise in completion of the undertaking. The directors subsequently paid off the amount due to the bank. The ry. co., at a general meeting, sanctioned these proceedings:—*Held*: the directors were entitled to

be repaid the amount so paid by them with interest out of the profits of the co., in priority to preference shareholders.—**ULSTER RY. CO. v. BANBRIDGE, LISBURN & BELFAST RY. CO. (1868), 1 R. 2 Eq. 190.—IR.**

3094 ii. ——— No authority to pledge company's credit.]—Where a co. was sought to be promoted & floated & a prospectus was issued, & H. & K. signed & agreed to act as directors, & figured as such on the prospectus, & certain advertising expenses were incurred on the promotion of the co. which was never floated:—*Held*: H. & K. were jointly & not jointly & severally liable for the expenses.—**HOLLIS v. ARGUS CO., LTD. (1890), 7 S. C. 326.—S. AF.**

n. ——— Commission.]—Where the directors of a co. personally guarantee an overdraft obtained by the co., they can charge the co. with such commission on the amount guaranteed as might have been charged if the

guarantee had been by strangers to the co., & they can take security from the co. for the amounts due & owing to them for such commission.—**Re MADDOX (F. W.) & CO.'S METROPOLITAN CHEMICAL & MANUFACTURING CO., LTD., PENNEY (G. H.) & CO. v. MADDOX (F. W.), ETC., CO., LTD. (1905), 24 N. Z. L. R. 782.—N.Z.**

3096 i. Money advanced to company—Right to repayment—Advance to company's use.]—The arts. of assocn. of a co., after providing for the remuneration of the directors, further provided that the directors "shall be indemnified out of the funds of the co. against all costs, charges, losses, damages & expenses which they shall respectively incur & be put to, in the execution of their respective offices." In an action by the co. against a director for repayment of sums paid to him as his expenses in travelling from his home in Scotland to attend the meetings of the bond in London:—*Held*: these

298; *sub nom.* *Re* PATENT STEAM FUEL CO., *Ex p.* BAKER, 29 L. J. Ch. 409.

*Annotations:—**Re* Electric Telegraph Co. of Ireland, Troup's Case (1860), 7 Jur. N. S. 901; *Stears v. South Essex Gas-Light & Coke Co.* (1860), 7 Jur. N. S. 447. *Mentd.* *British Provident Life & Fire Assco. Soc. v. Norton* (1863), 3 New Rep. 147.

3097. ——— **Confirmation under 1844 Act, s. 29—Necessity for.**—By a resolution of a meeting of shareholders in a joint-stock society, the directors were authorised to borrow money. In pursuance of this resolution they borrowed £100 of one of their own directors, upon a debenture, but no meeting of shareholders was called to approve of the contract, as required by the above sect:—*Held*: the contract was void.—*BARTLETT v. ATHENÆUM LIFE ASSURANCE SOCIETY* (1856), 27 L. T. O. S. 170.

3098. ——— **Sufficiency.**—Where directors had agreed to make advances to a co. on security of its promissory notes, & a report to that effect was made to a general meeting of shareholders, which meeting was adjourned, & in the meantime the auditors made their report, & therein referred to such advances, & such report was read & adopted at such adjourned meeting, & a vote of thanks passed to the directors for their resolution to make such advances:—*Held*: this was a good confirmation within the above sect., though it did not appear that the terms of the contract as to interest had been communicated to the shareholders.—*Re* UNIVERSAL SALVAGE CO., *MURRAY'S EXECUTOR'S CASE* (1854), 5 De G. M. & G. 746; 3 Eq. Rep. 39; 24 L. J. Ch. 25; 24 L. T. O. S. 85; 18 Jur. 1063; 3 W. R. 35; 43 E. R. 1060, L. JJ.

*Annotations:—**Re* South Essex Gas-Light & Coke Co., *Ex p. Stears* (1859), 29 L. J. Ch. 43; *Re* National Patent Steam Fuel Co., *Baker's Case* (1860), 1 Drew. & Sm. 55. *Mentd.* *Re* Cameron's Coalbrook Steam Coal & Swansea & Lougher Ry., *Ex p. Green* (1855), 24 L. J. Ch. 331.

3099. ——— *Re* NATIONAL PATENT STEAM FUEL CO., *BAKER'S CASE*, No. 3096, *ante*.

3100. ——— **Commission or bonus in lieu of interest.**—A director of a co., making advances of money to the co. of which he is a director, cannot accept a commission or bonus in lieu of interest.—*Re* CARDIFF PRESERVED COAL & COKE CO., LTD., *HILL'S CASE* (1862), 1 New Rep. 148; 32 L. J. Ch. 154; 7 L. T. 656, L. JJ.

——— **Intended for payment for qualification shares allotted as fully-paid.**—*See* No. 2956, *ante*.

3101. ——— **For purposes of its business—Right to repayment—Advance on authority of a minute of a general meeting.**—The manager & principal director of a mining co., under the authority of a minute at a general meeting, provided the money for carrying on a mine of the co., & other purposes of the co., until these sums reached nearly £5,000, when he stopped, & presented this petition. He had procured the money for the above purpose on his own acceptances, some of which he had also given to creditors of the co., who had threatened to sue the co., & were now threatening him upon his separate acceptances:—*Held*: such acceptances being *bond fide* given, & the proceeds applied for the purposes of the co., entitled the petitioner to sue for contribution.—*Re* COURT GRANGE SILVER-LEAD MINING CO., *Ex p. SEDGWICK* (1856), 2 Jur. N. S. 949.

*Annotation:—**Mentd.* *Re* Court Grange Silver Lead Co., *De Castro's Case* (1856), 2 Jur. N. S. 1203.

3102. ——— **Debt incurred for necessities—Though in excess of borrowing powers.**—

expenses were not incurred by the director in the execution of his office &

that consequently made to him were illegal & fell to be refunded.—*MARMOR,*

LOWNDES v. GARNETT & MOSELEY GOLD MINING CO. OF AMERICA, LTD., No. 3428, *post*.

3103. ——— **Priority as against creditors.**—Three of the directors of a co., in whom the lease of the co.'s premises was vested in trust for the co., had expended their own moneys in payment of rent, workmen's wages, etc.:—*Held*: they were entitled to be repaid in priority to all other claimants all sums which they could have been compelled to pay, but they were not entitled to priority in respect of any moneys voluntarily paid by them on behalf of the co.—*Re* POOLEY HALL COLLIERY CO. (1869), 21 L. T. 690; 18 W. R. 201.

*Annotation:—**Re* English Channel S.S. Co. v. Rolt (1881), 17 Ch. D. 715.

3104. ——— *Re* ——— *Directors carried on the business of a co. with unlimited liability, after a time when it had become their duty to stop it, & out of their own pockets paid off pressing engagements of the co., incurred after that time. On the co. being wound up the directors claimed to rank as creditors & to have their claims set off against calls made by the liquidator, who objected that the debts had been incurred in breach of duty & could not be proved:—Held*: the claims ought to be allowed, subject to the question whether they could come into competition with those of other creditors.—*Re* INTERNATIONAL LIFE ASSURANCE SOCIETY, *Ex p. CERTAIN DIRECTORS* (1870), 39 L. J. Ch. 271.

3105. **Guarantee on behalf of company—Enforced after winding up begun—Right of set-off.**—A director of an unlimited co. paid to the bankers of the co., after a winding-up order, & after a call has been made, £500 in respect of an overdraft of the co., for which he had become surety. On summons asking the ct. to declare that under 1862 Act, s. 101, the director was entitled to set off this sum against £875 due from him for calls on shares:—*Held*: the payment being made after the winding up, this was not a case of a co. carrying on business & incurring a debt to bankers in the ordinary way, & the director was not entitled to set off the debt against calls. On appeal:—*Held*: the amount, if any, owing to the director was one which could only be ascertained by inquiry; it was not clear that the director had any claim to be repaid; & the ct., in the exercise of the discretion given by the sect., ought not to allow the set off.—*Re* NORWICH EQUITABLE FIRE INSURANCE CO., *BRASNETT'S CASE* (1885), 53 L. T. 569; 34 W. R. 206, C. A.

See, also, No. 3134, *post*.

3106. **Capital improperly returned to shareholders—Right to contribution.**—Directors of a co., which had not obtained the sanction of the ct. to a reduction of its capital, distributed a portion of the capital amongst the shareholders with their assent, & with notice of the fact that the money so distributed was part of the capital. The co. was subsequently wound up, & the liquidator obtained an order that the directors should replace the money on the ground that the payment to the shareholders was *ultra vires*:—*Held*: the directors were entitled to an indemnity from the shareholders.—*MOXHAM v. GRANT*, [1900] 1 Q. B. 88; 69 L. J. Q. B. 97; 81 L. T. 431; 48 W. R. 130; 16 T. L. R. 34; 44 Sol. Jo. 58; 7 Mans. 65, C. A. *Annotation:—**Re* Towers v. African Tug Co. (1904), 73 L. J. Ch. 395.

3107. **Loss of right—Indemnity provided by constitution of company—Qualification shares pro-**

LTD. v. ALEXANDER, [1908] S. C. 78; 15 S. L. T. 515.—*SCOT*.

Sect. 28.—Directors: Sub-sect. 4, F.; sub-sect. 5, A. & B.]

*vided for not taken.]—*The subscribers' agreement of an abortive railway scheme contained a covenant by the subscribers, parties thereto of the first part, to indemnify the managing directors, who were named as parties of the third part, & described as being also some of the parties of the first part. It contained recitals to the effect that the persons named as managing directors had accepted the office, & provided that the holding of forty shares at least should be requisite to qualify a person to be a managing director. It was distinctly proved that before this deed was executed by anybody, one of the persons named as managing directors had refused to accept the office or execute the deed; & as to two others, there was no proof that they ever had accepted. The deed was executed by nineteen subscribers, but none of the managing directors ever executed it or took shares, though most of them accepted & acted in the office. The acting directors & the subscribers formed the list of contributories. The Master made a call for debts on all the contributories, in proportion to their shares, treating each director as a holder of forty shares, & a call for costs on all the contributories equally *per capita*:—*Held*: the directors, or some of them, must be considered to have knowingly made to the subscribers, at the time of their executing the deed, a material misstatement of facts, & the directors, therefore, could not claim the benefit of the deed against the subscribers.—*Re DOVER, HASTINGS & BRIGHTON JUNCTION RY. CO., CAREW'S CASE (No. 2) (1855), 7 De G. M. & G. 43; 3 Eq. Rep. 409; 24 L. J. Ch. 769; 24 L. T. O. S. 329; 3 W. R. 289; 44 E. R. 17, L. JJ.*

Annotation:—Mentd. Luke v. South Kensington Hotel Co. (1879), 27 W. R. 514.

SUB-SECT. 5.—POWERS AND DUTIES.

A. In General.

3108. Nature & extent of—General rule.]—*WILKINS v. ROEBUCK, No. 3591, post.*

3109. ———.]—Directors of a trading co. have, incidental to their office, the power of doing that which is ordinarily & reasonably done with a view to getting either better work from their servants or to attract customers.—*HUTTON v. WEST CORK RY. CO. (1883), 23 Ch. D. 654; 52 L. J. Ch. 689; 49 L. T. 420; 31 W. R. 827, C. A.*

Annotations:—Consd. Henderson v. Bank of Australasia (1888), 40 Ch. D. 170. Refd. Re Leicester Club & County Racecourse Co., Ex p. Cannon (1885), 30 Ch. D. 629; Tomkinson v. S. E. Ry. (1887), 35 Ch. D. 675; Re Newman, [1895] 1 Ch. 674; Warren v. Lambeth Waterworks (1905), 21 T. L. R. 685; Cyclists' Touring Club v. Hopkinson, [1910] 1 Ch. 179. Mentd. Kaye v. Croydon Tram. Co., [1898] 1 Ch. 358; Re Newspaper Proprietary Syndicate, Hopkinson v. Newspaper Proprietary Syndicate, [1900] 2 Ch. 349; Stroud v. Royal Aquarium & Summer & Winter Garden Soc., [1903] W. N. 146; Moriarty v. Regent's Garage & Engineering Co., [1921] 1 K. B. 423.

3110. ——— Power given by constitution of company—Contract providing for confirmation by company or directors.]—*WILKINS v. ROEBUCK, No. 3591, post.*

——— **To contract with own company.]—***See Sub-sect. 4, D., ante.*

3111. ——— To contract with another company—In which member of quorum interested—No special provisions in articles.]—Unless & so far only as authorised by a co.'s arts., the board cannot make a binding contract with any other co. in which a member of the quorum holds shares.

This rule applies whether the shares are held in trust or beneficially.

If the second co. has notice of the irregularity, the first co. may obtain rescission of the transaction even after completion, provided that rescission is still possible.—*TRANSVAAL LANDS CO. v. NEW BELGIUM (TRANSVAAL) LAND & DEVELOPMENT CO., [1914] 2 Ch. 488; 84 L. J. Ch. 94; 112 L. T. 965; 31 T. L. R. 1; 59 Sol. Jo. 27; 21 Mans. 364, C. A.*

Annotation:—Mentd. Moody v. Cox & Hatt (1917), 116 L. T. 740.

3112. Exercise of powers—Act to be done "at general meeting."]—*WILKINS v. ROEBUCK, No. 3591, post.*

3113. ——— As trustees for company not for creditors.]—*Re WINCHAM SHIPBUILDING, BOILER & SALT CO., POOLE, JACKSON & WHYTE'S CASE, No. 3047, ante.*

3114. ——— Subject to condition precedent—Allotment of specified number of shares.]—A clause in the arts. of assocn. of a co. registered under 1862 Act, provided that, when & so soon as 3,000 shares in the co. should have been subscribed for & allotted, the members of the co. for the time being should be & continue associated for the objects of the co., & the regulations for the management thereof should be in force & binding on such members in like manner as if the whole of the shares into which the nominal capital was divided had been subscribed for & allotted. Before 3,000 shares were subscribed for, the directors appointed pltf. engineer to the co. In an action against the co. for pltf.'s salary:—*Held*: the clause was valid & effectual; until 3,000 shares were subscribed for, the directors had no power to make any contract for carrying on the business of the co., & pltf. could not maintain the action.—*PERCE v. JERSEY WATERWORKS CO. (1870), L. R. 5 Exch. 209; 18 W. R. 838; sub nom. PIERCE v. JERSEY WATERWORKS CO., LTD., 39 L. J. Ex. 156; 22 L. T. 519.*

3115. ——— Control by members—Management vested in directors by articles—Power of majority of shareholders in general meeting.]—On the requisition of certain shareholders in pltf. co. a meeting of the co. was convened by the directors in Jan. 1906, & a resolution was then passed by a simple majority for the sale of the business to a new co., & the directors were directed to cause the seal of the co. to be affixed to a contract to effect the sale which had been prepared & was before the meeting. The directors were of opinion that it was not in the interest of the co. that the contract should be carried out, & they declined to comply with the resolution. An action was brought by the co., & a shareholder on behalf of himself & all other shareholders, asking that the directors might be ordered to affix the seal of the co. to the contract, & for other incidental relief. Among the objects of the co. stated in the memorandum of assocn. was "to sell the undertaking of the co., or any part thereof." By the arts. of assocn. the manage-

PART III. SECT. 28, SUB-SECT. 5.—A.

a. Nature & extent of—Power to sell property of company.]—The directors of a mining co. have authority to sell parts of the property of the co., not being the whole of it.—*BAW BAW SLUICING CO. v. NICHOLLS (1883), 9 V. L. R. 208.—AUS.*

p. ———.]—*LOCHABER DISTRICT COMMITTEE OF INVERNESS-SHIRE COUNTY COUNCIL v. INVERGARRY & FORT AUGUSTUS RY. CO. (1913), 50 Sc. L. R. 550.—SCOT.*

q. ——— To pledge own credit.]—In the absence of agreement, there is clearly no duty or obligation on the

part of directors to pledge their own credit for the benefit of the co.—*CHRISTOPHER v. NOXON (1883), 4 O. R. 672.—CAN.*

r. Exercise of powers—As trustees for company.]—As fiduciary donees of their powers, the directors of a co. are bound to exercise them *bona fide* for

ment of the business of the co. was vested in the directors, & they had power to do all such things as might be done, & were not by the arts. or by statute expressly required to be done, by the co. in general meeting, but subject to any regulations which might be made from time to time by the co. by extraordinary resolution; & they had power to sell or deal with any property of the co. on such terms as they might think fit. A director could only be removed from office by a special resolution of the co.:—*Held*: the directors were in the position of managing partners, & their mandate was the mandate of the whole body of shareholders, not of the majority only. If that mandate had to be altered, it could only be done by the machinery provided by the arts., & it was not competent for a simple majority of the shareholders by a resolution at an ordinary general meeting to alter the mandate & override the discretion of the directors.—*AUTOMATIC SELF-CLEANSING FILTER SYNDICATE CO., LTD. v. CUNINGHAME*, [1906] 2 Ch. 34; 75 L. J. Ch. 437; 94 L. T. 651; 22 T. L. R. 378; 50 Sol. Jo. 359; 13 Mans. 156, C. A.

Annotations:—*Consd. Marshall's Valve Gear Co. v. Manning, Wardle*, [1909] 1 Ch. 267. *Appld. Salmon v. Quin & Axtens*, [1909] 1 Ch. 311. *Refd. Gramophone & Typewriter v. Stanley*, [1908] 2 K. B. 89; *Logan v. Davis* (1911), 104 L. T. 914; *British Murac Syndicate v. Alpertion Rubber Co.*, [1915] 2 Ch. 186.

3116. ———.—By the arts. of assocn. of a co. the general management of the business of the co. was vested in the directors subject to such regulations, being not inconsistent with the provisions of the arts., as might be prescribed by the co. in general meeting, & it was provided that no resolution of a meeting of the directors having for its object, among other things, the acquisition or letting of any premises should be valid unless 24 hours' notice of the meeting should have been given to each of the managing directors, A. & B., & neither of them should have dissented therefrom in writing before or at the meeting. A. & B. held the bulk of the ordinary shares in the co. Resolutions were passed by the directors for the acquisition of certain premises & for the letting of certain other premises, but B. dissented from each of these resolutions in accordance with the arts. At an extraordinary general meeting of the co. resolutions to the same effect were passed by a simple majority of the shareholders:—*Held*: the resolutions of the co. were inconsistent with the provisions of the arts. & the co. ought to be restrained from acting upon them.—*QUIN & AXTEENS, LTD. v. SALMON*, [1909] A. C. 442; 78 L. J. Ch. 506; 100 L. T. 820; 25 T. L. R. 590; 53 Sol. Jo. 575; 16 Mans. 230, H. L.; *affg. S. C. sub nom. SALMON v. QUIN & AXTEENS, LTD.*, [1909] 1 Ch. 311, C. A.

Annotations:—*Mentd. Logan v. Davis* (1911), 104 L. T. 914; *Hickman v. Kent or Romney Marsh Sheep Breeders' Asscn.*, [1915] 1 Ch. 881; *Foster v. Foster*, [1916] 1 Ch. 532.

3117. ———.—Where under the arts. of assocn. of a co. the management of the business of

the co. is vested in the directors subject to any regulations of these arts., & "to such regulations, being not inconsistent with the aforesaid regulations, . . . as may be prescribed by the co. in general meeting," a bare majority of the shareholders in general meeting have the right to control the action of the directors in the management of the co., so long as they do not affect to control it in a direction contrary to any provision of the arts. of assocn.—*MARSHALL'S VALVE GEAR CO., LTD. v. MANNING, WARDLE & CO., LTD.*, [1909] 1 Ch. 267; 78 L. J. Ch. 46; 100 L. T. 65; 25 T. L. R. 69; 15 Mans. 379.

—— **Power of forfeiture of shares.**—See Sect. 27, sub-sect. 2, A., *ante*.

B. In connection with Company.

3118. Duty to shareholders—To give explanations.]—It is the duty of directors of cos. to be ready, at all times, to explain everything to shareholders.—*Re ANGLO-GREEK STEAM CO.* (1866), L. R. 2 Eq. 1; 35 Beav. 399; 14 L. T. 120; 30 J. P. 515; 12 Jur. N. S. 323; 14 W. R. 624; 55 E. R. 950.

Annotations:—*Mentd. Re Humber Iron Works Co.* (1866), 35 Beav. 346; *Re Bwlch y Plwm Co.* (1867), 17 L. T. 235; *Re Suburban Hotel Co.* (1867), 2 Ch. App. 737; *Re Hordsham Industrial & Provident Soc.* (1894), 70 L. T. 801; *Re Brinsmead*, [1897] 1 Ch. 45; *Re Shepherd's Bush Improvements* (1909), *Times*, Mar. 9.

3119. ———.—On breach of trust by co-directors.]—*JOINT STOCK DISCOUNT CO. v. BROWN*, No. 3434, *post*.

Appointments of directors.—See Sub-sect. 1, B. (b), *ante*.

Calls—Power to make.]—See Sect. 21, sub-sect. 1, *ante*.

To circularise shareholders to make known recommendation to members.]—Compare No. 4085, *post*.

—— **Sending out proxies.**—See Nos. 3830, 3831, *post*.

Compromise of action—By surrender of shares.]—See Sect. 26, sub-sect. 1, B., *ante*.

—— **Payment to club secretary on resignation**—Disputed liability to club.]—See *CLUBS*, Vol. VIII., p. 514, No. 60.

Convention of meetings—Date fixed to prevent exercise of voting powers—Interference by court.]—See No. 3900, *post*.

—— **Power to postpone**—Meeting properly convened.]—See No. 3736, *post*.

Issue of shares.—See, generally, Sect. 19, *ante*.

—— **Shares credited as partly or fully paid.**—See Sect. 20, sub-sect. 1, A., *ante*.

—— **Payment of commission or brokerage.**—See Sect. 11, sub-sect. 2, A., *ante*.

Rectification of register of members—Without application to court.]—See Sect. 13, sub-sect. 5, A., *ante*.

Forfeiture or cancellation of shares—By way of compromise.]—See Sect. 26, sub-sect. 1, C., *ante*.

—— **By agreement with shareholder.**—See Sect. 27, sub-sect. 4, *ante*.

the purposes for which they were conferred; & generally the corporate body to which they owe this duty is entitled, in case of a breach of it, to invoke the remedial action of the ct.—*MADDEN v. DIAMOND, RUDOLPH v. MACEY* (1905), 12 B. C. R. 80.—CAN.

PART III. SECT. 28, SUB-SECT. 5.—B.

s. Duty to inquire into doubtful matters.—Directors of a banking co. are not bound to examine the books of the bank, but if they become aware of anything reasonably suggesting the need of inquiry, it is their duty to

seek information.—*STAVERT v. LOVITT* (1908), 42 N. S. R. 449; 5 K. L. R. 33.—CAN.

t. ———.—To disclose onerous nature of contract.]—After some subscriptions for stock had been received, & the co. were about to offer other stock for public subscription, a meeting of the directors was held, at which pltf., then one of the directors & the co.'s manager, resigned his office as a director, & was appointed sales-agent for the co.'s out-put of coal for five years from that date, at a liberal scale of remuneration, with the exclusive right to make such

sales in A., S., & M. At the same time an arrangement was made by which the other directors derived advantages in regard to certain matters in dispute, respecting the affairs of the co., between them & pltf. The material facts & circumstances connected with these arrangements were not disclosed to the shareholders who then held stock in the co., nor to other persons who subsequently subscribed for shares of its stock:—*Held*: as pltf. & his co-directors were in a fiduciary position, & complete disclosure of the circumstances in regard to the making of the

Sect. 28.—Directors: Sub-sect. 5, B. & C. (a), (b), (c) & (d).]

Remuneration of directors.]—See Sub-sect. 3, ante.

Remuneration of officers & servants.]—See Sect. 29, sub-sect. 1, C., post.

Transfer of shares—Approval or disapproval.]—See Sect. 23, sub-sect. 2, C. (b), ante.

C. In connection with Company's Business.

(a) Power to Bind Company.

3120. Contract in fraud of company.]—A case may happen in which the governing body of a joint-stock co., or the partners of a firm, may so unite with a stranger in practising fraud against the co. for whom they act, as to entitle the co. to repudiate such acts, & to be relieved against them.—*VIGERS v. PIKE* (1842), 8 Cl. & Fin. 562, 648; 8 E. R. 220, H. L.

Annotations:—Refd. Erlanger v. New Sombrero Phosphate Co. (1878), 3 App. Cas. 1218. Mentd. Wilde v. Gibson (1848), 1 H. L. Cas. 605.

3121. Business conducted by less than number required by constitution of company—Dealings with agent of company—Whether agent bound.]—The deed of assocn. of a joint-stock co. provided that the business of the co. should be transacted by six directors; four directors conducted such business for a considerable time, & had various dealings with a third party as agent of the co.:—*Held*: it was not competent to such third party to object, in a suit against him, that the four directors did not sufficiently represent the co.—*BENSON v. HADFIELD* (1844), 4 Hare, 32; 67 E. R. 549.

Annotations:—Mentd. Ford v. Beech (1848), 11 Q. B. 852; Re Commercial Bank Corpn. of India & the East, Jones's Claim (1868), 18 L. T. 668; Re Smith, Knight, Ex p. Gibson (1869), 4 Ch. App. 662; Rouse v. Bradford Banking Co., [1894] 2 Ch. 32.

3122. Contract of service—Duty of employee to inquire as to authority.]—A person employed by directors of a co. is not bound to inquire whether they are acting within the limits of their power.—*GREEN v. NIXON* (1857), 23 Beav. 530; 27 L. J. Ch. 819; 29 L. T. O. S. 207; 3 Jur. N. S. 993; 5 W. R. 433; 53 E. R. 208.

Annotation:—Mentd. Lee v. Bude & Torrington Junction Ry. (1871), L. R. 6 C. P. 576.

3123. Under constitution of company.]—By the deed of settlement of a joint-stock co., the powers of the directors were defined to be, amongst other things, "the building or purchasing or hiring of steam-vessels as they should see fit," "the selling & letting to hire & chartering of the vessels," "the general conduct & management of the business of the co.," & "the controlling, managing, & regulating, in all other respects except as by those presents otherwise provided, of all matters relating to the co., & the affairs thereof." The directors, thinking it expedient to sell all the vessels belonging to the co., employed pl'tfs., ship-brokers, to procure a purchaser. Pl'tfs. accordingly negotiated a sale of the vessels upon the terms fixed by the directors, with C.

The negotiation, however, went off, upon an objection urged by C.'s solr. that the directors had no power to sell the whole of the vessels, except in the event of the winding up of the co. with the consent of the shareholders, which had not been obtained:—*Held*: pl'tfs. were not, under the circumstances, entitled to maintain an action against the directors upon an implied warranty that they had authority to sell, which in point of fact they had not.—*WILSON v. MIERS* (1861), 10 C. B. N. S. 348; 3 L. T. 780; 142 E. R. 486.

3124. Informal agreement—Within limits of powers—Effect in equity.]—Re STRAND MUSIC HALL Co., No. 3139, post.

See, also, Nos. 3037, 3094, ante, & generally, Sect. 31, sub-sect. 5, post.

3125. — Informal under internal regulations of company.]—By the arts. of assocn. of a telegraph co. it was provided that three directors should be the quorum necessary for the transaction of business; & the directors were empowered, in their discretion, to sell all or any one or more of the co.'s lines of telegraph, grants, licences, powers, ways, wayleaves, easements, privileges, engagements or contracts, or any part of its goodwill, estate, property or interest therein, upon such terms & conditions as they should deem expedient; & also at their discretion to appoint agents, any such agent to be remunerated at the discretion of the directors. The co. resolved to sell their undertaking to the Postmaster-General; & in July, 1869, a letter was written addressed to C., appointing him to act as agent for the directors in the matter of the sale, & agreeing that if he succeeded in obtaining from the Postmaster-General the sum of £20,000 or upwards, his commission should be £25 per cent. The letter concluded by saying: "We engage to sign a legal obligation to the above effect when called upon, & to get the signatures of our brother directors." This letter was written in C.'s office, & there signed by two of the directors, & handed to C., who forwarded it to a third director in the country, by whom it was returned to C. confirmed & signed by himself & a fourth director. This agreement, though not appearing to have been resolved upon or confirmed at any meeting of directors, was referred to at a subsequent meeting of shareholders, & not repudiated; but no such legal obligation as referred to in the letter was executed. The sale having been effected through C.'s agency for a sum of more than £20,000:—*Held*: the agreement was not *ultra vires*; & though informal according to the internal regulations of the co., it was binding against the co. in favour of a person dealing with them. Consequently, C. was entitled to commission at the rate of £25 per cent.—*Re BONELLI'S TELEGRAPH Co., COLLIE'S CLAIM* (1871), L. R. 12 Eq. 246; 40 L. J. Ch. 567; 25 L. T. 526; 19 W. R. 1022.

Annotations:—Refd. Re Haycraft Gold Reduction & Mining Co., [1900] 2 Ch. 230; Re State of Wyoming Syndicate, [1901] 2 Ch. 431.

contract had been not made to all the shareholders, present & future, the agreement was not binding upon the co.—*DENMAN v. CLOVER BAR COAL Co.* (1913), 26 W. L. R. 435.—CAN.

PART III. SECT. 28, SUB-SECT. 5.—
C. (a).

a. Business conducted by less than number required by constitution of company.]—IMPERIAL FLOUR MILLS Co. v. LAMB (1888), 1 L. R. 12 Bom. 647.—IND.

b. Borrowing money — Acquiescence

of shareholders.]—CITY BANK v. AUSTRALIAN PAPER Co. (1871), 10 N. S. W. S. C. R. 235.—AUS.

c. Release of debt.]—N. called a meeting of his creditors, & submitted to them a statement of his financial position. At the time he was a shareholder in a co. A call was due from him but unpaid in respect of the shares, & there was a large uncalled liability upon the shares, to secure which the co. held the shares. The co. was represented at the meeting of creditors, & agreed to accept a composition, & in N.'s statement the uncalled liability

upon the shares was included as a debt due to the co. The amount of the composition was paid to the co., who, by its directors, executed a release to N. & agreed to accept a forfeiture & surrender of the shares. The proceedings in respect of the composition were carried out under the provisions of Part C. of the Insolvency Act, 1890:—*Held*: such release being within the powers of the directors under the arts. of assocn. of the co. to execute on behalf of the co., was valid & bound the co.—*Re MELBOURNE LOCOMOTIVE & ENGINEERING WORKS, LTD.* (IN

3126. Lease taken by managing director of foreign board.]—An English & French co. had their chief office in London, but two distinct boards of directors, an English one in London, & a French one in Paris. A member of the French board took a lease, not under the seal of the co., of a house in Paris, as managing director of the assocn., for its offices there. The co. was ordered to be wound up by the ct. here; & the lessor came in to prove for the whole that was due to him in respect of the rent for the premises, the term in which was to expire in 1871. It was objected that the French directors had no authority to accept the lease, & generally, that it was not binding on the co. here:—*Held*: the co. was bound by the lease, & there must be a reference to chambers to ascertain what was due to the lessor in respect of it.—*Re* GENERAL INTERNATIONAL AGENCY Co., LTD. (1867), 16 L. T. 274.

(b) *Maintenance of Property.*

3127. Investment of funds—Under special resolution.]—A special resolution was made by a co., that for the better security of the policy-holders 50 per cent. of the premiums paid on whole life policies should be invested in govt. securities in the names of the trustees of the co. The directors appointed trustees, & the co. issued prospectuses stating that 50 per cent. of the premiums on whole life policies was invested, & granted policies in accordance with the special resolution:—*Held*: the directors were liable to account in the winding up to the extent of the funds not invested, & invested but applied to the general purposes of the co., & such liability was for a "misfeasance or breach of trust in relation to the co.," enforceable under 1862 Act, s. 165, on the application of the official liquidator & a policy-holder as a creditor in the winding up.—*Re* BRITISH GUARDIAN LIFE ASSURANCE Co. (1880), 14 Ch. D. 335; 49 L. J. Ch. 446; 28 W. R. 945.

Annotation:—*Mentd.* *Re* Cardiff Savings Bank, Davies' Case (1890), 45 Ch. D. 537.

3128. Under article providing for repairs & renewals—Floating dock.]—It is said that the directors by their report have admitted that they have not been properly maintaining the dock as a structure, & a passage from their report, which was issued in view of this reduction scheme, was referred to which, in my opinion, cannot be taken as an admission on the part of the directors that they have not done their duty in keeping up the dock. I refer now to art. 100, which deals with the net profits, but for the moment only to that part of it which shows how the net profits are to be applied: "After setting apart," says the art., "such sums for repairs & renewals as the directors shall from time to time consider necessary or proper." The directors under that have a discretion as to the sum which shall be devoted to repairs or renewals. There is a duty, no doubt, of maintaining the work in a reasonable state of repair by means of timely repairs & timely renewals; but it is scarcely necessary for me to state that under such a clause as this the directors were not bound to construct a new dock. They were only bound to do the best they could for this iron & wooden structure with a view to keeping that structure in a fair state & condition.

Like the case of repairing a house, the covenant to repair does not involve on the covenantor a liability to build a new house (CHITTY, J.).—*Re* FLOATING DOCK Co. OF ST. THOMAS, LTD., [1895] 1 Ch. 691; 64 L. J. Ch. 361; 43 W. R. 344; 39 Sol. Jo. 284; 13 R. 491.

Annotations:—*Mentd.* *Re* London & New York Investment Corp., [1895] 2 Ch. 860; *Re* Hyderabad (Deccan) Co. (1896), 75 L. T. 23.

(c) *Acquisition of Property.*

3129. Purchase of company's shares—Assent required under articles—Proof of assent.]—By the deed of settlement of a co., it was provided that it should not be lawful for the directors to sell or purchase any shares without the authority & sanction of a general meeting "previously in that behalf obtained." L., who was a registered shareholder for 300 shares, & who had been a director of the co., in 1855, being desirous of parting with his shares, applied to the directors, & was referred to S. as the agent. L. agreed with S. to give up the shares, to pay £100 & £30 bonus to himself, & take back two annuities. This transaction was completed in Jan. 1856. Direct evidence that any meeting was held for the purpose of confirming this purchase was wanting, but it appeared that the shares were transferred in the co.'s books, & in the public register, & that the allottee paid calls upon them. The annuities were also regularly paid, & there was evidence to show that at a general meeting held in Apr. 1856, a balance-sheet was produced & adopted, which showed entries for "annuity purchase-moneys," & a £300 for "deposits returned on shares":—*Held*: under the circumstances, the assent of the co. must be held to have been given to the transaction; and that, on the whole, the transfer by L. to the company was a valid transfer; & that he was not liable to be placed on the list of contributories.—*Re* BRITISH PROVIDENT, ETC., ASSURANCE SOCIETY, LANE'S CASE (1863), 1 De G. J. & Sm. 504; 3 New Rep. 50; 33 L. J. Ch. 84; 9 L. T. 461; 27 J. P. 804; 10 Jur. N. S. 25; 12 W. R. 60; 46 E. R. 200, L. C.

Annotations:—*Re* *Id.* *Re* British Provident Life & Fire Assce. Soc. v. Norton (1863), 3 New Rep. 147; Spackman v. Evans (1868), L. R. 3 H. L. 171; Hadley v. Hadley (1897), 77 L. T. 131. *Mentd.* Holmes v. Milward (1878), 47 L. J. Ch. 522.

3130. Purchase of shares in another company—Offer of inducement to one class of shareholders at expense of others.]—*KERRY v. MAORI DREAM GOLD MINES, LTD.* (1898), 14 T. L. R. 402, C. A.

See, further, Sect. 31, sub-sect. 2, *post*.

(d) *Mortgages.*

3131. Under article conferring general power of management.]—Directors of a shipping co., with limited liability, having power by the arts. of assocn. to do all such acts as the co. might do, not being acts which 1856 Act or the co.'s arts. of assocn. required to be done by the co. in general meeting, have power to borrow money for the purposes of the co. by mortgaging the co.'s ships.—*AUSTRALIAN, ETC., Co. v. MOUNSEY* (1858), 4 K. & J. 733; 27 L. J. Ch. 729; 31 L. T. O. S. 246; 4 Jur. N. S. 1224; 6 W. R. 734; 70 E. R. 304.

Annotations:—*Folld.* Bryon v. Metropolitan Saloon Omnibus Co. (1858), 4 Jur. N. S. 680; General Auction Estate & Monetary Co. v. Smith, [1891] 3 Ch. 432.

LIQUIDATION), NEAVE'S CASE (1895), 21 V. L. R. 442.—AUS.

d. Assignment for benefit of creditors.]—An assignment by the directors of a co. of all the estate & property of the co. to trustees for the

benefit of creditors is not *ultra vires* such directors, & does not require special statutory authority or the formal assent of the whole body of shareholders.—*HOVEY v. WHITING* (1887), 14 S. C. R. 515.—CAN.

PART III. SECT. 28, SUB-SECT. 5.—C. (d).

e. Implied from power to borrow.]—The directors of a co. incorporated under Companies Act, 1862, have the power to mtge. the property of the

Sect. 28.—Directors: Sub-sect. 5, C. (d), (e), (f) & (g).]

3132. Necessary formalities.]—Directors of a co. cannot, as such, authorise a mtge. of the co.'s property at any time or place they please, but they must be duly summoned, & a resolution of the co. properly passed for the purpose.—**SOUTHAMPTON BOAT CO., LTD. v. PINNOCK** (1864), 9 L. T. 748; 12 W. R. 330.

Annotation:—Distd. Southampton, etc., Boat Co. v. Rawlins (1864), 12 W. R. 331.

3133. Mortgage to directors.]—Where four directors of a co., registered under 1856 Act, met together & passed a resolution to mortgage, & did mortgage, part of the co.'s property to themselves & another director:—*Held*: a sale by them under the mtge. must be restrained by injunction.—**SOUTHAMPTON BOAT CO., LTD. v. MUNTZ** (1864), 9 L. T. 748; 12 W. R. 330.

Annotation:—Distd. Southampton, etc., Boat Co. v. Rawlins (1864), 12 W. R. 331.

3134. — Indemnity in respect of guarantee of company's debt.]—Two directors gave promissory notes to their co.'s bankers to secure an overdraft on the current account, & also gave guarantees to railway cos., who carried the co.'s goods on credit. The directors incurred these liabilities on the understanding that they were to have a mtge. upon the uncalled capital of the co. to indemnify them against loss, & such mtge. was accordingly executed to them. The co. had power under its memorandum & arts. to mtge. its uncalled capital to secure money borrowed:—*Held*: the mtge. in question was valid. The memorandum & arts. empowered the directors to issue securities founded or based upon uncalled capital for any legitimate business purpose of the co., & the indemnity of a director, was, under the arts., such a purpose.—*Re PYLE WORKS* (No. 2), [1891] 1 Ch. 173; 60 L. J. Ch. 114; 63 L. T. 628; 39 W. R. 235; 6 T. L. R. 142; *sub nom. Re PYLE WORKS, LTD., McILWRAITH & GOTTO'S CASES*, 2 Meg. 327.

See, also, No. 4578, *post*.

3135. Mortgage to secure advances by bank to contractor of company.]—Where the arts. of assocn. of a co. empowered the directors to raise any sum or sums of money by mtge. or charge upon all or any of the co.'s estate or effects, a mtge. made by the directors to secure past & future advances by a banker to the contractor of the co., was set aside at the instance of the co. as *ultra vires*.—**CRENVER, ETC., MINING CO., LTD. v. WILLYAMS** (1866), 35 Beav. 353; *sub nom. CREWER & WHEAL ABRAHAM UNITED MINING CO., LTD. v. WILLYAMS*, 14 L. T. 93; 14 W. R. 444; 55 E. R. 932; *on appeal*, 14 W. R. 1003, L. J.

Annotation:—Distd. National Bank of Australasia v. United Hand in Hand & Band of Hope Co. (1879), 4 App. Cas. 391.

3136. Mortgage authorised by directors after disqualification.]—**SOUTHAMPTON BOAT CO. v. RAWLINGS** (No. 3), No. 5109, *post*.

(e) Borrowing by the Company.

3137. Where no express power—Ordinary trading company.]—A co. established under 1862

co., to discharge obligations for which the shareholders are liable, & would continue liable in their own persons, if there were no mtge. The power to borrow money implies the power to mtge.—*Re NASH BRICK & POTTERY MANUFACTURING CO.* (1873), 9 N. S. R. 254.—CAN.

PART III. SECT. 28, SUB-SECT. 5.—
C. (e).

3137 i. Where no express power —

*Ordinary trading company.]—*By the deed of settlement of a paper manufacturing co., it was provided that the board of directors should have entire management of the business of the co. & of the application, investment, & disposal of its funds, & act as they thought best to promote the interests of the co. No power to borrow was given by the deed to the directors. *Semble*: the directors had an implied power to borrow.—**CITY BANK v.**

Act, for the purpose of the sale & purchase of estates & property, the granting of advances on property intended for sale, & loans on deposit of securities, & the discounting of approved commercial bills, had under its memorandum & arts. of assocn. no express power to borrow money. The co. received deposits & discounted bills, & one of its directors, who was also a depositor, advanced money to the co. upon the security of an equitable charge on realty belonging to the co., in order to enable it to repay money due to himself & another depositor. The co. was afterwards ordered to be wound up, & in an action by the liquidator to set aside the security as *ultra vires* the co.:—*Held*: the co. was a trading co., & as such had an implied power to borrow money for the purposes of its business.—**GENERAL AUCTION ESTATE & MONETARY CO. v. SMITH**, [1891] 3 Ch. 432; 60 L. J. Ch. 723; 65 L. T. 188; 40 W. R. 106; 7 T. L. R. 636.

Annotations:—Mentd. Scottish North American Trust v. Farmer (1911), 5 Tax Cas. 693; *Farmer v. Scottish North American Trust*, [1912] A. C. 118.

3138. — Construction of constitution of company.]—By the deed of settlement of a mining co., the capital of the co. was to be £50,000, & it was provided that the affairs & business of the co. should be under the sole & entire control of the directors. The deed empowered the directors, if they thought it desirable, to create new shares by vote at a special general meeting. The capital having been expended:—*Held*: the directors had no power, under the terms of this deed, to borrow money on the credit of the co., for the necessary purpose of working the mines.—**BURMESTER v. NORRIS** (1851), 6 Exch. 796; 21 L. J. Ex. 43; 17 L. T. O. S. 232; 155 E. R. 767.

Annotations:—Apld. Re German Mining Co., Ex p. Chippendale (1854), 4 De G. M. & G. 19. *Distd. MacLae v. Sutherland* (1854), 3 E. & B. 1. *Refd. Hambro v. Hull & London Fire Insce.* (1858), 3 H. & N. 789; *Yorkshire Ry. Waggon Co. v. Maclure* (1881), 19 Ch. D. 478. *Mentd. Bryson v. Warwick & Birmingham Canal Co.* (1853), 1 W. R. 462; *Ffooks v. S. W. Ry.* (1853), 1 Sm. & G. 142; *R. v. Reed* (1880), 5 Q. B. D. 483.

3139. Where limited borrowing powers—Extension of power.]—(1) Where directors of a public co. have entered into an informal agreement, within the limits of their power, it is in equity binding on the co., & this ct. will give effect to it.

(2) Art. 78 limited the power of the directors of borrowing to £10,000, unless authorised by a "general meeting." By Art. 35, a "special meeting" might authorise the borrowing of such sums as it thought fit:—*Held*: the directors might be authorised to borrow beyond £10,000, either by a general or a special meeting.—*Re STRAND MUSIC HALL CO.* (1865), 3 De G. J. & Sm. 147; 35 Beav. 153; 13 L. T. 177; 14 W. R. 6; 46 E. R. 594, L. J.

Annotations:—As to (1) *Apld. Ross v. Army & Navy Hotel Co.* (1886), 34 Ch. D. 43. *Follid. Re Queensland Land & Coal Co., Davis v. Martin*, [1894] 3 Ch. 181. *Distd. Re Johnston Foreign Patents Co., Re Johnston Die Press Co., Re Johnston Engraving Co., J. P. Trust v. The Companies* (1904), 91 L. T. 124. *Apld. Re Fireproof Doors, Umney v. Fireproof Doors*, [1916] 2 Ch. 142. *Refd. Re Perth Electric Tramways, Lyons v. Tramways Syndicate & Perth Electric Tramways*, [1906] 2 Ch. 216.

AUSTRALIAN PAPER CO. (1871), 10 N. S. W. S. C. R. 235.—AUS.

i. — Mutual insurance company.]—The directors of a mutual insurance co. may under R. S. O., c. 161, s. 29, borrow money on promissory notes or debentures without passing a by-law under seal.—**VICTORIA MUTUAL FIRE INSURANCE CO. v. THOMPSON** (1882), 32 C. P. 476.—CAN.

g. Where borrowing powers left in

Generally, Mentd. Brown, Shipley v. I. R. Comrs. (1895), 64 L. J. M. C. 241; *Re Tasker, Hoare v. Tasker*, [1905] 2 Ch. 587.

3140. — Issue of debentures at a discount.]—

It was provided by the arts. of assocn. of a limited co. that the directors might, from time to time, borrow, on behalf of the co., any sum of money not exceeding one half of the nominal capital, for the time being, of the co., & might secure the repayment thereof, or raise any money authorised to be borrowed by them by mtge. of the undertaking, or by the issue, on behalf of the co., of debentures, promissory notes or bills of exchange, or in such manner as the directors deemed expedient:—*Held*: the directors were thereby authorised to raise money by the issue of debentures at a discount.—*Re* ANGLO-DANUBIAN STEAM NAVIGATION & COLLIERY CO. (1875), L. R. 20 Eq. 339; *sub nom. Re* ANGLO-DANUBIAN STEAM NAVIGATION CO., *Ex p.* INTERNATIONAL FINANCIAL ASSOCN., 44 L. J. Ch. 502; 33 L. T. 118; 23 W. R. 783.

Annotations:—Mentd. Mainland v. Upjohn (1889), 41 Ch. D. 126; *Re Tasker, Hoare v. Tasker*, [1905] 2 Ch. 587.

3141. — Borrowing in excess—Ratification.]—

—Arts. of a co. registered under a Colonial statute adopting 1862 Act, provided that, subject to powers given at meetings of shareholders, the directors should have power to borrow on the property of the co. any sum “not exceeding in the aggregate one half the paid up capital.” The arts. further provided that one half of the votes of the shareholders called for the purpose should be “necessary” to enlarge, extend, rescind or alter all or any of the provisions contained therein. The directors exceeded their borrowing powers:—*Held*: the limitation of the power of borrowing was merely a limitation of the authority of the directors, & was not part of the constitution of the co. The act of the directors might be ratified by the co. at a half-yearly meeting, but such ratification would not enlarge the borrowing powers of the directors for the future.—*IRVINE v. UNION BANK OF AUSTRALIA* (1877), 2 App. Cas. 366; L. R. 4 Ind. App. 86; 46 L. J. P. C. 87; 37 L. T. 176; 25 W. R. 682, P. C.

Annotations:—Refd. Grant v. United Kingdom Switch-back Rys. (1888), 40 Ch. D. 135; *Boschoek Proprietary Co. v. Fuke*, [1906] 1 Ch. 148. *Mentd.* Melbourne Banking Corpn. v. Brougham (1879), 4 App. Cas. 158; *Re* London & New York Investment Corpn., [1895] 2 Ch. 860.

Banking company.]—See BANKERS & BANKING, Vol. III., p. 145, Nos. 156–160.

Insurance society.]—See No. 3274, *post*.

Borrowing by company, generally, see Sect. 34, *post*.

(f) Loans by Directors to Company.

Right of indemnity.]—See Nos. 3096–3098, *ante*.

Priority over debenture-holders.]—See No. 6727, *post*.

(g) Loans by Company.

3142. Where company empowered to lend

hands of directors—Power of shareholders by resolution.]—A majority of shareholders of the Y. Gas Light Co., at a special meeting of the co., voted to purchase an electric light plant, & also the patent for Canada for a gas governor, & for such purposes, to issue bonds of the co. to the amount of \$36,000, secured by the hypothecation of the real & personal property of the co. At a subsequent meeting it was resolved to increase the capital stock of the co. from \$36,000 to \$100,000, & to issue bonds to the extent of \$75,000, & authority was given to the president

of the co., to sign & execute such bonds. At a meeting of the directors of the co. it was resolved that it was inexpedient to borrow any sum of money or to issue any bonds, & the directors declined to borrow any money for any of the purposes mentioned. By sect. 17 of the Act of incorporation of the co. authority was given to the co. to borrow “such sum of money . . . as the directors shall deem necessary for carrying out any of the objects or purposes of this act,” & by bye-law 10 of the co. the directors of the co.

money—Loans to directors only on security—Directors can accept company’s shares as security.]

—(1) The liquidator in the winding up of a limited co. can recover from the directors dividends improperly paid by them, even though the creditors of the co. have been satisfied.

(2) Art. 15 of a limited banking co. provided that the co. should have a paramount lien on all the shares held by any shareholder for all his debts to the co. & empowered the directors in case of non-payment of any such debt or in the event of the bkpcy. of the shareholder to sell his shares & apply the proceeds in discharge of his debt. Art. 98 empowered the directors to lend the funds of the co. or give credit, with or without security, & provided that no advances without security should be made or credit given to any director:—*Held*: the lien given by Art. 15 was a security within Art 98 & a loan might be made to a director without any other security than the lien, if the board considered his shares to be of sufficient value.—*Re* NATIONAL BANK OF WALES, LTD., [1899] 2 Ch. 629; *sub nom. Re* NATIONAL BANK OF WALES, CORY’S CASE, 68 L. J. Ch. 634; 81 L. T. 363; 48 W. R. 99; 15 T. L. R. 517; 43 Sol. Jo. 705, C. A.; *on appeal, sub nom. DOVEY v. CORY*, [1901] A. C. 477, H. L.

Annotations:—As to (1) *Refd.* Merchants’ Fire Office v. Armstrong (1901), 17 T. L. R. 709. *Generally, Mentd.* Bond v. Barrow Haematite Steel Co., [1902] 1 Ch. 353; *Re* Crichton’s Oil Co., [1902] 2 Ch. 86; *Lucas v. Fitzgerald* (1903), 20 T. L. R. 16; *Re* Welsbach Incandescent Gas Light Co., [1904] 1 Ch. 87; *Exploring Land & Minerals Co. v. Kolkemann* (1905), 94 L. T. 234; *Prefontaine v. Grenier*, [1907] A. C. 101; *Ammonia Soda Co. v. Chamberlain*, [1918] 1 Ch. 266.

3143. — Loan to servant of company.]—An art. empowering directors on behalf of a co. to “lend money” & generally undertake such other financial operations as might in their opinion be incidental or useful to the general business of the co.:—*Held*: to authorise a loan to a faithful & confidential servant of the co.—*RAINFORD v. KEITH (JAMES) & BLACKMAN CO., LTD.*, [1905] 2 Ch. 147; 74 L. J. Ch. 531; 92 L. T. 786; 54 W. R. 189; 21 T. L. R. 582; 49 Sol. Jo. 551; 12 Mans. 278, C. A.

Annotations:—Mentd. Guy v. Waterlow & Layton (1909), 25 T. L. R. 515; *Mackereth v. Wigan Coal & Iron Co.*, [1916] 2 Ch. 293.

3144. — Loan to another company—Director of lending company interested in borrowing company—Duty to disclose.]—A co. lent another co. a sum of money secured by a debenture of the borrowing co. The lending co. was induced to lend the money by K., one of its directors, who was interested in the borrowing co., & in his private capacity had acquired the knowledge that the directors of the borrowing co. intended to use the money borrowed for purposes outside the purposes authorised by their memorandum & arts. of assocn., which, however, gave the co. a general power of borrowing for the purposes of its business. K. was the only director of the lending co. who knew how the money was to be applied:—*Held*: the knowledge of K. ought not

were authorised to borrow such sum of money “as they may deem necessary to carry out the objects or purposes of the act of incorporation”:—*Held*: the borrowing power having been thus restricted & left in the hands of the directors, the shareholders could not, by resolution direct the negotiation of a loan contrary to the wishes of the directors or authorise one of the officers of the co. to execute the necessary documents in the name & on behalf of the corpn.—*CANN v. EAKINS* (1891), 23 N. S. R. 475.—*CAN.*

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to be imputed to the lending co., as there was no legal duty on the director to impart his knowledge, nor any duty on the lending co. to have acquired the knowledge, & the debenture was a valid security.—*Re PAYNE (DAVID) & Co., LTD., YOUNG v. PAYNE (DAVID) & Co., LTD.*, [1904] 2 Ch. 608; 73 L. J. Ch. 849; 91 L. T. 777; 20 T. L. R. 590; 48 Sol. Jo. 572; 11 Mans. 437, C. A. *Annotations:—**Apld.* Sun Bldg. Soc. v. Western Suburban & Harrow Road Permanent Bldg. Soc., [1920] 2 Ch. 144. *Refd.* Rainford v. Keith & Blackman Co. (1905), 74 L. J. Ch. 531.

(h) Application of Company's Funds.

3145. General rule.]—(1) The governing body of a corpn., which is in fact a trading partnership, cannot in general use the funds of the community for any purpose other than those for which they are constituted, whether that governing body is exclusively directors, or a council general, or the majority at a general meeting of the co. Therefore the special powers given either to the directors or to a majority by the statutes or other constituent documents of the assocn., are always to be construed as subject to a paramount & inherent restriction, that they are to be exercised in subjection to the special purposes of the original bond of assocn. That is not a mere canon in the English municipal law, but a great & broad principle, which must be taken, in the absence of proof to the contrary, as part of any given system of jurisprudence.

(2) The costs of a prosecution for libel instituted by the directors of a trading co. are not properly payable out of the assets of the co. Such payments will accordingly be restrained for the future; but it does not follow that the directors will be ordered to repay past costs so discharged by them.—*PICKERING v. STEPHENSON* (1872), L. R. 14 Eq. 322; 41 L. J. Ch. 493; 26 L. T. 608; 20 W. R. 654.

*Annotations:—**As to* (2) *Folld.* Studdert v. Grosvenor (1886), 33 Ch. D. 528. *Distd.* *Re* Faure Electric Accumulator Co. (1888), 40 Ch. D. 141. *Dttd.* Cullerne v. London & Suburban General Permanent Bldg. Soc. (1890), 25 Q. B. D. 485. *Expld.* Peel v. L. & N. W. Ry., [1907] 1 Ch. 5. *Refd.* Tomkinson v. S. E. Ry. (1887), 35 Ch. D. 675; *Re* Liverpool Household Stores Assocn. (1890), 59 L. J. Ch. 616; *Re* Sharpe, *Re* Bennett Masonic & General Life Assoc. v. Sharpe, [1892] 1 Ch. 154; *Breay v. Royal British Nurses' Assocn.* (1897), 76 L. T. 735.

3146. —.]—*Re* KINGSTON COTTON MILL CO. (No. 2), No. 3861, *post*.

Particular companies, *see* Titles *passim*.

(i) Negotiable Instruments.

3147. As to bills of exchange—Acceptance—Where no express authority—One director cannot bind others by acceptance.]—In the absence of any evidence of express authority in one of the directors

of a joint-stock co. to bind the rest of the directors or the shareholders by his acceptance of bills of exchange, no such authority can be implied by law.—*BRAMAH v. ROBERTS* (1837), 3 Bing. N. C. 963; 3 Hodg. 191; 5 Scott, 172; 6 L. J. C. P. 346; 132 E. R. 682.

Compare No. 3039, *ante*, Nos. 3436, 4078, *post*.

Banking company.]—*See* BANKERS, Vol. III., pp. 145, 146, Nos. 158–160.

Liability on negotiable instruments.]—*See* Subsect. 6, F. (d), *post*.

(j) Legal Proceedings.

3148. Payment of costs out of assets of company—Proceedings by secretary under authority of directors—Action for malicious prosecution against member.]—A secretary of a co. was prosecuted by a shareholder for issuing, in his capacity as secretary, a false balance-sheet. The prosecution failed & the secretary was maintained in an action for malicious prosecution against the shareholder, in which he obtained a verdict for £50 damages, by a resolution of the directors authorising the secretary to instruct the co.'s solrs. to take such proceedings, at the co.'s expense, with reference to the prosecution as they might be advised. The ct. refused, at the suit of the shareholder, to restrain the taxation of costs, & subsequent proceedings in the action, & left the question of maintenance to be dealt with by the ct. of law.—*ELBOROUGH v. AYRES* (1870), L. R. 10 Eq. 367; 39 L. J. Ch. 601; 23 L. T. 68; 18 W. R. 913.

3149. — Proceedings by directors—Prosecution for libel.]—*PICKERING v. STEPHENSON*, No. 3145, *ante*.

3150. — — — Unsuccessful petition to wind up company.]—A proviso in the arts. of assocn. of a co. that the directors may "at any time direct any action or other legal proceedings to be commenced & prosecuted on behalf of the co. in the name of the co. or of such officer or other person as the directors may be advised, & may defend any action, etc., & may release, discontinue, or compromise any such action or other proceeding as they shall deem expedient, & they shall be indemnified out of the funds of the co. against all costs, damages, & expenses by reason of such action, suit, or proceedings," does not authorise the application by the directors of the assets of the co. in paying the costs of a petition for winding up the co. presented by themselves, but opposed by a number of the shareholders & a minority of the directors, & the costs of an appeal from the dismissal of such petition; & such intended application will be restrained as an act illegal & *ultra vires*.—*SMITH v. MANCHESTER (DUKE)* (1883), 24 Ch. D. 611; 53 L. J. Ch. 96; 49 L. T. 96; 32 W. R. 83.

PART III. SECT. 28, SUB-SECT. 5.—C. (h).

h. Fraudulent appropriation.]—By the bye-laws of an incorporated co. the board of directors was to consist of three persons, two of whom constituted a quorum. At a meeting, at which two of the directors, C. & G., *pltf.*, were present, one being the president & the other the secretary of the co., a resolution was passed that "the matter of the compensation of C., the editor, & G., the advertising solr., of the co. was considered, & the sum of \$1,000 each be ordered to be placed to their respective credits in the books of the co. for services rendered during 1895 in addition to their regular salary, & to be charged to their

salary account." C., as a matter of fact, had not been appointed editor, or G. advertising solr., the object of the resolution being to appropriate all the funds of the co., & to prevent a stockholder, who owned the greater part of the stock, & had made a claim against the co., being paid:—*Held*: that the resolution could not be sustained, nor could any moneys received under it be retained.—*GARDNER v. CANADIAN MANUFACTURER PUBLISHING CO., LTD.* (1899), 31 O. R. 488.—*CAN.*

k. Costs of petition against bill for amalgamation.]—A bill having been brought into Parliament to amalgamate two railway cos., one of which, by a former Act, had been leased to

the other, the directors of the leased line resolved to petition against the amalgamation, & authorised a certain sum of the co.'s funds to be uplifted in order to defray the expense:—*Held*: this was a competent application of the co.'s funds, & it fell within the powers of the directors.—*BLACKBURN v. STEWART* (1851), 13 Dunl. (Ct. of Sess.) 1243.—*SCOT.*

PART III. SECT. 28, SUB-SECT. 5.—C. (i).

l. As to bills of exchange—Acceptance—No express authority—Ordinary course of business.]—*BANK OF HAMILTON v. MUTUAL FRUIT CO., LTD.*, [1921] 1 W. W. R. 727.—*CAN.*

D. Delegation of Powers.

3151. Power vested in directors by constitution of company—Allotment of shares.]—Where the power of allotting shares is vested by the deed of settlement of a co. in the directors, they have no right to delegate such power.—*Re LEEDS BANKING CO., HOWARD'S CASE* (1866), 1 Ch. App. 561; 36 L. J. Ch. 42; 14 L. T. 747; 12 Jur. N. S. 655; 14 W. R. 942, L. JJ.

Annotations:—Distd. Re Imperial Land Co. of Marseilles, Harris' Case (1872), 7 Ch. App. 589, n. *Reid. New Sombrero Phosphate Co. v. Erlanger* (1877), 5 Ch. D. 73.

3152. Under power in articles—Allotment of shares.]—A committee appointed by the directors of a co. allotted 100 shares to an appct., & the secretary of the co. put into the post a letter addressed to appct. informing him that shares had been allotted to him:—*Held*: under the arts. of assocn. of the co., the allotment of shares by the committee instead of by the whole board of directors, was valid.—*Re IMPERIAL LAND CO. OF MARSEILLES, HARRIS' CASE* (1872), 7 Ch. App. 587; 41 L. J. Ch. 621; 26 L. T. 781; 20 W. R. 690, L. JJ.

Annotations:—Mentd. Re Imperial Land Co. of Marseilles, Walls' Case (1872), L. R. 15 Eq. 18; *Evans v. Nicholson* (1875), 32 L. T. 778; *Taylor v. Jones* (1875), 1 C. P. D. 87; *Brogden v. Met. Ry.* (1877), 2 App. Cas. 666; *Household Fire Insce. v. Grant* (1879), 4 Ex. D. 216; *Byrne v. Van Tienhoven* (1880), 5 C. P. D. 344; *Henthorn v. Fraser*, [1892] 2 Ch. 27; *Carlill v. Carbolic Smoke Ball Co.*, [1893] 1 Q. B. 256; *Re London & Northern Bank, Ex p. Jones*, [1900] 1 Ch. 220.

3153. — To delegate to committee—Delegation to chairman.]—M. applied for shares in a co. in faith of the prospectus, & paid the deposit on application. Subsequently he received an altered prospectus announcing a change of directors & an alteration in the contract for purchase of the works. He wrote withdrawing his application, but the letter of allotment was posted before the co. received his letter. M. refused to pay the amount due on allotment, & instructed his solr. to commence an action to recover his deposit. The directors had, by the arts. of assocn., power to delegate their powers to "committees consisting of members of their body" & the interpretation clause provided that "words importing the plural shall include the singular":—*Held*: the directors had power to delegate to the chairman their power to compromise M.'s claim.—*Re SCOTTISH PETROLEUM CO., MACLAGAN'S CASE* (1882), 51 L. J. Ch. 841; 46 L. T. 880.

3154. — Committee of one.]—There is

nothing to prevent the delegation by the directors of all the powers to one director as the committee of the board, if the articles of association authorise such delegation.—*Re TAURINE CO.* (1883), 25 Ch. D. 118; 53 L. J. Ch. 271; 32 W. R. 129; *sub nom. Re TAURINE CO., LTD., BECKWITH & ROBINSON'S CASE*, 49 L. T. 514, C. A.

Annotations:—Mentd. Re Russell Hunting Record Co., [1910] 2 Ch. 78; *Re Havana Exploration Co., Nathan's Claim*, [1916] 1 Ch. 8.

3155. — No quorum specified—All members must be present.]—*Re LIVERPOOL HOUSEHOLD STORES ASSOCN., LTD., No. 3343, post.*

3156. — Committee appointed mala fide—Exclusion of other directors.]—*BRAY v. SMITH* (1908), 124 L. T. Jo. 293.

3157. — One director appointed to negotiate sale of business—Authority of director.]—*FRIARY, HOLROYD & HEALY'S BREWERIES, LTD. v. MARINE HOTEL (SELSEY), LTD.* (1921), 152 L. T. Jo. 310.

3158. Under power to appoint manager—Power to buy shares.]—The directors of a co. having under the arts. of assocn. power to buy shares in the co. & to appoint a manager, appointed a manager. A shareholder agreed with the manager for the sale to the co. of his shares, & executed a transfer of his shares to two directors who were trustees for the co. The transfer was not executed by the two directors but was registered:—*Held*: the directors had no authority to delegate to a manager the power to buy shares; on the facts the directors had not delegated that power or ratified the transaction with the shareholder, & the directors were not considered to have such knowledge of the books of the co. as to be affected with knowledge of the transaction.—*Re COUNTY PALATINE LOAN & DISCOUNT CO., CARTMELL'S CASE* (1874), 9 Ch. App. 691; 43 L. J. Ch. 588; 31 L. T. 52; 22 W. R. 697, L. JJ.

E. Ratification of Acts in Excess of Powers.

3159. What acts capable of ratification—Act contravening articles as to qualification or remuneration of director.]—*BOSCHOEK PROPRIETARY CO., LTD. v. FULKE*, No. 2893, *ante*.

3160. —.]—The first ground of complaint is one which, though it might *prima facie* entitle the corpn. to rescind the transactions complained of, does not absolutely & of necessity fall under the description of a void transaction. The corpn. might elect to adopt those transactions, & hold the directors bound by them. In other words,

PART III. SECT. 28, SUB-SECT. 5.—D.

m. Allotment of shares or making calls.]—A board of directors cannot delegate to its officers or to third parties its statutory powers to allot stock, or make calls.—*Re BOLT & IRON CO., HOVEDEN'S CASE* (1884), 10 P. R. 434.—**CAN.**

n. —.]—An application for shares was never brought before or dealt with by the directors, but the secretary notified appct. that the directors had allotted him the shares in accordance with his application. They had not, however, passed a by-law or otherwise ordained, as required by Ont. Cos. Act, s. 26; they had merely passed a resolution that "the secretary be instructed to allot all stock as applications are passed in":—*Held*: the directors could not delegate their duty to a subordinate officer.—*Re PAKENHAM PORK PACKING CO., GALLOWAY'S CASE, RODMAN'S CASE, HIGGINBOTHAM'S CASE* (1906), 12 O. L. R. 100; 7 O. W. R. 658.—**CAN.**

3153 i. Under power in articles—To delegate to committee.]—In the absence of express provision, the provisional

directors had no power to delegate their powers to committees.—*MONARCH LIFE INSURANCE CO. v. BROPHY* (1907), 14 O. L. R. 1; 9 O. W. R. 151.—**CAN.**

3153 ii. —.]—Where the directors of a co. are authorised by the arts. of assocn. to delegate any of their powers to a Committee of their number such delegation must be exercised *bona fide* & the directors cannot make use of such power for the purpose of excluding one of their number from acting as director.—*ROBINSON v. IMROTH*, [1917] W. L. D. 159.—**S. AF.**

o. — Power to lease.]—Pltf., by what purported to be a deed under the Leases Facilitation Act, let certain premises to defts., a trading corpn. on whose behalf a lease was signed by their managing director but without affixing to it the seal of the co. Defts. entered under the lease & paid rent for part of the term, but ceased to occupy before it expired, & in answer to an action for the rent due for the remainder of the term, set up that the lease was not sealed with the co.'s seal, or signed by two directors as required by the arts. of assocn.:—*Held*: since

under the arts. of assocn. the directors had power to take a lease & to delegate their powers to a managing director who in fact signed it, pltf. was entitled to assume that the managing director had the authority of the co. to sign & the lease was binding on the co.—*PLOMLEY v. STEANES, LTD.* (1898), 19 N. S. W. L. R. 215.—**AUS.**

p. Under power to appoint "alternates"—Directors not liable for acts or omissions of "alternates."]—Where directors of a co. are empowered by their trust deed to appoint "alternates" to act in their absence, such "alternates," when duly appointed, & not the directors for whom they are acting are liable to the co. for their acts & omissions.—*ORANGE RIVER LAND & ASBESTOS CO.'S TRUSTEES v. HIRSCH* (1892), 10 S. C. 71.—**S. AF.**

PART III. SECT. 28, SUB-SECT. 5.—E.

q. Acts capable of ratification—Mortgage.]—A mortgage made by the directors of a co. prior to the consent of its shareholders, without which consent there was no power to borrow, may be ratified by the shareholders.—

Sect. 28.—Directors: Sub-sect. 5, E.; sub-sect. 6, A.]

the transactions admit of confirmation at the option of the corp'n. The second ground of complaint may stand in a different position; I allude to the mortgaging in a manner not authorised by the powers of the Act. This, being beyond the powers of the corp'n., may admit of no confirmation whilst any one dissenting voice is raised against it (*WIGRAM, V.-C.*).—*FOSS v. HARBOTTLE* (1843), 2 Hare, 461; 67 E. R. 189.

Annotations:—*Reid. Mozley v. Alston* (1847), 1 Ph. 790; *Lord v. Copper Miners' Co.* (1848), 1 H. & Tw. 85; *Bagshaw v. Eastern Union Ry.* (1849), 7 Hare, 114; *Salomons v. Laing* (1850), 6 Ry. & Can. Cas. 289; *Kent v. Jackson* (1851), 14 Beav. 367; *Re Norwich Yarn Co., Ex p. Bignold* (1856), 22 Beav. 143; *Taunton v. Royal Insce.* (1864), 2 Hem. & M. 135; *Hoole v. G. W. Ry.* (1867), 3 Ch. App. 262; *Studdert v. Grosvenor* (1886), 33 Ch. D. 528; *Tomkinson v. S. E. Ry.* (1887), 56 L. T. 812; *Tlessen v. Henderson*, [1899] 1 Ch. 861; *Normandy v. Ind. Coope*, [1908] 1 Ch. 84; *Foster v. Foster*, [1916] 1 Ch. 532; *Lawson v. Financial News* (1917), 34 T. L. R. 52. **Mentd.** *Cooper v. Shropshire Union Ry. & Canal Co.* (1849), 6 Ry. & Can. Cas. 136; *Edwards v. Shrewsbury & Birmingham Ry.* (1849), 2 Do G. & Sm. 537; *Yetts v. Norfolk Ry.* (1849), 5 Ry. & Can. Cas. 487; *Henry v. G. N. Ry.* (1857), 4 K. & J. 1; *Hodgkinson v. National Live Stock Insce.* (1859), 26 Beav. 473; *Hare v. L. & N. W. Ry.* (1861), 2 John. & H. 80; *White v. Carmarthen, etc. Ry.* (1863), 1 Hem. & M. 786; *East Pant Du United Lead Mining Co. v. Merryweather* (1864), 5 New Rep. 166; *Fraser v. Whalley, Gartside v. Whalley* (1864), 2 Hem. & M. 10; *Grogory v. Patchett* (1864), 33 Beav. 595; *Atwood v. Merryweather* (1867), L. R. 5 Eq. 464, n.; *Hallows v. Fernie* (1867), L. R. 3 Eq. 520; *Seaton v. Grant* (1867), 36 L. J. Ch. 638; *Clinch v. Financial Corp'n.* (1868), L. R. 5 Eq. 450; *Turquand v. Marshall* (1869), 4 Ch. App. 376; *Pickering v. Stephenson* (1872), L. R. 14 Eq. 322; *Featherstone v. Cook* (1873), 21 W. R. 835; *Gray v. Lewis, Parker v. Lewis* (1873), 8 Ch. App. 1035; *Trade Auxiliary Co. v. Vickers* (1873), 21 W. R. 836; *Menier v. Hooper's Telegraph Works* (1874), 9 Ch. App. 350; *Ward v. Sittingbourne & Sheerness Ry.* (1874), 9 Ch. App. 490, n.; *MacDougall v. Gardiner* (1875), 1 Ch. D. 13; *MacDougall v. Gardiner* (1875), 10 Ch. App. 606; *Russell v. Wakefield Waterworks Co.* (1875), L. R. 20 Eq. 474; *Duckett v. Gover* (1877), 25 W. R. 554; *Pender v. Lushington* (1877), 6 Ch. D. 70; *Isle of Wight Ry. v. Tahourdin* (1883), 25 Ch. D. 320; *Willing v. Mot. Dist. Ry.* (1888), 4 T. L. R. 723; *Lever v. Land Securities Co., De Carteret v. Land Securities Co.* (1893), 70 L. T. 323; *Southern Counties Deposit Bank v. Rider & Kirkwood* (1895), 73 L. T. 374; *Compagnie De Mayville v. Whitley*, [1896] 1 Ch. 788; *Wall v. London & Northern Assets Corp'n.* (1898), 79 L. T. 249; *Whitwam v. Watkin* (1898), 78 L. T. 188; *Alexander v. Automatic Telephone Co.*, [1900] 2 Ch. 56; *Burland v. Earle*, [1902] A. C. 83; *Punt v. Symons*, [1903] 2 Ch. 506; *Steel v. South Wales Miners' Federation* (1907), 96 L. T. 260; *Kirsopp v. Highton* (1911), 28 T. L. R. 129; *Dominion Cotton Mills Co. v. Amyot*, [1912] A. C. 546; *Fruit & Vegetable Growers' Asscn. v. Kekewich*, [1912] 2 Ch. 52; *Baillie v. Oriental Telephone & Electric Co.*, [1915] 1 Ch. 503; *Piercy v. Mills* (1919), 122 L. T. 20.

3161. — Return of capital.]—*KENT v. JACKSON*, No. 3276, *post*.

3162. — Sale of property to company.]—Appl't., being a director & the owner of nearly half the shares in a shipping co., contracted to sell

a ship to the co., & such contract was ratified by a majority of the shareholders:—*Held*: although the contract could not have been enforced against the co. at the instance of appl't., it was within the competency of a majority of the shareholders to adopt it, & such adoption must prevail unless brought about by unfair means.—*NORTH-WEST TRANSPORTATION Co. v. BEATTY* (1887), 12 App. Cas. 589; 56 L. J. P. C. 102; 57 L. T. 426; 36 W. R. 647; 3 T. L. R. 789, P. C.

Annotations:—*Reid. Castello v. London General Omnibus Co.* (1912), 107 L. T. 575. **Mentd.** *Salomon v. Salomon*, *Salomon v. Salomon*, [1897] A. C. 22; *Burland v. Earle*, [1902] A. C. 83; *Bath v. Standard Land Co.*, [1911] 1 Ch. 618; *Dominion Cotton Mills Co. v. Amyot*, [1912] A. C. 546; *Ving v. Robertson & Woodcock* (1912), 56 Sol. Jo. 412; *Transvaal Lands Co. v. New Belgium (Transvaal) Land & Development Co.*, [1914] 2 Ch. 488; *Cook v. Deeks*, [1916] 1 A. C. 554; *Phillips v. Manufacturers' Securities* (1917), 86 L. J. Ch. 305.

3163. Sufficiency—Contract ultra vires directors intra vires company—Ratification by resolution of general meeting sufficient.]—Although a resolution giving the directors powers to do certain acts in future which they are not authorised by the arts. to do, would be an alteration of the articles, & requires to be passed as a special resolution, the adoption of a contract which is within the objects of the co., but which the directors have entered into without authority, is not an alteration of the arts., & can be effected by ordinary resolution.—*GRANT v. UNITED KINGDOM SWITCHBACK RYS. Co.* (1888), 40 Ch. D. 135; 60 L. T. 525; 5 T. L. R. 92; 1 Meg. 117; *sub nom.* *GRANT v. THOMPSON'S PATENT GRAVITY SWITCHBACK RYS. Co.*, 58 L. J. Ch. 211; 37 W. R. 312, C. A.

3164. — By acquiescence.]—Although absent shareholders are not bound to do anything more than assume that their directors are doing their duty; yet, if they receive notice that the directors are exceeding their legal powers, & with that knowledge, they remain a long time without actively objecting to what has been done, they must be held, by their acquiescence, to have ratified the irregular transaction.—*EVANS v. SMALLCOMBE* (1868), L. R. 3 H. L. 249; 37 L. J. Ch. 793; *sub nom.* *EVANS v. SMALLCOMBE, Re AGRICULTURISTS' CATTLE INSURANCE Co.*, 19 L. T. 207, H. L.; *affg.* *S. C. sub nom. Re AGRICULTURISTS' CATTLE INSURANCE Co., SMALLCOMBE'S CASE* (1867), L. R. 3 Eq. 769.

Annotations:—*Expld. & Distd. Ashbury Ry. Carriage & Iron Co. v. Riche* (1875), L. R. 7 H. L. 653. **Reid.** *Re Agriculturist Cattle Insce., Dixon's Case* (1869), 21 L. T. 288; *Murray v. Bush* (1873), 22 W. R. 280; *Hadley v. Hadley* (1897), 77 L. T. 131; *Ho Tung v. Man On Insce.* (1901), 71 L. J. P. C. 46. **Mentd.** *Houldsworth v. Evans* (1868), L. R. 3 H. L. 263.

3165. —.]—*PHOSPHATE OF LIME Co. v. GREEN*, No. 2733, *ante*.

ADAMS & BURNS v. BANK OF MONTREAL (1900), 32 S. C. R. 719.—**CAN.**

r. Sufficiency.]—Where a shareholder had at a meeting moved the adoption of a report containing a statement of personal liabilities of directors & an account of the transactions in respect of which they had been incurred:—*Held*: sufficient ratification.—*TOOHKY v. McCULLA* (1889), 10 N. S. W. Eq. 264; 6 N. S. W. W. N. 106.—**AUS.**

s. — Must be by all shareholders.]—The arts. of assocn. of a co. empowered the directors to exercise all such powers of the co. as were not by Companies Statute, 1864, or by the co.'s own regulations required to be exercised in general meeting. The arts. also empowered the directors to forfeit shares:—*Held*: the power to accept a surrender of shares, was not a power of the co. & the acceptance of a surrender was *ultra vires* of the directors; &

an acquiescence of the co. in this act of the directors must be an acquiescence by all other shareholders.—*Re BRACONSFIELD HEIGHTS ESTATE Co., LTD., ASHER'S, FIELD'S & SMITH'S CASES* (1896), 22 V. L. R. 97.—**AUS.**

t. — Ratification by resolution of general meeting.]—Ratification of an unauthorised act of directors only requires the sanction of an ordinary resolution of a general meeting if the act is within the powers of the co.—*COLHOUN v. GREEN*, [1919] V. L. R. 196.—**AUS.**

a. —.]—Where certain shares were allotted to one of the directors of a co. at par, in consideration of which he offered to supply funds to meet a pressing demand upon the co., & he voted on these shares at a general meeting of the shareholders, & no opposition was at the time made to his so doing:—*Held*: the shareholders must be considered to have

ratified the transfer, & could not afterwards object to it as improper.—*CHRISTOPHER v. NOXON* (1883), 4 O. R. 672.—**CAN.**

b. —.]—Directors having borrowed on overdraft, & the overdraft having appeared for a number of years in the annual balance sheets posted to all the shareholders, & these balance-sheets having been adopted without objection at the annual meeting of shareholders:—*Held*: the power to borrow on overdraft being a power which the shareholders might have given to the directors (if necessary) by a new article for the purpose, the incurring of an overdraft was an act which was capable of being ratified by the whole body of shareholders; & it had been so ratified.—*UNION BANK OF AUSTRALIA, LTD. v. SOUTH CANTERBURY BUILDING & INVESTMENT Co., LTD.* (1894), 13 N. Z. L. R. 489.—**N.Z.**

c. — Want of knowledge of

3166. Effect of ratification—Relation back.]—Subsequently to some negotiations between A., a director of a co., & L., an offer by letter was made by L. to the co. to take from it a lease of its property. On Dec. 9, 1886, A. wrote to L. saying that his offer should be laid before the directors, & on Dec. 13, 1886, A. again wrote to L. to inform him that the directors accepted his offer, & that the co.'s solrs. had been instructed to prepare the necessary documents. On Jan. 13, 1887, L. wrote to the co. alleging that he had discovered that he had been misled as to certain facts, & stating that he therefore withdrew all offers made to the co. An action was thereupon brought by the co. against L. claiming specific performance of the contract, & damages. It appeared that at the time when A. wrote accepting L.'s offer, he, although acting perfectly *bonâ fide*, had not in fact obtained the formal authority of the co. to enter into the contract, & the contract was not ratified by the co. until after L.'s repudiation thereof:—*Held*: the ratification by the co. related back to the date of the contract, & the repudiation by L. was of no avail, notwithstanding that the co. itself was not bound by the contract until the ratification thereof took place.—**BOLTON PARTNERS v. LAMBERT** (1889), 41 Ch. D. 295; 58 L. J. Ch. 425; 60 L. T. 687; 37 W. R. 434; 5 T. L. R. 357, C. A.

Annotations:—**Appld.** *Re Portuguese Consolidated Copper Mines, Ex p. Badman, Ex p. Bosanquet* (1890), 45 Ch. D. 16. **Refd.** *Metropolitan Asylum Board Managers v. Kington* (1890), 6 T. L. R. 217; *Dibbins v. Dibbins*, [1896] 2 Ch. 348; *Re Hemp, Yarn, & Cordage Co., Hindleys Case* (1896), 74 L. T. 627; *Re Tiedemann & Ledermann Frères*, [1899] 2 Q. B. 66; *Fleming v. Bank of New Zealand*, [1900] A. C. 577; *Re Gloucester Municipal Election Petition 1900, Ford v. Newth*, [1901] 1 K. B. 683; *Reynolds v. Atherton* (1921), 125 L. T. 690. **Mentd.** *Bristol, Cardiff & Swansea Aerated Bread Co. v. Maggs* (1890), 44 Ch. D. 616; *Cook v. Williams* (1897), 13 T. L. R. 481.

3167. — Borrowing in excess of powers.]—**IRVINE v. UNION BANK OF AUSTRALIA**, No. 3141, *ante*.

SUB-SECT. 6.—LIABILITIES.

A. In General.

3168. On contract—Personal undertaking to pay—Liability of projected company.]—A bill incurred by a projected co. was ordered to be taxed upon the submission of four of the directors to pay. An official manager was afterwards appointed for winding up the co. The ct. refused to restrain the solrs. from enforcing payment against the directors, the undertaking being personal.—**Re SUDLOW & KINGDOM** (1850), 12 Beav. 527; 14 Jur. 1126; 50 E. R. 1162; *sub nom. Re SUDLOW & KINGDON, Ex p. DOVER & DEAL RY. CO.*, 19 L. J. Ch. 524.

3169. — Qualified signature.]—By

*shareholders.]—*Where it did not appear that the shareholders had been fully informed as to an arrangement for payment of a commission to the secretary in addition to his regular salary:—*Held*: the resolution of the shareholders had not the effect of ratifying the payment of the commission.—**ROUNTREE v. SYDNEY LAND & LOAN CO.** (1907), 39 S. C. R. 614.—**CAN.**

d. Effect of ratification—Subsequent acts.]—The ratification by a co. of particular acts done by its directors in excess of the authority given them by the arts. of the co. does not extend the powers of the directors so as to give validity to acts of a similar character done subsequently.—**IRVINE v. UNION BANK OF AUSTRALIA** (1877), 1 L. R. 3 Calc. 280.—**IND.**

e. — On rights of shareholders.]—Although a director is not the agent of the shareholders to commit a fraud, if they adopt & seek to enforce a contract entered into by him as their authorised agent, they cannot repudiate a fraud committed by him which led to the contract, & was immediately connected with it.—**Re TIPPERARY JOINT-STOCK BANK, Ex p. GINGER** (1856), 5 I. Ch. R. 174; 1 Ir. Jur. 373.—**IR.**

PART III. SECT. 28, SUB-SECT. 6.—A.

f. In respect of irregularities before appointment—Promotion money improperly paid to director—Refunding.]—Shortly after the incorporation of the co., at a meeting of the provisional directors, who were then the only shareholders, a resolution was passed

agreement between the T. co. & pltf., defts describing themselves as "we, the undersigned, three of the directors" agreed to repay £500 advanced by pltf. to the co. & assigned to pltf. as security for the advance certain machines & tools, which were the property of the co.:—*Held*: defts. were personally liable to replay the £500.—**MCCOLLIN v. GILPIN** (1881), 6 Q. B. D. 516; 44 L. T. 914; 45 J. P. 828; 29 W. R. 408, C. A.

See, generally, AGENCY, Vol. I., pp. 628 et seq.

Signature by chairman—On behalf of company.]—*See No. 3516, post.*

3170. — Agreement for lease—As trustee for company.]—An agreement for a lease of certain premises containing a stipulation that the lessees should execute building works, & that the lessors should advance £1000 on mtge. to a limited co., was executed by the directors & secretary of the co. as lessees. The £1000 was advanced, & the lessor, pltf., had in correspondence treated the co. as liable to perform the stipulations of the agreement, & evidence was given that the directors & secretary were trustees of the benefit of the agreement for the co.:—*Held*: nevertheless, the directors & secretary who signed the agreement were personally liable.—**KAY v. JOHNSON** (1864), 2 Hem. & M. 118; 71 E. R. 406.

3171. Warranty of authority.]—**CHERRY & M'DOUGALL v. COLONIAL BANK OF AUSTRALASIA**, No. 3319, *post*.

See, also, No. 3123, ante, & generally, AGENCY, Vol. I., pp. 657 et seq.

To take qualification shares.]—*See Subsect. 2, C., ante.*

3172. In respect of irregularities before appointment—Subsequent dealings based on previous resolutions in minutes.]—Although it may be too strict to hold that a director of a co. is bound to look back through the minute book into entries made in it before he became a director, yet, where, subsequently to his becoming a director, he is a party to dealings founded on those noticed in such prior entries, & allows his brother directors to act & proceed upon the notion that he affirms & adopts the transactions to which such entries relate, & this course of acting goes on during two years, he is precluded from impeaching such transactions, unless he can establish a case of deception or want of due information.—**BURT v. BRITISH NATION LIFE ASSURANCE ASSOCN.** (1859), 4 De G. & J. 158; 28 L. J. Ch. 731; 33 L. T. O. S. 191; 5 Jur. N. S. 612; 7 W. R. 517; 45 E. R. 62, L. JJ.

Annotation:—**Refd.** *Re Waterloo Life, etc., Assoc., Paul & Beresford's Case* (1864), 33 Beav. 204.

3173. — Promotion money improperly paid—Knowledge before appointment.]—Upon the formation of a co. promotion money had been improperly paid, of which B. was cognisant though not a party thereto. B. subsequently became a

authorising payment to one of the provisional directors, afterwards a director, of \$300 out of capital, for alleged services. It did not appear that any service had been rendered by him. The minutes of this meeting were confirmed at a subsequent shareholders' meeting. At the time no profits had been made & nothing paid on account of the stock. No bye-law was passed. The payment was subsequently made:—*Held*: the director was bound to refund.—**Re PUBLISHERS' SYNDICATE, PATON'S CASE** (1903), 5 O. L. R. 392; 2 O. W. F. 65.—**CAN.**

g. Obtaining improper personal advantage.]—A director acting in a certain way, with the primary object of deriving an improper personal advantage, financial or otherwise, cannot

Sect. 28.—Directors: Sub-sect. 6, A. & B. (a).]

director, but took no steps to recover the money for the co. The co. was now being wound up. On a summons by the liquidator to make B. liable under the above circumstances:—*Held*: B. was not liable for wilful default or for misfeasance under 1862 Act, s. 165.—*Re FOREST OF DEAN COAL MINING CO.* (1878), 10 Ch. D. 450; 40 L. T. 287; 27 W. R. 594.

Annotations:—*Reid. Re Wedgwood Coal & Iron Co.* (1882), 31 W. R. 181; *Re Faure Electric Accumulator Co.* (1888), 40 Ch. D. 141; *Re Liverpool Household Stores Assocn.* (1890), 59 L. J. Ch. 616; *Re Cardiff Savings Bank, Bute's Case*, [1892] 2 Ch. 100; *Re Lands Allotment Co.*, [1894] 1 Ch. 616; *Percival v. Wright*, [1902] 2 Ch. 421. *Mentd. Re Exchange Banking Co., Flitcroft's Case* (1882), 21 Ch. D. 519; *Re National Bank of Wales*, [1899] 2 Ch. 629.

3174. Discretion not exercised—Agreement to pay preliminary expenses without examination.]—E. agreed with S. that S. should get up a co. to purchase & work a colliery which E. had power to sell; that S. should sell to the co. for a certain price in cash & shares, & the balance, after paying preliminary expenses, should be equally divided. S. promoted the formation of a co. to purchase the colliery for £25,000 in cash & £25,000 in paid-up shares & induced six gentlemen to become directors, engaging that they should be at no expense. The arts. contained a clause empowering, but not binding, the directors to pay the preliminary expenses attending the formation of the co. Shortly before the co. was registered an agreement was made between S. & the directors that S. should receive £3500 for preliminary expenses. On this occasion he produced a list of preliminary expenses, but did not produce vouchers, & no inquiry was made of him as to whether he was entitled to receive anything under his arrangements with E. S. received £3200 from E. & received out of the funds of the co. the £3500, out of which he paid the calls on the shares which the directors had taken to qualify them for the office. The co. having been ordered to be wound up:—*Held*: the directors were jointly & severally liable to repay to the co. the sum so ordered to be paid to S. for preliminary expenses, on the ground that the money was paid in order to provide the directors' qualifications, for the directors had by their agreement with S. disqualified themselves for exercising a discretion as to the payment of preliminary expenses & had not used due care & caution in examining into the propriety of paying them, & irrespective of the fact of their calls having been paid out of the money received by S., the payment to him was, under the circumstances, a misapplication of the funds of the co., for which they were liable under 1862 Act, s. 165.—*Re ENGLEFIELD COLLIERY CO.* (1878), 8 Ch. D. 388; *sub nom. Re ENGLEFIELD COLLIERY CO., Ex p. WINGROVE*, 38 L. T. 112, C. A.

Annotations:—*Reid. Re Carriage Co-op. Assocn.* (1884), 27 Ch. D. 322. *Mentd. Re Lady Forrest (Murchison) Gold Mine*, [1901] 1 Ch. 582.

save himself by showing that his action was also of benefit to the co. If the circumstances are such that his actions are equivocal, & open to two constructions, he must, seeing that he is in a fiduciary capacity, be prepared to show beyond all reasonable doubt the singleness of his intentions.—*MADDEN v. DIMOND, RUDOLPH v. MACEY* (1905), 12 B. C. R. 80.—CAN.

h. Discretion not exercised—Damage to shareholder by wrong acts of directors.]—*BROWN v. STEWART* (1898), 1 F. (Ct. of Sess.) 316; 36 Sc. L. R. 221.—SCOT.

3176 i. Acts ultra vires.]—A bye-law passed by co. directors fixing the remuneration of deft., held not to

have been confirmed by a general meeting of the co. Where a bye-law of a board of directors providing for their own remuneration has not been sanctioned by the shareholders as provided by Joint Stock Cos. Act, s. 32 (4), payment of the remuneration is *ultra vires* the directors. Although the payment might have been sanctioned by the co., if in fact the sanction has not been given, the payment may be recovered back.—*CANADA FURNITURE CO. v. BANNING*, [1918] 1 W. W. R. 31; 39 D. L. R. 313.—CAN.

3176 ii. —.]—A director of a co. in liquidation is not liable at the instance of a liquidator if he does not know of

3175. —.]—(1) Question whether directors had exercised their judgment & discretion as agents of the co. in making certain advances.

(2) A summons seeking to make directors of a co. liable for misfeasance under 1890 (Winding up) Act, s. 10, should give some information as to the grounds upon which the application is based.

(3) To make directors of a co. liable for misfeasance or breach of trust in relation to the co. on the ground of negligence in performing an act which is within their powers, it must be shown that they did not really exercise their judgment & discretion in the matter as agents of the co.—*Re NEW MASHONALAND EXPLORATION CO.*, [1892] 3 Ch. 577; 61 L. J. Ch. 617; 67 L. T. 90; 41 W. R. 75; 8 T. L. R. 738; 36 Sol. Jo. 683.

Annotation:—*As to (2) Reid. Re Salo Hotel & Botanical Gardens, Ex p. Hesketh* (1898), 78 L. T. 368.

3176. Acts ultra vires.]—The directors of a co. entered into an agreement with a firm of contractors under which the contractors agreed to execute certain works on behalf of the co. for a specified sum in debentures & fully paid shares of the co., & by means of a stipulated portion of those debentures & shares to carry out the provisions of certain contemporaneous agreements under which debentures & fully paid-up shares of the co. were to be made over to third parties without consideration. Each of the shareholders & debenture-holders for the time being of the co. took a benefit under one or other of the agreements:—*Held*: to the extent to which the contractors had been provided with debentures & shares to be made over to third parties without consideration, the transaction was *ultra vires* of the co.; & the directors were liable to make good the loss occasioned thereby.

If acting fairly, honestly, & reasonably, directors mistake the legal powers of their co., they may not be made answerable, either in an action or in a winding up. But if they in fact know, or with due care ought to have known, that the acts done are beyond the powers of the co., then if they do those acts even in the honest belief of necessity in the interests of the company, they take the risks of the consequences.—*LONDON TRUST CO., LTD. v. MACKENZIE* (1893), 62 L. J. Ch. 870; 68 L. T. 380; 9 T. L. R. 201; 3 R. 597.

Transactions at directors' meetings.]—See Sub-sect. 7, E., *post*.

3177. Satisfaction—Whether by set-off—Funds misappropriated.]—*Re ANGLO-FRENCH CO-OPERATIVE SOCIETY, Ex p. PELLY*, No. 3347, *post*.

3178. — Capital misapplied ordered to be replaced.]—*Re EXCHANGE BANKING CO., FLITCROFT'S CASE*, No. 3284, *post*.

B. For Misrepresentation.

(a) In General.

3179. Who entitled to relief—Whether shareholders individually or shareholders as a body.]—*TURQUAND v. MARSHALL*, No. 3283, *post*.

the breach of trust, as in this case making unsecured advances to another co., either before or at its occurrence & does not tacitly concur in its continuance.—*CALEDONIAN HERITABLE SECURITY CO. (LIQUIDATOR) v. CURROR'S TRUSTEE* (1882), 9 R. (Ct. of Sess.) 1115.—SCOT.

k. — Infringement of patent rights.]—*SIMPSON, LTD. & LIQUIDATOR v. BEARE* (1908), 45 Sc. L. R. 424.—SCOT.

PART III. SECT. 28, SUB-SECT. 6.—B. (a).

l. Misrepresentation inducing purchase of shares.]—*CURWEN v. YAR*

3180. Misrepresentation by chairman—In reference to contract with managing director.]—COWAN *v.* LASCELLES, No. 3504, *post*.

3181. Misrepresentation by co-director.]—A director of a co. is not liable for a fraud, such as the issue of a fraudulent prospectus of the co. committed by his co-directors or by any agent of the co. unless he has either expressly authorised or tacitly permitted its commission.—CARGILL *v.* BOWER (1878), 10 Ch. D. 502; 47 L. J. Ch. 649; 38 L. T. 779; 26 W. R. 716.

*Annotations:—*Reid. Symonds *v.* City Bank (1886), 34 W. R. 364. *Mentd.* Capel *v.* Sim's Ships Compositions Co. (1888), 57 L. J. Ch. 713; Lewis & Lewis *v.* Durnford (1907), 24 T. L. R. 64.

3182. Misrepresentation inducing purchase of shares—Civil liability.]—(1) After a resolution has been passed for winding up a co. voluntarily a shareholder cannot as a general rule obtain a compulsory order for winding up or an order for continuing the voluntary winding up under supervision. The only exceptions to the rule are where the resolutions has been passed fraudulently, or where creditors appear to support the petition.

By the arts. of assocn. of a limited co. the directors were authorised, when it should appear to them that the capital for the time being subscribed was sufficient for the purposes of the co., to allot the remaining unallotted shares among the shareholders in proportion to the number of shares then held by them, without receiving any money for them. When shares to the amount of one-fourth of the nominal capital had been allotted & paid up, the directors allotted the remaining three-fourths as fully paid up shares, among the existing shareholders without further consideration; & petitioner became a purchaser of some of these shares in the market. The co. passed a resolution for a voluntary winding up & afterwards the petitioner presented a petition for compulsory winding up:—*Held*: (2) the provision in the arts. was highly improper; (3) if it amounted to a fraud, it was a fraud upon petitioner in his individual capacity of purchaser of the shares & was not committed by or upon the co. & therefore it was not within the scope of the winding-up Acts to give relief in respect thereof; (4) if the alleged fraud could be proved the guilty party could be indicted for conspiracy.—*Re* GOLD CO. (1879), 11 Ch. D. 701; 48 L. J. Ch. 281; 40 L. T. 5; 43 J. P. 652; 27 W. R. 341, C. A.

*Annotations:—*As to (2) *Consd.* London Trust Co. *v.* Mackenzie (1893), 62 L. J. Ch. 870. As to (3) *Consd.* *Re* National Distribution of Electricity Co., [1902] 2 Ch. 34. *Reid.* *Re* Ambrose Lake Tin & Copper Mining Co., *Ex p.* Taylor, *Ex p.* Moss (1880), 14 Ch. D. 390; *Re* British Seamless Paper Box Co. (1881), 50 L. J. Ch. 497; London Trust Co. *v.* Mackenzie (1893), 62 L. J. Ch. 870. *Generally, Mentd.* *Re* Phoenix Electric Light & Power Co. (1883), 48 L. T. 260; *Re* The Varieties, [1893] 2 Ch. 235; *Re* Bishop, [1900] 2 Ch. 254; *Re* Hadleigh Castle Gold Mines, [1900] 2 Ch. 419; *Re* Haycraft Gold Reduction & Mining Co., [1900] 2 Ch. 230; Arnot *v.* United African Lands, [1901] 1 Ch. 518.

3183. — Conspiracy—Criminal liability.]—*Re* GOLD CO., No. 3182, *ante*.

Misrepresentation by servant or agent of company.]—See Sub-sect. 6, F. (f), *post*.

3184. What plaintiff must prove—Misrepresentations wilful & fraudulent—Plaintiff in fact deceived.]—To make a co. or its directors or secretary liable for misrepresentation made in the certificates or transfer of shares purchased from

a shareholder, the purchaser must show that he was in fact deceived, & that the misrepresentations were wilful & fraudulent.

The capital of a railway co. that had been classified by Act of Parliament according to the respective priorities of the shares & stocks of which it was composed included £85,000, No. 1 preference stock, & £60,000 No. 2 preference stock.

The directors, acting under a *bona fide* belief that they had power to issue stock that would rank with the No. 1 preference stock, issued £10,000 that was described in the certificates as No. 1 preference stock. In 1865, pltf's., without having seen these certificates, purchased this £10,000 stock, & a transfer in which it was also described as No. 1 Preference stock was sent to the co., & was returned to pltf's. with an indorsement by the secretary that coupons for such stock were held by him to meet the transfer. In 1869, pltf's. ascertained that the directors had no power to issue No. 1 preference stock, & in 1870 it was declared by the Ct. of Chancery that this £10,000 stock ranked below the No. 2 preference stock. In 1874, pltf's. filed a bill against the co., the directors, & the secretary, to make them jointly & severally liable for the loss sustained by pltf's. through the misrepresentation of defts. The bill alleged that pltf's. bought the £10,000 stock under the belief that it formed part of the £85,000 but this allegation was not verified by affidavit, & pltf's. only swore that they bought it under the belief that it would rank with No. 1 preference stock:—*Held*: no misrepresentation had been made to pltf's. by which they had been deceived, & even had they been deceived their delay in commencing proceedings would have disentitled them to relief.—EAGLESFIELD *v.* LONDONDERRY (MARQUIS) (1876), 4 Ch. D. 693; 35 L. T. 822; 25 W. R. 190, C. A.; *affd.* (1878), 26 W. R. 540, H. L.

*Annotations:—*Reid. Phosphate Sewage Co. *v.* Hartmont (1877), 5 Ch. D. 394; Cargill *v.* Bower (1878), 10 Ch. D. 502. *Mentd.* Yorkshire Ry. Waggon Co. *v.* Maclure & Cornwall Minerals Ry. (1881), 45 L. T. 747; Deeley *v.* Lloyds Bank, [1912] A. C. 756.

3185. — Representation made with intention of being acted on.]—In an action for deceit it is incumbent on pltf. to prove actual fraud. Therefore where the managing director of a co., without any fraudulent intention, made a statement which was not true as to the receipt of information affecting the prospects of the co., whereby a shareholder in the co. was induced to sell his shares at a lower price than he would have obtained if it had been known that the information had been in fact received:—*Held*: an action against the director to recover the difference between the price actually received for the shares, & the price which would have been received if the director had not denied that he possessed the information which he had in fact received, could not be maintained.—TACEY *v.* MCBAIN, [1912] A. C. 186; 81 L. J. P. C. 131; 106 L. T. 226, P. C.

See, generally, MISREPRESENTATION & FRAUD.

3186. Measure of damages—Money advanced or debenture insufficiently secured.]—Where the directors of pltf. co. had been induced by the fraudulent misrepresentation of deft., who was one of their number, to make an advance out of the funds of pltf. co. on the security of a second

YEAN LAND CO. (1891), 17 V. L. R. 64, 745.—AUS.

m. —.]—A person induced to take shares in a co. by the misrepresentation of the directors may bring an action in deceit personally against the directors & obtain damages but

he cannot bring an action of deceit against the co.—WESTERN BANK OF SCOTLAND *v.* ADDIE (1867), 5 Macph. (Ct. of Sess.) 80; L. R. 1 Sc. & Div. 145.—SCOT.

n. *Misrepresentation of law.]—*A representation by the directors of a co.

that they are authorised to buy & hold shares in another co. is a representation of law upon which, if untrue, they cannot be made personally liable.—MCINTYRE *v.* SWYNY (1893), 14 N. S. W. L. R. 436.—AUS.

Sect. 28.—Directors: Sub-sect. 3, B. (a), (b), (c) & (d), & C. (a).]

debenture issued by another co. in which deft. was personally interested, & in the result the debenture proved to be an insufficient security, so that loss was occasioned to the pltf. co.:—*Held*: the measure of damages to which pltf. co. was entitled was the difference between the money advanced by it & the value of the debenture at the date of issue.—*EXPLORING LAND & MINERALS CO., LTD. v. KOLCKMANN* (1905), 94 L. T. 234, C. A.

(b) *In Prospectus.*

See Sect. 8, sub-sect. 3, D., *ante*.

(c) *To secure Stock Exchange Quotation.*

3187. Civil liability—To purchaser.]—B. the chairman of a mining co., by falsely representing to the Stock Exchange that two-thirds of the shares had been taken & paid upon, procured the stock to be entered in the official list. S. a stranger, knowing the rule, that such stock was not admitted into such list unless two-thirds of the capital had been paid up, & seeing the stock so entered, & relying on the insertion having been procured by honest means, bought some shares from a jobber on the Exchange:—*Held*: S. had a right of action against B. for the fraudulent representation, & there was evidence for the jury of the fraud.—*BAGSHAW v. SEYMOUR* (1858), 32 L. T. O. S. 81, H. L.

Annotations:—*Folld. Bedford v. Bagshaw* (1859), 4 H. & N. 538. *Consd. Peek v. Gurney* (1873), L. R. 6 H. L. 377.

3188. ———.]—By the rules of the Stock Exchange for 1853, the committee will not fix a settling day for the shares in a mining co., or permit the same to be inserted in the official list, unless it has been represented to them that the subscription list is full, with the exception of such shares as are reserved for special purposes, & that not less than two-thirds of the scrip have been paid upon. Deft., one of the directors of a mining co., formed to consist of 100,000 shares of £1 each fully paid up, having in conjunction with others falsely & fraudulently caused it to be represented to the committee of the Stock Exchange that 41,711 shares had been allotted, & that £40,911 was in the hands of the co.'s bankers, having been paid upon the scrip, 40,000 shares being reserved, as the price to be paid for certain land, & 19,000 for distribution in the colony, the committee caused a settling day to be appointed & the shares to be quoted in the official list. Pltf. knowing the rule of the Stock Exchange & from seeing the shares quoted, believing that two-thirds of the scrip had been paid upon, bought on the Stock Exchange from third persons 200 shares in that belief. It was proved that no more than 19,183 shares were allotted & only 7000 were ever paid upon, & that deft. knew this at the time of the representation to the Stock Exchange. The shares turned out to be valueless:—*Held*: an action was maintainable by pltf. against deft. for the

false & fraudulent representation made by him.—*BEDFORD v. BAGSHAW* (1859), 4 H. & N. 538; 29 L. J. Ex. 59; 33 L. T. O. S. 137; 157 E. R. 951.

Annotations:—*Consd. Peek v. Gurney* (1873), L. R. 6 H. L. 377. *Refd. Barry v. Croskey* (1881), 2 John. & H. 1; *Richardson v. Sylvester* (1873), 43 L. J. Q. B. 1; *Salaman v. Warner* (1891), 64 L. T. 598. *Mentd. Swift v. Winterbotham* (1873), L. R. 8 Q. B. 244.

3189. ——— Damages arising from business being improperly continued.]—Re KINGSTON COTTON MILL Co. (No. 2), No. 3280, post.

3190. Criminal liability.]—Defts. were indicted, as directors & promoters of a certain co. called the Eupion Fuel & Gas Company, Ltd., for conspiring to induce the members of the committee of the Stock Exchange to order a quotation of the shares of the co., “& thereby to induce & persuade divers of the liege subjects of our lady the Queen who should thereafter try & sell the shares of the co. to believe that the co. was duly formed & constituted, & had in all respects complied with the rules & regulations of the Stock Exchange so as to entitle the co. to have their shares quoted in the official list of the Stock Exchange”:—*Held*: the indictment disclosed an indictable offence.—*R. v. ASPINALL* (1876), 2 Q. B. D. 48; 46 L. J. M. C. 145; 36 L. T. 297; 42 J. P. 52; 13 Cox, C. C. 563; *sub nom. ASPINALL v. R.*, 25 W. R. 283, C. A.

Annotations:—*Refd. Bradlaugh v. R.* (1878), 3 Q. B. D. 607; *Scott v. Brown, Doering, McNab, Slaughter & May v. Brown, Doering, McNab*, [1892] 2 Q. B. 724. *Mentd. R. v. Stroulger* (1886), 17 Q. B. D. 327; *Salaman v. Warner* (1891), 65 L. T. 132; *R. v. Silverlock*, [1894] 2 Q. B. 766; *R. v. Whitaker*, [1914] 3 K. B. 1283.

See, generally, CRIMINAL LAW & PROCEDURE, Vol. XV., pp. 1015 *et seq.*

See, also, BANKERS & BANKING, Vol. III., pp. 171, 260, Nos. 291, 786.

(d) *Misleading Reports and Balance-Sheets.*

3191. To whom reports addressed.]—SCOTT v. DIXON (1859), 29 L. J. Ex. 62, n.

Annotations:—*Consd. Re Liverpool Borough Bank, Duranty's Case* (1858), 26 Beav. 268. *Distd. Bedford v. Bagshaw* (1859), 4 H. & N. 538. *Consd. Peek v. Gurney* (1873), L. R. 6 H. L. 377. *Refd. Bale v. Cleland* (1864), 4 F. & F. 117; *R. v. Most* (1881), 50 L. J. M. C. 113.

3192. Civil liability—Whether action lies—General rule.]—D. & other directors of a bank systematically published false & fraudulent reports, & made dividends purporting to be out of profits, while in reality the bank was insolvent:—*Held*: an action lay against D., at the suit of a shareholder, to recover damages for loss sustained in purchasing shares on the faith of such reports, & also to recover damages for misconduct in misapplying the funds while the shareholder continued to hold the shares.

The true test as to whether an individual shareholder can sue a director for misconduct is, if the transaction is such that the body of the shareholders could not have sanctioned it; if they could not, as for example where false reports are made, then such action lies, for it is an injury to each individual shareholder, who was or might be deceived.—*DAVIDSON v. TULLOCH* (1860),

PART III. SECT. 28, SUB-SECT. 6.—
B. (d).

o. Civil liability—Whether action lies—Indifference or recklessness.]—In an action of deceit against directors of a co., for putting forth false statements in a balance-sheet, by means of which the pltf. was induced to take shares which entailed a loss upon him, defts. are liable if they made the statements, being indifferent or reckless as to whether they were true or false, although they may not have actually

known them to be false.—*PATER-NOSTER v. HACKETT* (1880), 6 V. L. R. 232, 396.—*AUS.*

p. ——— Issue of deceptive balance-sheet.]—An original share-holder of a co. brought an action against one of the directors, for damages sustained by the pursuer in having been induced to purchase additional shares, by false & fraudulent representations in the annual report presented to the shareholders, to the effect that the co. was prosperous,

while in reality it was the reverse:—*Held*: the action was relevant as against the director.—*CULLEN v. JOHNSTON* (1861), 23 Dunl. (Cl. of Sess.) 574; 33 Sc. Jur. 162.—*SCOT.*

q. ———.]—A share-holder in a co. brought an action against the co. & directors for declarator that defenders were not entitled to issue balance-sheets in which the stock in hand was entered at less than its true value with the object & result of concealing that profits had

2 L. T. 97; 6 Jur. N. S. 543; 8 W. R. 309; 3 Macq. 783, H. L.

Annotations.—*Consd.* Arkwright v. Newbold (1881), 17 Ch. D. 301; Peek v. Derry (1887), 37 Ch. D. 541. *Reid.* Twycross v. Grant (1877), 2 C. P. D. 469. *Mentd.* Orr v. Glasgow, Airdrie & Monklands Ry. (1860), 2 L. T. 550; Waddell v. Blockey (1879), 4 Q. B. D. 678.

3193. ——— Representation made without knowledge of untruth—Directors guilty of gross negligence.]—Except in cases where a contract has been entered into, a party is not liable to an action for making a false representation to another, by which damage accrues to that party, unless the representation be made under circumstances which render it morally fraudulent, & therefore, where the directors of a joint-stock bank adopted & published a false report of the state of the co., which had been drawn up by one of its officers, & stated to be in a flourishing condition, by which pltf. was induced to take shares in the co., which statement afterwards turned out to be false; & the jury found that the directors had been guilty of gross negligence, but he had not acted with a fraudulent intention:—*Held*: (1) no right of action lay against them; (2) in order to constitute such moral fraud, it was not necessary to prove that deft. knew the representation to be untrue; it was sufficient if he had grounds for believing it to be so.—TAYLOR v. ASHTON (1843), 11 M. & W. 401; 12 L. J. Ex. 363; 7 Jur. 978; 152 E. R. 860.

Annotations.—*As to* (1) *Consd.* Eastwood v. Bain (1858), 28 L. J. Ex. 74; Derry v. Peek (1889), 14 App. Cas. 337. *Reid.* Denton v. G. N. Ry. (1856), 5 E. & B. 860; *Re* Agra & Masterman's Bank, *Ex p.* Asiatic Banking Corp'n. (1867), 16 L. T. 162; Jolliffe v. Baker (1883), 11 Q. B. D. 255; Ryan v. Oceanic Steam Navigation Co., O'Connell v. Same, Scanlon v. Same, O'Brien v. Same, [1914] 3 K. B. 731. *As to* (2) *Reid.* Gerhard v. Bates (1853), 2 E. & B. 476; Higgins v. Samels (1862), 2 John. & H. 460; Derry v. Peek (1889), 14 App. Cas. 337.

3194. ——— Fraudulent intent to deceive.]—BURNES v. PENNELL, No. 3625, *post*.

3195. ——— Report originally true becoming untrue.]—Directors are not justified in using reports which were true at the time they were made, as inducement to persons to buy shares, at a time when they have become untrue.—NEW BRUNSWICK & CANADA RAILWAY & LAND CO. v. CONYBEARE (1862), 9 H. L. Cas. 711; 31 L. J. Ch. 297; 6 L. T. 109; 8 Jur. N. S. 575; 10 W. R. 305; 11 E. R. 907, H. L.; *reversg.* S. C. *sub nom.* CONYBEARE v. NEW BRUNSWICK & CANADA RAILWAY & LAND CO. (1860), 1 De G. F. & J. 578, L. J.

Annotations.—*Reid.* Kisch v. Central Ry. of Venezuela (1865), 3 De G. J. & Sm. 122; McKeown v. Boudard Peveril Gear Co. (1896), 74 L. T. 310. *Mentd.* *Re* Leeds Banking Co., *Ex p.* Barritt (1865), 5 New Rep. 460; Western Bank of Scotland v. Addie, Addie v. Western Bank of Scotland (1867), L. R. 1 Sc. & Div. 145; A.-G. v. Ray (1874), 9 Ch. App. 402, n.; *Re* Coal Economising Gas Co., *Gover's Case* (1875), L. R. 20 Eq. 114; Houldsworth v. City of Glasgow Bank (1880), 5 App. Cas. 317; Hambro v. Burnand, [1903] 2 K. B. 399.

3196. Criminal liability.]—BURNES v. PENNELL, No. 3625, *post*.

3197. ——— Conspiracy—Issue of untrue balance sheet.]—On an indictment for a conspiracy to defraud, by false representations of solvency, defts. may be convicted who had no knowledge of the

transactions, which resulted in insolvency, provided they were aware of the result, & concurred in the representations in furtherance of the common design, even although they did so with no motive of particular benefit to themselves.

Overt acts in conspiracy, though not necessarily laid, & if laid not proved as against all defts., may be looked at as showing the object of the conspiracy.

The information charged defts., intending to deceive, defraud & prejudice such of the shareholders of the Royal British Bank as were not aware of the true state of the affairs of the bank, & to induce the Queen's subjects to become customers & creditors of the bank, & to purchase & hold shares therein, did conspire falsely & fraudulently to publish & represent that the bank & its affairs had been, during the year ended Dec. 31, 1855, & then were, in a sound & prosperous condition, producing profits divisible among the shareholders, they, defts., then well knowing, as the fact was, that the bank & its affairs had been during that year, & then were, in an unsound & unprosperous condition, not producing any profit divisible among the shareholders.

One overt act alleged was the publication & distribution of a balance-sheet purporting to give a true statement of the condition & affairs of the bank for the year ending Dec. 31, 1855:—*Held*: though some of defts. were aware of the insolvent state of the bank, & concurred in the balance-sheet & the dividend with a view to induce persons to retain or to purchase shares in the bank, in the hope, or even belief, that they might thereby rescue the bank from its difficulties, they were in point of law guilty of the offence charged in the information; & with respect to each of the three there was evidence from which the jury were justified in finding the guilty knowledge & concert.—R. v. ESDAILE (1858), 1 F. & F. 213.

Dividends passed by shareholders on faith of misrepresentations.]—See No. 3283, *post*.

Balance-sheets passed at meetings where director not present.]—See Sub-sect. 7, *post*.

Liability of company—To stranger mislead by misrepresentation.]—See No. 4623, *post*.

C. In Respect of Gifts.

(a) Of Qualification Shares.

3198. Price of qualification shares—Paid by promoter—Liability to refund.]—The promoter of a co. secretly agreed to give each of four directors, who subscribed the memorandum, ten £10 shares or the money for them.

After registration, a cheque for £400 was paid to him by resolution of the directors, as money due to him from the co., under an agreement set out in the arts., & he handed the cheque to one of the four directors, to divide the amount, according to the secret agreement.

On an application by the official liquidator under 1862 Act, s. 165:—*Held*: the four directors were jointly & severally liable to repay the £400 with

been earned in excess of those shown in the balance-sheets; & for interdict against the issue of such balance-sheets. Pursuer did not charge directors with fraud, & he admitted that the balance-sheets had been passed by the auditors & approved by general meeting of the co., but he averred that the actings complained of were *ultra vires*:—*Held*: the action fell to be dismissed on the ground that the valuation of the stock was a matter within the discretion of the directors, subject to the approval of the shareholders, & that there was no relevant averment that the co. or

the directors had acted *ultra vires*.—YOUNG v. BROWNLEE & CO., LTD., [1911] S. C. 677.—SCOT.

r. ——— Directors guilty of gross negligence.]—The truth of a report by directors depended on the value of the securities held, which consisted of stocks of other companies. Nothing inconsistent with the report appeared in the books of the company, which were kept in the ordinary way, but the value of the stocks was variable, & comparison with the prices current would have shown that at the date of the report the securities had greatly

fallen in value:—*Held*: gross neglect on the part of the directors in making proper investigations into the state of a company coupled with reporting to the shareholders that investigation had been made, will render the representations in the report false.—NATIONAL EXCHANGE CO. OF GLASGOW v. DREW & DICK (1860), 23 Dunl. (Cl. of Sess.) 1.—SCOT.

s. Criminal liability—Director surety—Untrue statement of his affairs.]—R. v. COHEN (1915), 33 O. L. R. 340; 8 O. W. N. 110; 25 D. L. R. 510.—CAN.

Sect. 28.—Directors: Sub-sect. 6, C. (a) & (b).]

interest at 5 per cent.—*Re LONDON & PROVINCIAL STARCH CO.* (1869), 20 L. T. 390.

3199. — Value of shares at time of purchase.]—M., who was a director of a co., received from the promoters a present of £1,000 to buy his qualification shares. M. duly paid for the shares with the £1,000, & by his assistance the co. was formed & registered for the purpose of purchasing from the promoters a quarry which belonged to them. The co. afterwards went into liquidation, & M. offered to give up the shares. It was admitted that at the time M. bought the shares they were worth £1,000:—*Held*: he must pay to the liquidator the £1,000, with interest at five per cent. from the date when he received the gift.—*Re DRUM SLATE QUARRY CO., LTD., McLEAN'S CASE* (1885), 55 L. J. Ch. 36; 53 L. T. 250; 1 T. L. R. 660.

3200. — Out of profit on sale of property to company.]—O., being asked by K., a promoter of a co., to become a director of the co., the qualification for which was the holding of fifty shares of £10 each, declined to do so, & then K. offered to provide the qualification for him. O., under these circumstances, consented, & N., another of the promoters, out of the profit which he made by the sale of certain property to the co., paid up fifty shares in full for O. There was no completed agreement for sale of the property by N. to the co. before O. became a director. The co. having been ordered to be wound up, an application was made by the official liquidator, under 1862 Act, s. 165, for an order that O. should repay the £500 paid-up for him by N. as being money of the co. retained by O.:—*Held*: the sale by N. to the co. not being repudiated, no such order could be made.—*Re MASONS' HALL TAVERN CO., LTD., ORGILL'S CASE* (1869), 21 L. T. 221, L. J.

Annotation:—Dtd. Re Canadian Oil Works Corp., Hay's Case (1875), 10 Ch. App. 593.

3201. — By way of indemnity after qualification.]—A promoter acting in the interests of the vendor entered into a secret agreement with A., in order to induce him to become a director, to buy back at par at any time when required the shares which A. was bound to take up to qualify. A. having become a director, & having duly qualified, received back from the promoter the price of the shares at par at a time when they had become valueless:—*Held*: A. was guilty of a misfeasance under 1862 Act, s. 165, in accepting a secret indemnity from a promoter, & that he was accountable to the co. for the value of that indemnity, which was in this case the price of the shares at par.—*Re NORTH AUSTRALIAN TERRITORY CO., ARCHER'S CASE*, [1892] 1 Ch. 322; 61 L. J. Ch. 129; 65 L. T. 800; 40 W. R. 212; 8 T. L. R. 90; 36 Sol. Jo. 91, C. A.

Annotations:—Apld. Re London & South Western Canal, [1911] 1 Ch. 346. *Reid. Rowland v. Chapman, Rowland v. Corrie, Rowland v. Brandreth* (1901), 17 T. L. R. 669; *Kregor v. Hollins* (1913), 109 L. T. 225.

Whether shares taken as fully-paid.]—

See Sub-sect. 2, ante.

3202. — Paid out of purchase-money payable to vendor to company—Liability to refund.]—Before the formation of a co. for the purchase of certain property the vendors agreed with H. that he should become a director, they providing him with the forty shares necessary to qualify him. He thereupon signed the memorandum of assocn. in respect of forty shares & became a director. At a meeting of directors cheques were drawn on the bankers of the co. & given to the vendors in payment of part of the purchase-money. One

of these cheques being for the same amount as that due on H.'s shares was given by the vendors to H., & was by him paid in to his own bankers. He then drew a cheque on his own bankers, & gave the cheque to the co. in payment of the sum due on his shares. The co. was afterwards ordered to be wound up:—*Held*: (1) H. being a director of the co., could not retain money so paid him by the vendors; (2) the money had never ceased to be the money of the co.; (3) there had in fact been no payment by H. of the money due in respect of the shares; (4) he was liable as a contributory in respect of these shares.—*Re CANADIAN OIL WORKS CORPN., HAY'S CASE* (1875), 10 Ch. App. 593; 44 L. J. Ch. 721; 33 L. T. 466; 24 W. R. 191, L. JJ.

Annotations:—As to (1) Consd. Re North Australian Territory Co., Archer's Case, [1892] 1 Ch. 322. *Reid. Re Morvah Consols Tin Mining Co., McKay's Case* (1875), 2 Ch. D. 1; *Re Englefield Colliery Co.* (1878), 8 Ch. D. 388; *Re Ambrose Lake Tin & Copper Mining Co., Ex p. Taylor, Ex p. Moss* (1880), 14 Ch. D. 390; *Kregor v. Hollins* (1913), 109 L. T. 225. *As to (2) Reid. Re Canadian Oil Works Corp., Eastwick's Case* (1876), 45 L. J. Ch. 225; *Re Carriage Co-op. Assocn.* (1884), 27 Ch. D. 322; *Lister v. Stubbs* (1890), 45 Ch. D. 1. *As to (3) Consd. Re Eupion Fuel & Gas Co., Aspinall's Case* (1877), 36 L. T. 362. *Dstd. Lister v. Stubbs* (1890), 45 Ch. D. 1. *As to (4) Reid. Re Wedgwood Coal & Iron Co., Anderson's Case* (1877), 7 Ch. D. 75.

3203. — Without knowledge of director.]—*Re CANADIAN OIL WORKS CORPN., EASTWICK'S CASE*, No. 2950, *ante*.

3204. — Paid out of sum voted for preliminary expenses—Sum voted without exercise of discretion.]—*Re ENGLEFIELD COLLIERY CO.*, No. 3174, *ante*.

3205. Qualification shares—Voted gratuitously to themselves.]—(1) On a petition to wind up a co. by a debenture holder where the co. admitted the validity of the debenture, but contended that the interest was only payable out of profits, the ct. took upon itself to decide the dispute at the hearing of the petition, & made the winding up order without waiting till the debt had been established at law.

(2) *Semble*: directors voting to themselves gratuitously the number of shares required as a qualification, will, on the co. being wound up, be rendered liable to the full amount of such shares.—*Re IMPERIAL SILVER QUARRIES CO., LTD.* (1868), 16 W. R. 1220.

3206. — Transferred as fully-paid by vendor or promoter—Transfer before contract for purchase adopted—Extent of liability.]—A director of a co. received from one of the promoters a number of paid-up shares sufficient to qualify him as a director, & then took an active part in carrying out a conditional contract for the purchase by the co. of a colliery belonging to the promoters, & for purchasing & working which the co. was formed:—*Held*: the director was liable, under the 1862 Act, s. 165, to pay to the liquidator the value of the shares; & in the present case the shares were to be taken as having been worth their nominal amount.—*Re CAERPHILLY COLLIERY CO., PEARSON'S CASE* (1877), 5 Ch. D. 336; 46 L. J. Ch. 339; 25 W. R. 618, C. A.

Annotations:—Folld. Re Eskern Slate & Slab Quarries Co., Clarke & Helden's Case (1877), 37 L. T. 222. *Consd. Re Caerphilly Colliery Co., Ormerod's Case* (1877), 37 L. T. 244; *Re Wedgwood Coal & Iron Co., Anderson's Case* (1877), 7 Ch. D. 75. *Apld. Nant-y-glo & Blaenau Ironworks Co. v. Grave* (1878), 12 Ch. D. 738; *Re West Jewell Tin Mining Co., Weston's Case* (1879), 10 Ch. D. 579. *Consd. Re North Australian Territory Co., Archer's Case*, [1892] 1 Ch. 322; *Kregor v. Hollins* (1913), 109 L. T. 225. *Reid. Re Sir John Moore Gold Mining Co.* (1877), 25 W. R. 900; *Re Ambrose Lake Tin & Copper Mining Co., Ex p. Moss, Ex p. Taylor* (1879), 49 L. J. Ch. 459, n.; *Re Milan Tram. Co., Ex p. Theys* (1882), 22 Ch. D. 122; *Re Drum Slate Quarry Co., McLean's Case* (1885), 55 L. J. Ch. 36.

3207. — — — — — **Contract for allotment of fully-paid shares not registered.]**—By the conditional contract for the sale of a colliery to a co., part of the purchase-money was to be paid to the vendors in fully paid-up shares in the co. This contract was not registered. H., one of the vendors & promoters of the co., made O. a gratuitous present of a number of vendor's shares sufficient to qualify him as a director. After the contract had been adopted & completed, O. was elected a director, & from that time acted as director until the winding up of the co.:—*Held*: (1) the transaction between H. & O. amounted to a hiring of O.'s services as a director to act in the interests of H.; (2) O. had thereby committed a misfeasance within 1862 Act, s. 165, & was liable to pay the liquidator the nominal value of the shares.—*Re CAERPHILLY COLLIERY CO., ORMEROD'S CASE* (1877), 37 L. T. 244; 25 W. R. 765.

Annotation:—As to (1) *Reid. Kregor v. Hollins* (1913), 109 L. T. 225.

3208. — — — — — **].**—The principles laid down in *McKay's Case*, No. 3559, *post*, & *Pearson's Case*, No. 3206, *ante*, viz., that a director being in a fiduciary position to his co. cannot retain a consideration received by him from the promoters as an inducement to become a director; & if the consideration has been a gift of fully paid-up shares, that he may be compelled not only to restore the shares, but to account to the co. for the highest value to be attributed to them since they have been in his possession are equally applicable to proceedings in an action by the co. to recover the value of the shares, as proceedings under 1862 Act, s. 165, for the same purpose. The director is further chargeable with interest on the highest value of the shares. Previously to the incorporation of a co. fifty fully paid-up ordinary shares were offered to G. by the promoters to induce him to act as a director. G. consented to act as a director, & fifty shares of £100 each, part of a large number of paid-up shares retained as commission by the promoters on the sale of the works to the co., were transferred into his name without any consideration. G. acted as director for three years, & assisted in carrying into effect the contracts for purchase, but was not aware of the amount of commission retained by the promoters. In 1871 these ordinary shares were quoted at £80 a share. In 1874 G. ceased to be a director. In 1877, when these shares were only quoted at £1 per share, the co. commenced an action against G., claiming a declaration that he was a trustee of these fifty shares for the co., or of the value of them at the election of the co. with interest, & for an account:—*Held*: (1) G. was a trustee of these shares for the co.; (2) restitution of these shares was not sufficient; (3) as the co. had elected to take the value of these shares, G. must pay to the co. £80 per share on each of the shares transferred to him, with interest at 4 per cent. from the date of transfer, & the costs of the action.—*NANT-Y-GLO & BLAINA IRONWORKS CO. v. GRAVE* (1878), 12 Ch. D. 738; 38 L. T. 345; 26 W. R. 504.

Annotation:—As to (3) *Folld. London Trust Co. v. Mackenzie* (1893), 62 L. J. Ch. 870.

3209. — — — — — **Knowledge of directors—Joint & several liability.]**—*Re CARRIAGE CO-OPERATIVE SUPPLY ASSOCN.*, No. 2956, *ante*.

3210. — — — — — **Subsequent offer to pay for shares—Payment accepted as advance—Right of set-off.]**—*Re CARRIAGE CO-OPERATIVE SUPPLY ASSOCN.*, No. 2956, *ante*.

3211. — — — — — **Shares held on trust for transferor.]**—Directors who accept & hold their qualification shares in trust for & at the will of the promoter, to whom they hand blank transfers, are guilty of misfeasance, & the measure of damages is the highest value of the shares during their holding.—*Re LONDON & SOUTH WESTERN CANAL, LTD.*, [1911] 1 Ch. 346; 80 L. J. Ch. 234; 104 L. T. 95; 18 Mans. 171.

— — — — — **Whether shares taken by director as fully-paid.]**—See Sub-sect. 2, *ante*.

3212. — — — — — **Allotted as fully-paid—On nomination of vendor to company—Under provision in articles.]**

—A co. was formed for the purpose of carrying out a preliminary agreement to purchase from C., a promoter, certain slate quarries, the purchase-money to be paid partly in cash & partly in fully paid-up shares. The agreement was registered. The arts. of assocn. appointed A. one of the first directors, & provided that a director should be qualified by holding fifty shares. Art. 14 provided that it should be lawful for C. "to give shares to the directors, or any other persons, for the purpose of promoting the co." At a meeting of the directors, at which A. was present, fifty of the vendor's shares were, at the request of C., allotted to A., & registered in his name as fully paid up. Nothing was, in fact, paid for them. The co. was afterwards ordered to be wound up:—*Held*: (1) the arrangement contained in art. 14 was fraudulent; (2) A. had been guilty of a misfeasance in relation to the co., & was liable under 1862 Act, s. 165, to pay to the liquidator the value of the shares.—*Re ESKERN SLATE & SLAB QUARRIES CO., LTD., CLARKE & HELDEN'S CASES* (1877), 37 L. T. 222.

— — — — — **Whether shares taken by director as fully-paid.]**—See Sub-sect. 2, *ante*.

— — — — — **By vote of directors themselves.]**—See No. 3205, *ante*.

(b) Other Gifts.

3213. Money as consideration for becoming director—Received from promoter.]—(1) A summary order was made under 1862 Act, s. 165, that directors who had received from the promoter of the co. sums of money in consideration of their becoming directors which sums he had paid out of the money of the co. should repay the money which they had so received.

(2) A similar order was made that the directors should repay money which they had paid themselves as their fees, after a petition had been presented to wind up the co. & notice had been served on them not to part or deal with the money of the co.—*Re BRIGHTON BREWERY CO., HUNT'S CASE* (1868), 37 L. J. Ch. 278; 16 W. R. 472.

Annotation:—As to (1) *Reid. Madrid Bank v. Pelly* (1869), L. R. 7 Eq. 442.

See, also, Nos. 3206–3208, *ante*.

PART III. SECT. 28, SUB-SECT. 6.—
C. (b).

3213 i. Money as consideration for becoming director—Received from promoter.]—The prospectus of a co. set forth the name of A. as a director, & that the co. had been formed for the purchase of certain mines at the price of £125,000. A. received £10,000 of the price from

the vendor of the mines in consideration, as he alleged, of certain services rendered & to be rendered by him to the co.

In an action by the co. against A. for repetition of the £10,000:—*Held*: the co. were entitled to recover, in respect that the true price of the mines was only £115,000, & that A.'s services were not set forth in the pros-

ppectus or memorandum of assocn. as a consideration for the £10,000; & that A. B. standing in a fiduciary relation to the co., from the date when he agreed to become a director, could not enter into a contract with the vendor for his own benefit.—*HENDERSON v. HUNTINGTON COPPER & SULPHUR CO.* (1877), 5 R. (Ct. of Sess.) 1; 15 Sc. L. R. 217.—SCOT.

Sect. 28.—Directors: Sub-sect. 6, C. (b) & D. (a).]

3214. Costs—Received from promoters.]—The arts. of assocn. of a banking co., with a nominal capital of £1,200,000 in 60,000 shares, of which the prospectus stated that the first issue would be 30,000, empowered the directors to commence business as soon as they should think fit, notwithstanding the whole capital might not have been subscribed for, & provided that upon the first allotment of shares £10,000 should be paid to the promoters. When only 5,000 shares had been subscribed for, & before the co. was in a situation to commence business, the directors allotted the shares & paid £5,000 to the promoters, who immediately paid to four of the directors £500 apiece. The co. having been ordered to be wound up:—*Held*: the directors could not be charged with the money paid to the promoters, but that each of the four directors must repay to the co. the £500 received by him from the promoters. Where a co. in course of liquidation is ordered to pay costs, such costs are not to be proved as a debt in the winding up, but are payable in full out of the assets of the co.—**MADRID BANK v. PELLY** (1869), L. R. 7 Eq. 442; 21 L. T. 13; 33 J. P. 596.

Annotation:—**Refd.** *Re Imperial Land Co. of Marseilles* (1870), 22 L. T. 598.

3215. Fully-paid shares—Received from vendors & co-director as promotion money—Contrary to terms of prospectus.]—The prospectus issued by the promoters of a projected co. stated that the purchase money to be paid by the co. to the vendors was £32,500, of which £15,000 was to be paid in 3,000 fully paid-up shares, & that "the remuneration of the directors will be paid by the shareholders, & it is proposed that they should be paid only by a commission on the profits made, no promotion money whatever being paid to them by the co., & all formation expenses being paid by the vendors." The £32,500 was the real price originally agreed to be paid to the vendors. Shortly after the registration of the co. the vendors, who were two of the first directors of the co., transferred 800 of their vendors' paid-up shares to their co-directors in pursuance of an understanding which existed at the time the prospectus was issued, but which was not disclosed. The shares were so transferred as promotion money, & in order to induce them to continue directors. In an action by a shareholder against the directors, claiming damages, on the ground that he had been induced to take his shares in the co. by the fraudulent misrepresentations contained in the above paragraph of the prospectus, & on the faith of which he had taken his shares:—*Held*: (1) the understanding was not a contract within 1867 Act, s. 38, & the omissions to state it in the prospectus did not make the latter fraudulent within the statute; (2) although the transaction between the vendors & their co-directors might be ground for holding them liable in some other proceedings, it did not render the prospectus false or fraudulent, & the action must be dismissed with costs.

(3) "Formation expenses" necessarily include promotion moneys paid to persons as a commission for floating a co.; & where a prospectus states that "no promotion money will be paid by the co., & that the formation expenses will be paid by the vendors," it must be shown in order to prove such a statement false, that the purchase price agreed upon has been purposely & fraudulently increased for the purpose of making the co. pay the promotion money in addition to what was

understood to be the real price between the parties.—**ARKWRIGHT v. NEWBOLD** (1881), 17 Ch. D. 301; 50 L. J. Ch. 372; 44 L. T. 393; 29 W. R. 455, C. A.

Annotations:—*As to* (1) **Refd.** *Capel v. Sim's Ships' Compositions Co.* (1888), 57 L. J. Ch. 713. *As to* (3) **Refd.** *Lydney & Liverpool Iron Ore Co. v. Bird* (1885), 31 Ch. D. 328; *McConnel v. Wright* (1903), 51 W. R. 661. *Generally*, **Mentd.** *Mathias v. Yetts* (1882), 46 L. T. 497; *Boswell v. Coaks* (1883), 23 Ch. D. 302; *Jolliffe v. Baker* (1883), 11 Q. B. D. 255; *Roots v. Snelling* (1883), 48 L. T. 216; *Re Scottish Petroleum Co., Wallace's Case* (1883), 49 L. T. 348; *Nash v. Wooderson* (1884), 52 L. T. 49; *Smith v. Chadwick* (1884), 9 App. Cas. 187; *Derry v. Peek* (1889), 14 App. Cas. 337; *Seaton v. Heath, Seaton v. Burnand* (1899), 68 L. J. Q. B. 631.

3216. — Allotted by majority of company to some directors—With knowledge of all members—Fresh members subsequently admitted.]—A co. was formed & registered consisting of eight persons, seven of whom were directors & the eighth the solr., for the purchase & working of a patent belonging to some of the members. The directors allotted shares without consideration to some of their number. It was proved to the satisfaction of the ct. that it was intended at that time to work the co. as a private partnership, & to admit no other members. All the members consented to what was done, & it was sanctioned at a general meeting of the co. No prospectus was issued. Rather more than a year afterwards, the co. being in need of more capital, some fresh shareholders were admitted, who alleged that they were not informed of the manner in which the original shares had been allotted. The co. was ordered to be wound up:—*Held*: no fraud had been committed on the co., & the official liquidator, as representing the co., could not call upon the directors under 1862 Act, s. 165, to account for the value of the shares so allotted to them.—**Re BRITISH SEAMLESS PAPER BOX Co.** (1881), 17 Ch. D. 467; 50 L. J. Ch. 497; 44 L. T. 498; 29 W. R. 690, C. A.

Annotations:—**Consd.** *London Trust Co. v. Mackenzie* (1893), 62 L. J. Ch. 870; *Broderip v. Salomon*, [1895] 2 Ch. 323; *Re Newman*, [1895] 1 Ch. 674; *Re Olympia*, [1898] 2 Ch. 153; *Re Leeds & Handley Theatres of Varieties*, [1902] 2 Ch. 809. **Refd.** *Re Anglo-French Co-op. Soc., Ex p. Pelly* (1882), 21 Ch. D. 492; *Re Postage Stamp Automatic Delivery Co.*, [1892] 3 Ch. 566; *Lagunas Nitrate Co. v. Lagunas Syndicate*, [1899] 2 Ch. 392; *Re Darby, Ex p. Brougham*, [1911] 1 K. R. 95; *Re Jubilee Cotton Mills*, [1923] 1 Ch. 1. **Mentd.** *Foster v. I. R. Comrs.*, [1894] 1 Q. B. 516.

3217. — Received from vendor—Whether received before or after adoption of contract with vendor—Onus of proof.]—When a person standing in a fiduciary relation to a co. is charged with a misfeasance, & a *prima facie* case is raised against him, the *onus* is on him to prove the *bona fides* of the transaction; & as a general rule, he will not be allowed on appeal, if there is no record of the transaction or other corroborative evidence, to give further parol evidence in his own favour. He should prove his case with the utmost particularity from the outset.

If a director of a co., whose duty it is to adopt an agreement by the co. with a vendor, has received some of the shares, forming part of the purchase-money, at less than their value from the vendor, the *onus* lies upon him to prove that he received such shares after the adoption of the agreement. Failing such proof he is liable to pay such a sum as with the sum paid by him to the vendor shall amount to the full nominal value of the shares.—**Re WEST JEWELL TIN MINING Co., WESTON'S CASE** (1879), 10 Ch. D. 579; 48 L. J. Ch. 425; 40 L. T. 43; 27 W. R. 310, C. A.

Annotations:—**Refd.** *Re Ambrose Lake Tin & Copper Mining Co., Ex p. Moss, Ex p. Taylor* (1880), 49 L. J. Ch. 459, n.; *Hirsche v. Sims*, [1894] A. C. 654.

3218. — Received from promoter—Questions still open between company & promoter.]—A gift by a promoter of a co. to a director whilst there are any questions open between the co. & the promoter, must be accounted for by the director to the co., & the co. has the option of claiming the thing given or its highest value whilst held by the director.—*EDEN v. RIDSDALES RAILWAY LAMP & LIGHTING Co., LTD.* (1889), 23 Q. B. D. 368; 58 L. J. Q. B. 579; 61 L. T. 444; 54 J. P. 20; 38 W. R. 55, C. A.

*Annotations:—*Consd. *Shaw v. Holland*, [1900] 2 Ch. 305. *Reid. Re London & South Western Canal*, [1911] 1 Ch. 346.

3219. — Extent of liability.]—The vendor of property to a co. gave to one of the directors a number of shares, part of some which had been allotted to him as fully paid up in payment of the purchase-money of the property. With respect to some of these shares it had been stipulated that the co. should retain the certificates for two years. At the commencement of the winding up of the co. some of the shares so given remained registered in the director's name, & the rest had been transferred by him, some for value, others for a nominal consideration. There was evidence that the public had subscribed for the ordinary shares of the co. at their par value:—*Held*: the director had been guilty of a misfeasance in relation to the co., & he must pay to the liquidator the full nominal value of all the shares which had been given to him, & there was no distinction between those shares, the certificates of which were to be retained for two years, & the others.—*Re DIAMOND FUEL Co., MITCALFE'S CASE* (1879), 13 Ch. D. 169; 41 L. T. 717; 28 W. R. 417, C. A.

3220. — —.]—*Re HOWATSON PATENT FURNACE Co., LTD.* (1887), 4 T. L. R. 152.

3221. — —.]—*EDEN v. RIDSDALES RAILWAY LAMP & LIGHTING Co., LTD.*, No. 3218, *ante*.

3222. — Presumption that shares of value—When value presumed.]—Where the vendor to & promoter of a co. agreed to give A., B., C., & D. a share of his profits as such vendor if they would become directors of the co., & A., B., C., & D., having consented & having become directors, took transfers accordingly from the vendor, of shares in the co. allotted to him in part payment of his purchase-money although there were still matters open between him & the co. at the time. On an application to make directors liable for misfeasance under 1890 (Winding-up) Act, s. 10:—*Held*: a prospectus having been issued inviting the public to subscribe for shares, in respect of any shares so transferred by way of gift to the directors as to which there had been concealment of the fact from the public, the directors were

liable, & the fact of knowledge of the transaction on the part of all the actual members of the co. made no difference; these directors having paid full value for similar shares subscribed for by them, that raised as against them, in the case of the shares given to them, a presumption that these shares were of value.—*Re POSTAGE STAMP AUTOMATIC DELIVERY Co.*, [1892] 3 Ch. 566; 61 L. J. Ch. 597; 67 L. T. 88; 41 W. R. 28; 36 Sol. Jo. 647.

3223. Gifts voted by directors.]—*Re NEWMAN (GEORGE), & Co.*, No. 3257, *post*.

— Qualification shares.]—See No. 3205, *ante*, No. 3257, *post*.

D. In Respect of Improper Profits.

(a) In General.

3224. General rule.]—The directors of a co. are trustees, & they have attached to them, for the benefit of the shareholders, all the liability & duties which attach to a trustee & agent. If, therefore, a director enter into a contract for the co., he can derive no personal benefit from it.

A railway co. furnished a director with a large sum of money to enable him to purchase the "concession" of another line. He purchased it, as it turned out, from himself, he being the concealed owner of it:—*Held*: the transaction could not stand, but the co. must adopt or repudiate the transaction altogether.—*GREAT LUXEMBOURG RY. Co. v. MAGNAY* (No. 2) (1858), 25 Beav. 586; 31 L. T. O. S. 293; 4 Jur. N. S. 839; 6 W. R. 711; 53 E. R. 761.

*Annotations:—*Consd. *Bank of London v. Tyrrell* (1859), 27 Beav. 273. *Reid. Ladywell Mining Co. v. Brookes, Ladywell Mining Co. v. Huggons* (1886), 55 L. T. 284. *Mentd. Kimber v. Barber* (1872), 8 Ch. App. 56.

3225. —.]—(1) A director of a joint-stock co. is in a fiduciary position towards the co., & if he makes any profit on account of transactions of business when he is acting for the co., he must account for them to the co. So, if, acting for himself, he proposes to the co. a contract from the execution of which he will derive a profit, that profit belongs to the co.

Where the arts. of a joint-stock assocn. declared that if a director had any interest in a contract proposed for acceptance by the assocn. he should declare his interest, or his place as director should be vacated, & that having declared it he should not vote on the proposal:—*Held*: (2) "declare his interest" meant declare the nature of his interest, & the words were not satisfied by a mere declaration that he had an interest in the matter; (3) the vacating of the seat would not prevent the contract itself from being treated as one made for the benefit of the assocn., for that the rule of equity would apply to such a case in addition to the penalty specially mentioned by the art. of assocn.

3218 i. Fully-paid shares—Received from promoter—Questions still open between company & promoter.]—A gift by a promoter of a co. to a director, whilst there are any questions open between the co. & the promoter, must be accounted for by the director to the co.—*BALMORAL DIAMOND SYNDICATE, LTD. (IN LIQUIDATION) v. LIDDLE*, [1907] T. H. 89.—S. AF.

3218 ii. — —.]—The directors of a projected co. purchased a mine from its promoters for a large sum, for the purpose of completing a co. & working it. Shortly afterwards the promoters gave 300 shares a-piece to each of the directors:—*Held*: on the application of the official manager, in the absence of fraud, that the directors were liable to pay the full value of such shares to the official manager, & to be declared contributories on foot of such shares.—

Re KNOCKATRELLANE COPPER MINING Co., Ex p. CHATTERTON (1857), 10 Ir. Jur. 187.—IR.

t. Extent of liability.]—Where directors of a co. receive by way of gifts from a third person shares in the co., & belonging to it, & do not, when they discover that the shares belong to the co., offer to hand them back or to make any restitution to the co., & do not admit that the shares belong to the co., the failure to make any attempt at restitution is a ground upon which the ct. may charge them with interest upon the value of the shares.

In such case the co. has an option either to take back the shares themselves & rely upon all the advantages which may pertain to the shares, or to require an account of the value of the shares together with interest upon

their value.

The value of the shares so taken is the value at the time they were misappropriated.—*MONTGOMERIE'S BREWERY Co. v. BLYTH* (1901), 26 V. L. R. 612; 27 V. L. R. 175.—AUS.

a. Partly-paid shares—Received from vendor.]—P., the owner of a mine, sold his interest in it to a co. for 5,000 shares, to be treated as having £1 paid up upon each. By an agreement between himself & the directors, one-half of those shares was transferred to the directors for their own benefit. The co. was ordered to be wound up, & the directors to whom those shares had been transferred were declared contributories in respect of the shares, as unpaid shares.—*Re IRISH CONSOLS MINING Co., Ex p. PERRIER* (1857), 7 I. Ch. R. 256.—IR.

Sect. 28.—Directors: Sub-sect. 6, D. (a), (b) & (c).]

(4) In a joint stock assocn. created for the purpose of carrying into effect loans & other financial operations C., who carried on business as a stockbroker, was a director. C. had a partner K. who was not in any way connected with the assocn.; the transaction, however, had been a partnership transaction:—*Held*: the partners were liable, jointly & severally, to make good to the assocn. the profits which it ought to have received in the increased amount of the commission.—**IMPERIAL MERCANTILE CREDIT ASSOCN. (LIQUIDATORS) v. COLEMAN** (1873), L. R. 6 H. L. 189; 42 L. J. Ch. 644; 29 L. T. 1; 21 W. R. 696, H. L.

Annotations:—As to (1) **Consd.** Costa Rica Ry. v. Forwood, [1901] 1 Ch. 746. **Refd.** *Re* Coal Economising Gas Co., Gover's Case (1876), 1 Ch. D. 182; New Sombrero Phosphate Co. v. Erlanger (1877), 5 Ch. D. 73; Bagnall v. Carlton (1877), 6 Ch. D. 371; Silkstone & Haigh Moor Coal Co. v. Edey (1899), 69 L. J. Ch. 73; Transvaal Lands Co. v. New Belgium (Transvaal) Land & Development Co., [1914] 2 Ch. 488. As to (2) **Apld.** *Re* Coal Economising Gas Co., Gover's Case (1875), 1 Ch. D. 182. **Consd.** Panama & South Pacific Telegraph Co. v. India Rubber, Gutta Percha & Telegraph Works Co. (1875), 10 Ch. App. 520, n.; Chesterfield & Boythorpe Colliery Co. v. Black (1877), 26 W. R. 207. **Apld.** New Sombrero Phosphate Co. v. Erlanger (1877), 5 Ch. D. 73. **Consd.** Emma Silver Mining Co. v. Grant (1879), 11 Ch. D. 918. **Apld.** Turnbull v. West Riding Athletic Club, Leeds (1894), 70 L. T. 92. **Consd.** Transvaal Lands Co. v. New Belgium (Transvaal) Land & Development Co., [1914] 2 Ch. 488. **Refd.** Cackett v. Keswick, [1902] 2 Ch. 456. As to (4) **Consd.** Costa Rica Ry. v. Forwood, [1901] 1 Ch. 746. **Refd.** *Re* Coal Economising Gas Co., Gover's Case (1876), 1 Ch. D. 182; New Sombrero Phosphate Co. v. Erlanger (1877), 5 Ch. D. 73; Bagnall v. Carlton (1877), 6 Ch. D. 371; Silkstone & Haigh Moor Coal Co. v. Edey (1899), 69 L. J. Ch. 73; Transvaal Lands Co. v. New Belgium (Transvaal) Land & Development Co., [1914] 2 Ch. 488. *Generally, Mentd.* Dunne v. English (1874), L. R. 18 Eq. 524; Boston Deep Sea Fishing & Ice Co. v. Ansell (1888), 59 L. T. 345.

3226. ———.]—(1) A subscriber of the memorandum of assocn. of a co. limited by shares is in the absence of any provision in the arts. of assocn. or of an express agreement between him & the co. to the contrary, not liable to make any payment in respect of the shares for which he subscribes, except as & when calls are made upon him in accordance with the provisions of the arts.

(2) If directors issue other shares besides those which are taken by the subscribers of the memorandum, there is nothing to prevent them from offering those shares on such terms as regards payment to the co. on application & allotment as the directors may think expedient. But if directors require other appcts. for shares to make payment on application & allotment & issue their own shares for which they have subscribed the memorandum without requiring any such payments to be made & without disclosing to the other shareholders this difference between their position & that of the directors, they commit a breach of duty, even though in doing so they act without fraud & in the belief they are doing nothing wrong.

(3) Directors who so use their powers as to obtain benefits for themselves at the expense of the other shareholders, without informing them of the facts, cannot be allowed to retain those benefits, but must account for them to the co., so that all shareholders may participate in them.—**ALEXANDER v. AUTOMATIC TELEPHONE CO.**, [1900] 2 Ch. 56; 69 L. J. Ch. 428; 82 L. T. 400; 48 W. R. 546; 16 T. L. R. 339; 44 Sol. Jo. 407, C. A.

Gifts—Voted to themselves.]—See No. 3205, ante, No. 3257, post.

3227. Remuneration—Voted in excess of authorised scale.]—EVANS v. COVENTRY, No. 3339, post.

3228. ——— Voted after winding up begun—& notice not to part with assets.]—*Re* BRIGHTON BREWERY CO., HUNT'S CASE, No. 3213, ante.

3229. Discount on issue of debentures—Issue to director.]—Directors, with borrowing powers, issued debentures at 7½ per cent. discount. Some of the debentures having been taken by a director:—Held: the issue of debentures at a discount was not illegal; & the director was not liable to the co. for the difference between 92½ per cent. & par.—*Re* COMPAGNIE GÉNÉRALE DE BELLEGARDE, CAMPBELL'S CASE (1876), 4 Ch. D. 470; 35 L. T. 900; 25 W. R. 299.

Annotation:—**Refd.** Webb v. Shropshire Ry., [1893] 3 Ch. 307.

3230. Travelling expenses wrongly allowed.]—YOUNG v. NAVAL, MILITARY & CIVIL SERVICE CO-OPERATIVE SOCIETY OF SOUTH AFRICA, No. 3007, ante.

(b) *Improper Payments to Co-Directors.*

3231. Commission or brokerage.]—BENSON v. HEATHORN (1845), 2 Coll. 309; 63 E. R. 748.

3232. Remuneration paid for services not rendered—Negligence.]—Directors held liable to refund to the co. a sum of money paid by them to a co-director for alleged services rendered, the claim to be paid for such service being unfounded, & the directors having been guilty of negligence in making such payment.—MERCHANTS' FIRE OFFICE, LTD. v. ARMSTRONG** (1901), 17 T. L. R. 709; 45 Sol. Jo. 706, C. A.**

3233. Travelling expenses wrongly allowed.]—YOUNG v. NAVAL, MILITARY, & CIVIL SERVICE CO-OPERATIVE SOCIETY OF SOUTH AFRICA, No. 3007, ante.

3234. Extent of liability—Interest.]—BENSON v. HEATHORN, No. 3231, ante.

See, generally, Sub-sect. 3, ante.

(c) *Profits arising out of Office.*

3235. General rule.]—(1) The directors & officers a joint-stock co. are bound to consult exclusively the interests of the shareholders, & cannot retain pecuniary benefits acquired in the conduct of transactions afterwards sanctioned by the shareholders, unless the particulars of these benefits are fully explained to the shareholders & approved of by them.

(2) The rights & liabilities of one co. were transferred to another for the purpose of amalgamation:—*Held*: the purchasing co. acquired the right to recover from the director & officers of the selling co. sums improperly received by them out of the assets of the selling co.—**GENERAL EXCHANGE BANK v. HORNER** (1870), L. R. 9 Eq. 480; 39 L. J. Ch. 393; 22 L. T. 693; 18 W. R. 414.

3236. Profits on sale or amalgamation of company's business—Not disclosed to shareholders—Compensation for loss of office.]—The directors of a co. are trustees for the shareholders; &, therefore, where directors contracted for an amalga-

PART III. SECT. 28, SUB-SECT. 6.—D. (b).

3231 i. Commission & brokerage.]—CRAWFORD v. BATHURST LAND & DEVELOPMENT CO., LTD. (1918), 42 O. L. R. 256; *reversd. sub nom.* FULLERTON v. CRAWFORD, 50 D. L. R. 457; 59

S. C. R. 315.—CAN.

3231 ii. ———.]—A., one of the directors of a co., entered into an agreement with the managers of the co. to the effect that if the managers should receive a bonus of £700 from the co. on the sale of its business, A. should

receive £200 from the managers. The managers having received the bonus of £700, & refused to pay the £200, A. sued them for same:—*Held*: that the contract was illegal & could not be enforced.—**LAUGHLAND v. MILLAR, LAUGHLAND & CO.** (1904), 6 F. (Ct. of Sess.) 413.—SCOT.

mation of their co. with another, & without the knowledge of the shareholders contracted for payments to themselves of sums of money as a compensation for their prospective interest in their fees, they were, upon a bill filed by a shareholder for an account, compelled to pay such moneys into ct.—*GASKELL v. CHAMBERS* (1858), 26 Beav. 360; 28 L. J. Ch. 385; 32 L. T. O. S. 188; 5 Jur. N. S. 52; 53 E. R. 937; *on appeal* (1859), 32 L. T. O. S. 327, L. JJ.

3237. ————]—Under an agreement between two cos., ratified by the shareholders on June 29, 1902, all the assets of A. co. were sold to B. co., there being issued to shareholders in A. co. stock in B. co. to the amount of a detailed valuation of the assets. At the same time £30,000 were paid by B. co. to the directors of A. co.; this transaction not being disclosed to A. co. or to the shareholders in either co. In 1919 & 1920 actions were brought against the directors to recover the £30,000. Pltfs. included the liquidator of B. co., a person suing on behalf of himself & all other shareholders in A. co., & of all shareholders in that co. prior to June 29, 1902, who transferred their shares pursuant to the agreement. A. co. was not made a party to the actions:—*Held*: (1) the payment to the directors could not be justified as compensation for loss of their directorships, in the absence of a full disclosure of the facts; (2) the actions could not be maintained. The liquidator could not sue, because no claim had been made & transferred to B. co., & that co. was not a shareholder. The claim as representing the shareholders failed because, if A. co. existed, it was a necessary party; if it did not, there was no claim. The claim as representing the shareholders on June 29, 1902, failed, because the directors acted as agents for the co. & not for the shareholders.—*CLARKSON v. DAVIES*, [1923] A. C. 100; 92 L. J. P. C. 27; 128 L. T. 452; [1923] B. & C. R. 42, P. C.

3238. ————]—*GENERAL EXCHANGE BANK v. HORNER*, No. 3235, *ante*.

3239. ————]—Induced by misrepresentation to shareholders.]—Appls., the directors of a co., represented to resps., who were shareholders in the co., that it was necessary for the directors to secure the consent of the majority of the shareholders in order to effect an amalgamation with another co., & induced resps. to give them options to purchase their shares. Appls. exercised these options & the amalgamation took place & applts. made a profit:—*Held*: applts. were trustees of this profit for the benefit of resps.—*ALLEN v. HYATT* (1914), 30 T. L. R. 444, P. C.

3240. Shares issued at a premium—Profits on shares allotted to directors' nominee.]—Defts., in 1864, were four of the directors of a joint-stock bank. In that year resolutions were passed to increase the capital by the issue of 20,000 new £50 shares which were to be offered to the old shareholders at the rate of one new share for each old share held by them, each allottee paying for each share £25 premium, & £5 as a first call. The shares not taken up by them were to be disposed of by the directors at £30 premium. The directors

entered into an arrangement with S., for him to take at £30 premium all the shares not taken up by the old shareholders. In pursuance of this, 9778 shares were allotted to S., who paid only £5 per share, it being arranged that the certificates for these shares should be withheld, that the bank should have a lien on them for the premiums, & that no transfer from him to any purchaser should be registered till the £30 per share on the shares transferred had been paid. S., being unable to take up so many shares applied to defts. to relieve him of some of them, & they severally took from him considerable numbers at £30 per share, & afterwards disposed of them at a profit, the £30 per share being paid to the bank at the times when the shares were respectively registered in the names of the purchasers:—*Held*: defts. must respectively account to the bank for the profits made by them respectively by sale of the shares.—*PARKER v. MCKENNA* (1874), 10 Ch. App. 96; 44 L. J. Ch. 425; 31 L. T. 739; 23 W. R. 271, L. C. & L. JJ.

Annotations:—*Distd. Municipal Freehold Land Co., v. Pollington* (1890), 2 Meg. 307. *Reid. Re Canadian Oil Works Corp., Hay's Case* (1875), 10 Ch. App. 593; *Re West Jewell Tin Mining Co., Weston's Case* (1879), 48 L. J. Ch. 425; *Re Fitzroy Bessemer Steel, etc. Co.* (1884), 50 L. T. 144; *Percival v. Wright*, [1902] 2 Ch. 421. *Mentd. Nant-y-Glo & Blaina Ironworks Co. v. Tamplin* (1876), 35 L. T. 125; *Bagnall v. Carlton* (1877), 6 Ch. D. 371; *National Bank of Australasia v. United Hand-in-Hand & Band of Hope Co.* (1879), 4 App. Cas. 391; *Hopkinson v. Lovering* (1883), 11 Q. B. D. 92; *Guy v. Churchill & Sim* (1886), 2 T. L. R. 855; *Re Postlethwaite, Postlethwaite v. Rickman* (1888), 59 L. T. 58; *Salford Corp. v. Lever* (1890), 25 Q. B. D. 363; *Williams v. Scott*, [1900] A. C. 499; *Delves v. Gray*, [1902] 2 Ch. 606; *Armstrong v. Jackson*, [1917] 2 K. B. 822.

3241. Profit on purchase from company—After termination of office.]—*Re IMPERIAL LAND CO. OF MARSEILLES, Ex p. LARKING*, No. 3073, *ante*.

3242. Commission—From customers—Company itself ineligible to draw.]—*BOSTON DEEP SEA FISHING & ICE CO. v. ANSELL*, No. 3490, *post*.

3243. ————]—On sale of property to company—Though still in vendor's hands.]—Pltf., who was the owner of a mine, agreed with a person who was in fact, though pltf. did not then know it, a director of & agent for defts., a limited co., that the director should have an option of finding a purchaser for the property, & should, if successful, be paid as commission 10 per cent. of the price obtained. The director arranged a sale to defts., but before the contract was entered into, or the commission had become payable, pltf. became aware of the director's position with regard to defts.:—*Held*: pltf. having completed the contract without disclosing to defts., as purchasers, the agreement to pay commission to their agent, any part of the agreed commission remaining in pltf.'s hands could be recovered from him by defts.—*GRANT v. GOLD EXPLORATION & DEVELOPMENT SYNDICATE*, [1900] 1 Q. B. 233; 69 L. J. Q. B. 150; 82 L. T. 5; 48 W. R. 280; 16 T. L. R. 86; 44 Sol. Jo. 100, C. A.

Annotations:—*Mentd. Hovenden v. Millhoff* (1900), 83 L. T. 41; *Rowland v. Chapman, Rowland v. Corrie, Rowland v. Corrie, Rowland v. Brandreth* (1901), 17 T. L. R. 669; *Bartram v. Lloyd* (1903), 88 L. T. 286.

3244. Business diverted by directors—Company

PART III. SECT. 28, SUB-SECT. 6.—
D. (c).

3238 i. Profit on sale or amalgamation of company's business—Not disclosed to shareholders.]—Defts. & another director of a co., formed to acquire & sell a single tract of land, were appointed by the directors a committee to bring in a proposal for disposing of the lands & shares. This committee

negotiated a sale at a price which made the shares worth about \$2,400 each; whereupon defts. proceeded to purchase the shares held by pltf. & others at \$1,370 per share without disclosing the advantageous sale they had made, & pltf., sold & transferred his shares to defts. in ignorance of such sale:—*Held*: the position of the members of the committee was different from that of ordinary directors of a co.

as regards their fiduciary relations to the shareholders, & they were bound to inform the shareholders about the sale if they proposed to buy their shares from them, & defts. had been guilty of such fraudulent concealment as to make their purchase from the pltf. voidable.—*GARDEN v. BENNETTO* (1913), 23 W. L. R. 633; 2 W. L. R. 733; 3 W. W. R. 1109; 9 D. L. R. 719.—CAN.

Sect. 28.—Directors: Sub-sect. 6, D. (c) & (d) i. & ii.] entitled to benefit of.]—COOK v. DEEKS, No. 3055, *ante*.

Compare No. 3038, *ante*, & Part IX., Sect. 9, sub-sect. 5, *post*.

3245. In whose name action brought—Provision in constitution of company.]—Some shareholders in a joint-stock co. may sue, on behalf of themselves & the other shareholders, for the purpose of compelling directors of the co. to refund money improperly withdrawn by them from the stock of the co., & applied to their own use.

A clause in an Act of Parliament, passed for the regulation of a joint-stock co., provided, that all proceedings, whether at law or in equity, to be carried on by or on behalf of the co. against any person or persons, whether such person or persons should be a member or members of the co. or not, should be instituted & carried on in the name of the chairman or of one of the directors as the nominal pltf. :—*Held*: such a clause does not apply to a case in which directors appropriate to their own use part of the joint stock by charging the co. with a much larger sum, as the price of property purchased by them, than was actually paid.—HICHENS v. CONGREVE (1828), 4 Russ. 562; 1 Russ. & M. 150, (B); 6 L. J. O. S. Ch. 167; 38 E. R. 917, L. C.

Annotations:—Consd. Mocatta v. Ingilby (1835), 5 L. J. Ch. 145. *Apld.* Vigors v. Audley (1837), Donnelly, 246. *Refd.* Walburn v. Ingilby (1833), Coop. temp. Brough. 270; Wallworth v. Holt (1840), 4 My. & Cr. 619; Benson v. Heathorn (1842), 1 Y. & C. Ch. Cas. 326; Foss v. Harbottle (1843), 2 Hare, 461; Harvey v. Collett (1846), 15 Sim. 332; Dunne v. English (1874), L. R. 18 Eq. 524; Gluckstein v. Barnes, [1900] A. C. 240. *Mentd.* Imperial Mercantile Credit Asscn. v. Coleman (1871), 6 Ch. App. 562, n.; Kimber v. Barber (1872), 8 Ch. App. 56; Craig v. Phillips (1876), 35 L. T. 198; New Sombrero Phosphate Co. v. Erlanger (1877), 5 Ch. D. 73; Omnium Electric Palaces v. Baines, [1914] 1 Ch. 332.

(d) On Contract with Company.

i. In General.

3246. General rule.]—IMPERIAL MERCANTILE CREDIT ASSCN. (LIQUIDATORS) v. COLEMAN, No. 3225, *ante*.

3247. Extent of rule—Profit made by director's firm.]—IMPERIAL MERCANTILE CREDIT ASSCN. (LIQUIDATORS) v. COLEMAN, No. 3225, *ante*.

3248. — Exception in articles.]—By the arts. of assocn. of a limited ry. co., it was provided that a director should vacate his office if he was concerned in, or participated in the profits of, any contract with the co. without declaring the nature of his interest; but "no director shall vacate his office by reason of his being a member of any corpn. co., or partnership, which has entered into contracts with, or done any work for, the co.; or by reason of his being interested, either in his individual capacity, or as a member of any co., corpn. or partnership, in any adventure or undertaking in which the co. may also have an interest";

but the director was not to vote on any contract of this kind, and if he did, his vote was not to be counted.

In 1886, shortly after its formation, the ry. co., of which F. was a director, entered into contracts with a steamship co. for the carriage & shipment of bananas. F. was the largest shareholder in the steamship co., & was also a partner in the firm that managed it; no disclosure of F.'s interest was made either in the prospectus of the ry. co., or when the contracts were entered into, nor did he ever "declare the nature of his interest" pursuant to the arts. of assocn.; but his co-directors of the ry. co. were aware that he had some interest in the steamship co. F. continued a director of the ry. co. until 1896, when he resigned & shortly afterwards that co. brought an action against him to make him liable for all profits received by him as shareholder in the steamship co., & as partner in the firm that managed it, under the contracts with the pltf. co. F. having died before the trial, the action was revived against his exors.:—*Held*: on the arts. of assocn., F.'s estate was not liable to account for any profits made by him out of the contracts with the pltf. co.

Consideration of the equitable rule prohibiting a person who stands in a fiduciary relation from entering into engagements in which his interest may conflict with his duty, except on the condition of accounting for all profits he may receive from such engagements to the person towards whom he stands in the fiduciary relation.—COSTA RICA RY. CO., LTD. v. FORWOOD, [1901] 1 Ch. 746; 70 L. J. Ch. 385; 84 L. T. 279; 49 W. R. 337; 17 T. L. R. 297; 45 Sol. Jo. 424; 8 Mans. 374, C. A.

Annotation:—*Refd.* Transvaal Lands Co. v. New Belgium (Transvaal) Land & Development Co., [1914] 2 Ch. 488.

3249. Discretion of court to order repayment—Grounds for exercise.]—Re SUNLIGHT INCANDESCENT GAS LAMP CO., LTD. (1900), 16 T. L. R. 535.

3250. Director acting as ship's-husband to company's vessel.]—(1) H., being a director of a joint-stock co. established for the building, purchasing, hiring & employment of steam vessels, purchased a vessel for £1840, & afterwards sold it to the co., as from a stranger, for £1500, charging the co. with commission at £1 per cent., the broker's earnest money, & the expenses of the bill of sale to himself, there being but one bill of sale. Such a transaction cannot stand in a Ct. of Equity.

(2) A ship's-husband, being the servant of the shipowners, holding an important office & open to the vigilant superintendence of his employers, it is *prima facie* a breach of trust in any director of a co. established for the purpose of acquiring & working of vessels, especially where the directors have the exclusive management of the concern, to take upon himself the duties of ship's-husband. Where, therefore, in a co. so constituted, one of

PART III. SECT. 28, SUB-SECT. 6.—
D. (d) i.

3247 i. Extent of rule—Profit made by director's firm.]—The directors of a co., without authority from the shareholders, passed a resolution providing that, in consideration of a firm, of which two directors were members, carrying on business of a similar character, continuing the same until the co. could take it over, the co. indemnified it from all loss occasioned thereby. K. & F., two members of the firm, refused their assent to the terms of this resolution & declared their intention, of which the majority of the directors were made aware, to retire

from the firm. F. subsequently wrote to the president & another director reiterating her intention to retire, & declaring that she would not be responsible for any further liability. The co. afterwards took over the business of the firm paying therefor £30,000, & receiving assets worth £12,000, & having eventually gone into liquidation, the liquidator brought an action to recover from the members of the firm the difference:—*Held*: K. & F. having received the benefit of the money paid by the co., were liable to repay the loss.—WADE v. KENDRICK (1905), 37 S. C. R. 32; 26 C. L. T. 124.—CAN.

3247 ii. — — —.]—Pltf., a share-

holder, claimed a refund to deft. co., by the individual defts., directors of deft. co., of moneys received by them as salaries, a declaration that defts. were disqualified, the appointment of a receiver to carry on the business of the co., & an account of money improperly received by the directors while dealing with themselves as members of a partnership:—*Held*: the conduct of defts. was a fraud upon pltf.; & the action was properly constituted to entitle pltf. to an account of the profits in connection with the co.'s dealings with the partnership.—STONE v. THEATRE AMUSEMENT CO. (1913), 25 W. L. R. 905.—CAN.

the directors, with the consent of others forming with himself a board of directors, undertook the office of ship's-husband, & in that character received out of the funds of the co. such sums for commission & brokerage as are usually allowed to the ship's-husband:—*Held*: he must refund those moneys; *semble*: the other members of the board of directors were similarly responsible in the event of any inability in the principal party implicated to refund.—*BENSON v. HEATHORN* (1842), 1 Y. & C. Ch. Cas. 326; 9 L. T. 118; 62 E. R. 909.

Annotations:—As to (1) *Refd.* Imperial Mercantile Credit Assocn. v. Coleman (1871), 6 Ch. App. 558; Costa Rica Ry. v. Forwood, [1900] 1 Ch. 756; Rowland v. Chapman, Rowland v. Corrie, Rowland v. Brandreth (1901), 17 T. L. R. 669; Transvaal Lands Co. v. New Belgium (Transvaal) Land & Development Co., [1914] 2 Ch. 488. As to (2) *Distd.* Re Cape Breton Co. (1885) 29 Ch. D. 795. *Refd.* Smith v. Lay (1856), 3 K. & J. 105.

3251. Loan to company.—*BLUCK v. MALLALUE*, No. 3479, *post*.

3252. Premiums on insurance policy—Risk underwritten by directors.—*Re SUNLIGHT INCANDESCENT GAS LAMP Co., LTD.* (1900), 16 T. L. R. 535.

Contracts between company & directors generally, *see* Sub-sect. 4, D., *ante*.

ii. On Sale to Company.

3253. Sales before incorporation of company—After agreement to become director—Goods delivered after incorporation.—In Aug., Sept., & Oct., 1872, negotiations were carried on for the purchase of the business of F. & B. by a limited co. M., who often had large contracts with F. & B. for the delivery of goods, on Sept. 7 agreed to become a director of the proposed co., & on Sept. 24, an agreement was entered into between F. & B. & a trustee for the co. for the purchase & taking over by the co. as from Sept. 1, the business of F. & B. & for carrying on all contracts entered into by them as buyers or sellers. On Oct. 7, M. attended a meeting of the directors. On Oct. 24, the memorandum & arts. of assocn. were signed by M. The arts. ratified the agreement of Sept. 24. On Oct. 31, the co. was incorporated. On Oct. 15 & 25, & on subsequent dates, M. entered into contracts with F. & B., & afterwards with the co., for the delivery of goods; some of the goods under the earlier contracts were not delivered by Oct. 31. In a suit by the co. to make M. liable to account for profits made on all these contracts:—*Held*: he was not, under the circumstances, liable to account for profits in respect of contracts prior to the incorporation of the co., but only for those after that date.—*ALBION STEEL & WIRE Co. v. MARTIN* (1875), 1 Ch. D. 580; 45 L. J. Ch. 173; 33 L. T. 660; 24 W. R. 134.

Annotations:—*Refd.* Costa Rica Ry. v. Forwood, [1901] 1 Ch. 746. *Mentd.* Re Bodega Co. (1903), 52 W. R. 249.

3254. Sale to private company—Price payable in shares—Goodwill valued too high.—(1) H., the owner of a manufacturing business, sold it to a co., of which he was sole director. The co. was, & was intended to remain, a private concern, consisting of the vendor & his friends, & the consideration was satisfied wholly in shares. H. afterwards sold his shares:—*Held*: in the absence of fraud, & under the circumstances of the case, the co. had no right of action against H. on the

alleged ground that in estimating the purchase price of the business, too high a value had been placed upon the goodwill.

(2) Where a reasonable salary had been drawn by a managing director without the authority of any resolution, & without any specific notice to the shareholders, but the item appeared in the accounts, & every shareholder either knew, or had the means of knowing the fact:—*Held*: the director was not liable to account to the co. for the money.—*HADLEY (FELIX) & Co., LTD. v. HADLEY* (1897), 77 L. T. 131.

3255. Property acquired by director not purporting to act on behalf of co.—*BURLAND v. EARLE*, No. 3526, *post*.

3256. Where directors sole persons beneficially interested.—Where all the shares in a co. belong in reality to the directors, & there are no independent shareholders, a sale by the directors to the co., not being in itself *ultra vires*, will not be set aside on the ground that the directors occupy a fiduciary position, & that the transaction was not approved by a general meeting, the directors themselves being in fact the only persons beneficially interested.—*A.-G. FOR CANADA v. STANDARD TRUST Co. OF NEW YORK*, [1911] A. C. 498; 80 L. J. P. C. 189; 105 L. T. 152, P. C.

3257. Knowledge of members—No formal approval.—Directors cannot pay themselves for their services, or make presents to themselves out of the co.'s assets, unless authorised so to do by the instrument which regulates the co., or by the shareholders at a properly convened meeting.

N. the chairman of a co. in which substantially all the shares were held by himself & his family, purchased on behalf of the co. the right to a building agreement to be obtained from certain comrs. The comrs. objected to the co. as tenant, & proposed to substitute N. who thereupon sold the benefit of the agreement to the co. at an advance of £10,000 of which £7,000 was spent upon commissions & otherwise in order to obtain the agreement from the comrs., & £3,000 was applied by N. to his own use. A further sum of £3,500 was spent by N. out of the assets of the co. upon his private house. These payments were made out of money borrowed by the co. for the purpose of its business; they were sanctioned by resolutions of the directors, & were approved of by all the shareholders. The arts. contained no power to make presents to directors. Upon a summons taken out by the liquidator in the winding up of the company against N. under 1890 (Winding up) Act, s. 10:—*Held*: N. was not liable for the £7,000, but was liable for the £3,000 & the £3,500, because the shareholders for the time being had no power to authorise the making of presents to directors out of money borrowed by the co., & because if there had been such power it could be exercised only at a general meeting.—*Re NEWMAN (GEORGE) & Co.*, [1895] 1 Ch. 674; 64 L. J. Ch. 407; 72 L. T. 697; 43 W. R. 483; 11 T. L. R. 292; 39 Sol. Jo. 346; 2 Mans. 267; 12 R. 228, C. A.

Annotations:—*Folld.* Re Bodega Co., [1904] 1 Ch. 276. *Distd.* Re Express Engineering Works, [1920] 1 Ch. 466. *Refd.* Seligman v. Prince, [1895] 2 Ch. 617; Re Innes, [1903] 2 Ch. 254; Young v. Naval, Military & Civil Service Co-op. Soc. of South Africa, [1905] 1 K. B. 687. *Mentd.* Salomon v. Salomon, Salomon v. Salomon (1896), 66 L. J. Ch. 35; Hammond v. Prentice, [1920] 1 Ch. 201.

PART III. SECT. 28, SUB-SECT. 6.—D. (d) ii.

b. *General rule.*—Even if there is no fraud, a secret profit made by a vendor-director cannot be retained by him but must be handed over to the co.—*PACIFIC COAST COAL MINES v.*

ARBUTHNOT (1916), 33 W. L. R. 487; 9 W. W. R. 1208.—*CAN.*

c. —.]—In any question as to the remedies available against a director of a co. who has sold his own property to the company, regard must be had to the relationship in which the

director stood to the company when he acquired the property. If he was under no obligation at that time to acquire the property for the co. instead of for himself, then his nondisclosure of the fact that the property was his own would entitle the co. to repudiate

Sect. 28.—Directors: Sub-sect. 6, D. (d) ii. & E. (a).]

3258. Sufficiency of disclosure.]—A. & B., directors of a colliery co., purchased the lease of a colliery & re-sold the same to the co. of which they were directors at a large profit. There was no allegation that the price they obtained from the co. was more than the lease was worth at the time. The fact that A. & B. were the vendors to the co. was fully disclosed to the latter at the time of the sale, but the price they had themselves paid to the lessee was not disclosed. No unfair advantage had, in the opinion of the ct., been taken of the co.:—*Held*: A. & B. had made a "full & fair disclosure" of their interest in the subject of sale & it was not incumbent upon them to disclose the price for which they had themselves bought.—*CHESTERFIELD & BOYTHORPE COLLIERY CO. v. BLACK* (1877), 37 L. T. 740; 26 W. R. 207.

3259. —.]—Directors of a co., who are also vendors to the co. do not discharge their duty of disclosing to the shareholders what profits they have made on the sale to the co. by the insertion of words in a prospectus which, read with caution & sifted to the bottom might have given to the reader a clue to their meaning. The disclosure must be explicit. Nor can they escape liability to refund secret profits by a clause in arts. of assocn. that they shall not be accountable to the company for any profit realised by reason only of their holding that office or of the fiduciary relation thereby established.—*GLUCKSTEIN v. BARNES*, [1900] A. C. 240; 69 L. J. Ch. 385; 82 L. T. 393; 16 T. L. R. 321; 7 Mans. 321, H. L.; *affg. S. C. sub nom. Re OLYMPIA, LTD.*, [1898] 2 Ch. 153, C. A.

Annotations:—*Distd. Re Lady Forrest* (Murchison) Gold Mine, [1901] 1 Ch. 582. *Apld. Re Darby, Ex p. Brougham*, [1911] 1 K. B. 95. *Consd. Re Jubilee Cotton Mills*, [1922] 1 Ch. 100. *Reid. Re Leeds & Hanley Theatres of Varieties* (1902), 72 L. J. Ch. 1; *Watts v. Bucknall* (1903), 88 L. T. 845; *Omnium Electric Palaces v. Baines*, [1914] 1 Ch. 332. *Mentd. Re Haycroft Gold Reduction & Mining Co.*, [1900] 2 Ch. 230.

Compare No. 3225, *ante*, No. 3482, *post*.

3260. Effect of protective clause in articles.]—*GLUCKSTEIN v. BARNES*, No. 3259, *ante*.

3261. Effect of adoption of contract by company.]—In 1871 certain coal areas were purchased for £5,500 by six persons, of whom F. was one, & were vested in G. as a trustee for them without disclosing the trust. In 1873 a co. was formed for the purpose of purchasing these areas & other property. F. was one of the directors, & as such he concurred in effecting a purchase by the co. from G. for £12,000 cash, & £30,000 in fully paid-up shares, without disclosing the fact that F. was a part owner. In 1875 the co. was ordered to be wound up. In 1878 a meeting of contributories was called, at which two rival schemes were brought forward, one for repudiating the purchase of the coal areas, the other for adopting the purchase & selling the property. The latter scheme was adopted, & was confirmed by the ct. The liquidator accordingly sold the property, but at a heavy loss. A contributory then took out a summons under 1862 Act, s. 165, to make F. liable for misfeasance as a director in allowing the co.'s seal to be affixed to the agreement for pur-

chase by the co.:—*Held*: (1) though the co. would have been entitled to rescind the contract, yet as rescission had become impossible no relief could be given against F.; (2) as F. when he acquired his interest in the property was not a trustee for the co., he could not be treated as having purchased on behalf of the co. at the price he gave, & was not chargeable with the difference between the price at which he bought & the price paid by the co., & he could not be charged with the difference between the price paid by the co. & the value of the property when the co. bought it, as this would be making a new contract between the parties.

Where a trustee, purchasing on behalf of his *cestui que trust*, purchases his own estate without disclosing his own interest in it, the *cestui que trust*, when he discovers the fact, may, if he pleases, set aside the contract altogether, but then he must return that which has been purchased. The same rule applies, in the case of a purchase by a director on behalf of a co., of property in which he has any interest; if the co. repudiates the contract, the property must be returned. In this case a return of the property is impossible after what was done in 1878. The resolution of the shareholders to sell the property was passed in 1878, & the co. having determined to adopt, & not to set aside, this contract of purchase, it is too late now to seek to do so (*COTTON, L.J.*).—*Re CAPE BRETON CO.* (1885), 29 Ch. D. 795; 54 L. J. Ch. 822; 53 L. T. 181; 33 W. R. 788; 1 T. L. R. 450, C. A.; *affd. sub nom. CAVENDISH BENTINCK v. FENN* (1887), 12 App. Cas. 652, H. L.

Annotations:—*As to* (1) *Folld. Re Lady Forrest* (Murchison) Gold Mine, [1901] 1 Ch. 582. *Reid. Re Olympia*, [1898] 2 Ch. 153. *As to* (2) *Consd. Lydney & Wigpool Iron Ore Co. v. Bird* (1886), 33 Ch. D. 85. *Folld. Ladywell Mining Co. v. Brookes, Ladywell Mining Co. v. Huggons* (1887), 35 Ch. D. 400. *Consd. Re North Australian Territory Co., Archer's Case*, [1892] 1 Ch. 322; *Re Olympia*, [1898] 2 Ch. 153; *Re Leeds & Hanley Theatres of Varieties*, [1902] 2 Ch. 809. *Distd. Re Jubilee Cotton Mills*, [1922] 1 Ch. 100. *Reid. Re Liverpool Household Stores Assocn.* (1890), 59 L. J. Ch. 616; *Burland v. Earle*, [1902] A. C. 83; *Re Brazillion Rubber Plantations & Estates*, [1911] 1 Ch. 425; *Omnium Electric Palaces v. Baines*, [1914] 1 Ch. 332; *Jacobus Marler Estates v. Marler* (1916), 85 L. J. P. C. 167, n. *Generally, Reid. Kregor v. Hollins* (1913), 109 L. T. 225. *Mentd. Re Liberator Permanent Benefit Bldg. Soc.* (1894), 10 T. L. R. 537; *Re Kingston Cotton Mill Co. (No. 2)*, [1896] 2 Ch. 279; *Grant v. Gold Exploration & Development Syndicate*, [1900] 1 Q. B. 233; *North American Land & Timber Co. v. Watkins* (1904), 91 L. T. 425.

3262. —.]—*BURLAND v. EARLE*, No. 3526, *post*.

3263. — Director also promoter.]—*Re LADY FORREST (MURCHISON) GOLD MINE, LTD.*, No. 47, *ante*.

Sales by promoters.]—*See* Nos. 38, 41, 44, 45, 47–49, *ante*.

E. In connection with Company.

(a) *On Issue of Shares.*

3264. Resolution to allot—No shares available.]—*FERGUSON v. WILSON*, No. 3037, *ante*.

3265. Shares allotted to directors—As fully-paid.]—The directors of a ry. co. passed a resolution by which they appropriated 200 "paid-up" shares to one of the directors for his services in the

the sale & restore the original position, but would not entitle it to retain the property at a price reduced by reduction of the directors' profit. When, however, the directors' fault extends further than nondisclosure, when a breach of duty attended the original acquisition, the co. may, if it chooses, retain the property purchased & also demand a refund of the profits.

Where a director of a company purchased property under such circumstances, as showed that it was his duty to have acquired the property not for himself but for the co., & thereafter resold the property to the co. at a profit:—*Held*: the co. was entitled to claim from the director the profit made by him.—*ROBINSON v. RANDFONTEIN ESTATES GOLD MINING CO., LTD.*,

[1921] App. D. 168.—S. AF.

PART III. SECT. 28, SUB-SECT. 6.—E. (a).

3265 i. Shares allotted to directors—As fully-paid.]—*MARTIN v. GIBSON* (1907), 15 O. L. R. 623; 10 O. W. R. 66.—CAN.

3265 ii. —.]—An original sub-

formation of the co.:—*Held*: the directors had no power to allot shares among themselves as "paid up" & the director to whom the shares were appropriated was liable to a call equally with the other shareholders.—*Re* UNIVERSAL PROVIDENT LIFE ASSOCN., *Ex p.* DANIELL (1857), 1 De G. & J. 372; 26 L. J. Ch. 563; 29 L. T. O. S. 254; 3 Jur. N. S. 803; 5 W. R. 677; 44 E. R. 767, L. JJ.

Annotations:—*Distd.* *Re* Western of Canada Oil, Lands & Works Co., Carling, Hespeler & Walsh's Case (1875), 1 Ch. D. 115. *Mentd.* *Re* Anglesea Colliery Co. (1866), L. R. 2 Eq. 379.

3266. —[By the memorandum of assocn. of a co., its capital was declared to be £121,200 in £10 shares, the first 120 shares being founders' shares & the others ordinary shares. The memorandum also provided that each of the subscribers for a founders' share should, in addition to paying up the nominal amount of that share, "subscribe for" fifty ordinary shares for each founders' share held by him. Five directors of the co. took certain founders' shares each, & no ordinary shares in respect of them; but they procured other persons to acquire fifty ordinary shares for every founders' share so taken:—*Held*: (1) (LORD LUDLOW, *diss.*), the meaning of the words "subscribe for" was not "take" personally, the obligation to "subscribe for" such things as transferable shares being performed, or at all events satisfied & discharged, by procuring an allotment to be made to persons approved by the directors; but that, even if "subscribed for" meant "take," the obligation to take might be satisfied & discharged by the acceptance by the directors of a nominee of the person bound to take; & the directors by finding others to take fifty ordinary shares for every founders' share taken had fulfilled the obligation imposed upon them; (2) a charge of misfeasance had not been made out, inasmuch as a mere allotment of shares, whether ordinary or founders' shares, by directors to themselves was not unlawful, nor a breach of duty, nor a breach of trust.—*Re* LONDON & COLONIAL FINANCE CORPN., LTD. (1897), 77 L. T. 146; 13 T. L. R. 576, C. A.

3267. —[At undervalue.]—Where directors of a co. had improperly allotted a large number of shares to themselves at an undervalue:—*Held*: the directors must account to the co. for the profits which they had derived from the sale of

such of the shares thus allotted as they had disposed of, & as to the shares which they retained the proper measure of the damages was, under the circumstances, not the highest price at which any shares of the co. had been sold during the period for which the directors had held their shares, but the market value of the shares at the dates at which they were respectively allotted to the directors, & the directors must pay to the co. the excess, if any, of that market value above the sums which they had paid to the co. for the shares respectively.—*SHAW v. HOLLAND*, [1900] 2 Ch. 305; 69 L. J. Ch. 621; 82 L. T. 782; 48 W. R. 680; 7 Mans. 409, C. A.

3268. Allotment at discount—Liability for amount of discount.—It is not competent for directors to issue shares at a discount, so as to make the holder liable for less than their full amount.

Where directors *bonâ fide* agreed, in consideration of a stipulated service, to allot shares at a discount & the allottee subsequently received certificates of fully paid-up shares, paid to the co. the par value less 10 per cent. discount & subsequently sold the same to *bonâ fide* purchasers at a profit:—*Held*: (1) the directors were answerable to the co. for the discount allowed; (2) they were not liable beyond the discount there being no proof of fraud against the co., or of further resulting damage to it from the transaction. *Semble*: such further resulting damage could not have exceeded the difference between the price paid by the allottee the presumable value of the shares at the date of the agreement if it & the transaction founded thereon had never taken place.—*HIRSCHE v. SIMS*, [1894] A. C. 654; 64 L. J. P. C. 1; 71 L. T. 357; 10 T. L. R. 616; 11 R. 303, P. C.

Annotations:—*As to* (1) *Refd.* *Welton v. Saffery*, [1897] A. C. 299. *As to* (2) *Refd.* *Lagunas Nitrate Co. v. Lagunas Syndicate*, [1899] 2 Ch. 392. *Generally, Mentd.* *Stamp Duties Comrs. v. Broken Hill South Extended*, [1911] A. C. 439.

3269. Allotment to infant children of director.—A director of a co. induced three of his children, who were minors, to apply for shares. Shares were allotted to each & he gave them money to pay the sums payable on allotment. All the shares in the co. were allotted. The co. never paid any dividend, & an order for winding it up was made before any of the children had attained twenty-

scriber & provisional director of a co. who had only paid \$25 on account joined with the other provisional directors in passing a resolution, at the organisation meeting of the co. in 1902, that the shares of capital stock subscribed for by them should be allotted to them as fully paid up, which was done. In 1904 he transferred his shares, receiving therefor the sum of \$125 more than he had paid. In 1906 the shares were forfeited, by resolution of the directors, for non-payment of a call of 100 per cent made upon them:—*Held*: the original subscriber for the shares was liable as for breach of trust under Winding-up Act, R. S. C. 1906, c. 144, s. 123, in assuming to accept the shares as fully paid up.—*Re* MANES TAILORING CO., *CRAWFORD'S CASE* (1908), 18 O. L. R. 572; 11 O. W. R. 498; 13 O. W. R. 829.—CAN.

d. — [For purpose of obtaining controlling voting power.]—Deft. co. was incorporated in 1912 under the Ontario Companies Act, with an authorised capital stock of \$150,000, divided into 1,500 shares of the par value of \$100 each, but only 1,208 shares had been issued. Pltf., a director, was the registered holder of

458 of these, & had agreed to buy 150 shares from another shareholder, which would give him a majority of the issued shares. At a meeting of the directors held in Oct. 1918, a resolution was passed (pltf. voting against it) that the balance of the share capital of the co. unissued be offered to the shareholders at par. This offer to remain open for 20 days. There were five directors, & all were present at the meeting. The president then asked each one present how many shares he would take. Two asked for 10 each, one for 100, & one for 50—these numbers bearing no fixed relation to their previous holdings. The pltf. said he would take his proportion based upon his holding of 608 shares. This was not conceded; pltf. was offered 98 shares, which he refused. The directors then passed a resolution (pltf. voting against it) that the applications for the shares be accepted & that certificates be issued accordingly. Pltf., suing on behalf of himself & all shareholders other than the individual defts., brought this action against the co., his four co-directors, & another shareholder who was to get some of the shares, to restrain them from making the allotment:—*Held*: the purpose of deft. directors in all they

did was to deprive pltf. of the controlling position which he had acquired—they were making a one-sided allotment of shares with a view to the control of the voting power which was beyond their powers.—*BONISTEEL v. COLLIS LEATHER CO., LTD.* (1919), 45 O. L. R. 195.—CAN.

3268 i. Allotment at discount—Liability for amount of discount.—Where the directors of a co. in return for a report made upon the property of the co., gave a mining engineer the option of taking 10,000 reserved shares within a fortnight at a price below par, & the shares went from considerably below par to a high premium, whereupon the engineer exercised his option & made a large profit:—*Held*: the directors were not at liberty to issue fully-paid shares at a discount, & were liable for the difference between the price at which they were actually issued & the par value; but were not liable for the difference between the par value & any higher amount which the share might have fetched in the market.—*ORANGE RIVER LAND & ASBESTOS CO.'S TRUSTEES v. HIRSCH* (1892), 6 H. C. 260.—S. AF.

e. *Issue of new share certificate—Old certificate not produced—Negligence.*

Sect. 28.—Directors: Sub-sect. 6, E. (a), (b), (c), (d), (e) & (f).]

one. The infants were placed on the list of contributories, & an order was made against each for payment of an arrear of calls, but, their infancy having been discovered, no attempt was made to enforce it:—*Held*: the father was liable to pay the amount of these calls, as a loss occasioned to the co. by his breach of duty as director in having shares allotted to infants.—*Re CRENVER & WHEAL ABRAHAM UNITED MINING CO., Ex p. WILSON* (1872), 8 Ch. App. 45; 42 L. J. Ch. 81; 27 L. T. 597; 21 W. R. 46, L. J. J.

Annotations:—Mentd. Re Montrotier Asphalte Co., Perry's Case (1876), 34 L. T. 716; *Re Newman*, [1895] 1 Ch. 674.

3270. Liability for non-compliance with 1900 Act, s. 4—Necessity for knowledge of facts.]—(1) A co. issued a prospectus offering 20,000 £1 preference shares to the public & stating that no allotment would be made unless 15,000 shares had been applied for & the application money paid. Pltf. applied for 100 shares. The directors proceeded to allotment when 15,000 shares had been applied for, but in some cases the application money had only been paid by cheques which had not been cleared. Pltf. paid the full amount of his shares. The co. went into liquidation, & it then appeared that the co. was insolvent & the shares worthless. Pltf. brought this action against one of the directors claiming repayment of the money paid on application for the shares under sect. 4 & compensation for loss under sect. 5 of the 1900 Act. Deft. was not present at the meeting of the board at which the allotment was made, but was present at subsequent meetings at which the minutes were confirmed & a resolution passed to apply for a certificate to commence business:—*Held*: *Mears v. Western Canada Pulp & Paper Co.*, No. 1650, *ante*, having decided that payment by cheque is not payment within 1900 Act, s. 4, until the cheque is cleared, there had been a contravention of the Act.

(2) Sect. 4 applies only before allotment. After allotment is once made, whether in contravention of the Act or not, it is only voidable at the option of the shareholder, & the co. cannot pay back the application money; the only liability of the directors after allotment is the liability to make good the loss under sect. 5, sub-sect. 2, of above Act. Under that section, "knowingly contravene" means contravene with knowledge of the facts. A director cannot escape liability by ignorance of the law.

(3) A director does not make himself responsible for an act done at a meeting at which he was not present, & which is complete without further confirmation, merely by voting at a subsequent meeting for the confirmation of the minutes:—*Held*: deft. was not aware of the facts & had not knowingly contravened the Act.—*BURTON v. BEVAN*, [1908] 2 Ch. 240; 77 L. J. Ch. 591; 99 L. T. 342; 15 Mans. 272.

See now 1908 Act, s. 85.

—A director of pltf. co. who had certified under the co.'s seal to new share certificates without requiring production of the old certificates for which the new certificates were to be substituted or looking at the register or doing more than inquire of the secretary as to a matter not within his personal knowledge whereby there was an over-issue of shares was in the circumstances liable for wilful default for loss to the co. thereby arising.—*GOULD & BIRBECK & BACON v. MOUNT OXIDE MINES, LTD.* (1916), 22 C. L. R. 490.—*AUS.*

1. Shares allotted to secretary — *As*

fully-paid.] — At a meeting of the directors of a co. they allotted all the unissued shares, being 40 per cent of the capital stock, to the secretary of the co. at par, he having subscribed for them, & immediately afterwards he disposed of a number of these shares at par to the directors individually. No shares had been sold for three years previously, & in the meantime the co.'s real estate had greatly increased in value, & pltf. had recently purchased a large number of shares, nearly all at a premium, & some at a premium of 150 per cent:—*Held*: this transaction by the directors was

Payment of brokerage or commission.]—See, generally, Sect. 11, ante.

(b) *Improving Market for Shares.*

3271. Steps taken to improve price—Brokers employed to buy.]—H. Co. was formed to take over a shipbuilding business. M. Co. had agreed to assist in bringing out H. Co. Brokers were employed to purchase shares in H. Co. to induce the public to purchase them, & considerable liabilities were thereby incurred. Subsequently to the transaction, I. Co. was formed, to take over the business of M. Co. & another. The directors of I. Co. advanced large sums to the brokers to cover their losses, as being part of the business of M. Co. taken over by them. Demurrer by one of the directors of I. Co. to a bill filed against them by the liquidators, overruled.—*IMPERIAL MERCANTILE CREDIT ASSOCN. v. CHAPMAN* (1871), 19 W. R. 379.

Annotation:—Reid. Parker v. Lewis (1873), 28 L. T. 91.

3272. — Directors liable to refund money spent.]—*Re RAILWAY & GENERAL LIGHT IMPROVEMENT CO., MARZETTI'S CASE*, No. 3058, *ante*.

Rigging the market generally, *see CONTRACT*, Vol. XII., pp. 230, 239, Nos. 1959, 1960; *STOCK EXCHANGE*.

Steps taken to procure Stock Exchange quotation.]—*See Sub-sect. 6, B. (c), ante.*

(c) *Transfer of Shares.*

Transfer by director—To escape liability.]—*See Nos. 1380, 2037, ante.*

Power of directors to refuse.]—*See, generally, Sect. 23, sub-sect. 5, ante.*

(d) *Calls.*

3273. Payments in advance of calls on their own shares—Applied in paying themselves remuneration.]—The directors of a co. by the arts. of assocn. were empowered to receive payments in advance of calls, & were to be paid a certain amount for their fees. The co. fell into a state of utter insolvency, & the directors knowing this, in order to get rid of their liability on shares not fully paid up held by them, passed a resolution authorising any director to pay calls in advance. Under this resolution the directors from time to time paid to the account of the co. large sums purporting to be advances on calls, & immediately afterwards they drew against these sums for their fees. The co. was afterwards wound up. Upon summons by the official liquidator to enforce a second payment of the calls purported to have been paid under this arrangement:—*Held*: the arrangement being a contrivance only for the benefit of the directors could not stand, the pretended payments in anticipation of calls were invalid, & the calls must be enforced.—*Re EUROPEAN CENTRAL RY. CO., SYKES' CASE* (1872), L. R. 13 Eq. 255; 41 L. J. Ch. 251; 26 L. T. 92.

Annotations:—Consd. Re Wincham Shipbuilding, Boiler & Salt Co., Poole, Jackson, & Whyte's Case (1878), 9 Ch. D.

not illegal, as the shares were allotted *bond fide* to the secretary with intent to further the co.'s interests & without intent on the part of the directors to profit personally thereby; that the directors were acting within their powers when they exercised their discretion & sold shares at par which might have been brought to a premium; & that they were not obliged to offer the unissued shares to the shareholders *pro rata* or put them up at auction before disposing of them to one shareholder at par.—*HARRIS v. SUMNER* (1909), 39 N. B. R. 204; 5 E. L. R. 161.—*CAN.*

322; *Re Wood's Ships' Woodite Protection Co.* (1890), 62 L. T. 760. *Reid. Re Land Development Asscn.*, Kent's Case (1888), 39 Ch. D. 259; *Re Washington Diamond Mining Co.*, [1893] 3 Ch. 95.

3274. Calls made for securing debts guaranteed by directors personally—After presentation of petition to wind up.]—(1) Directors of a life assurance co. borrowed money from their bankers for the purposes of the co., & by resolution declared a charge in favour of the bankers upon the unpaid proceeds of calls already made. They borrowed a further sum, & passed a second similar resolution after the presentation of a winding-up petition, but before any order made. The co. having been ordered to be wound up:—*Held*: both charges were effectual.

(2) The directors had been made themselves personally responsible to the bankers for the amount of both the above-mentioned loans, & were compelled to pay the same:—*Held*: they were entitled to stand in the shoes of the bankers as against the proceeds of the calls.

(3) Directors of a life assurance co. not being a limited co. within the Companies Acts advanced sums out of their own money for the benefit of the co.:—*Held*: they were entitled to set off the sums so due to them against calls made upon them as contributories.—*Re INTERNATIONAL LIFE ASSURANCE SOCIETY, GIBBS & WEST'S CASE* (1870), L. R. 10 Eq. 312; 39 L. J. Ch. 667; 23 L. T. 350; 18 W. R. 970.

Annotations:—*As to* (1) *Apld. English Channel S.S. Co. v. Rolt* (1881), 17 Ch. D. 715. *Reid. Re Hamilton's Windsor Ironworks, Ex p. Pitman & Edwards* (1879), 12 Ch. D. 707; *Wheatley v. Silkstone & Haigh Moor Coal Co.* (1885), 29 Ch. D. 715; *General Auction Estate & Monetary Co. v. Smith*, [1891] 3 Ch. 432. *As to* (3) *N.F. Re West of England & South Wales District Bank, Ex p. Branwhite* (1879), 48 L. J. Ch. 463. *Reid. Re International Life Assce. Soc., Prudential Assce. Co.'s Case* (1876), 34 L. T. 49; *Re Whitehouse* (1878), 9 Ch. D. 595. *Generally, Mentd. Re Liverpool Civil Service Supply Asscn., Ex p. Greenwood* (1874), 22 W. R. 636.

3275. — Fraudulent preference—Directors must refund any benefits.]—A board of directors knowing the co. to be insolvent made a call & ordered the seal of the co. to be affixed to a mtge., whereby the call & all other property of the co. were assigned to a trustee by way of security for some of themselves, who were personally liable as sureties for debts of the co. The co. was afterwards ordered to be wound up & was unable to pay its debts in full:—*Held*: this transaction amounted to a fraudulent preference, & the directors who had received anything for their own benefit under the mtge. were liable to refund.—*GASLIGHT IMPROVEMENT CO. v. TERRELL* (1870), L. R. 10 Eq. 168; 39 L. J. Ch. 725; 23 L. T. 386.

Annotation:—*Reid. Re Wincham Shipbuilding, Boiler & Salt Co., Poole, Jackson & Whyte's Case* (1878), 26 W. R. 588.

(e) Return of Capital.

3276. By English directors of foreign company—Return sanctioned by general meeting.]—The English directors of a Belgian ry. co., established as a Société Anonyme, subsequent to their retiring, returned deposits to a considerable amount to English allottees, & also purchased back for the co. some of the shares which had been allotted. An account of these transactions was laid by the English directors before the committee of management, to whom also the balance due from the

English directors was paid. These transactions were afterwards approved of by a general meeting:—*Held*: the general meeting had power to sanction such a transaction, & having done so, there was no ground for a suit in this country against the retired English directors.—*KENT v. JACKSON* (1852), 2 De G. M. & G. 49; 21 L. J. Ch. 438; 19 L. T. O. S. 55; 42 E. R. 789, L. JJ.

3277. Right of recovery from shareholders.]—*MOXHAM v. GRANT*, No. 3106, *ante*.

(f) Dividends Improperly Paid.

3278. Dividend not warranted by state of funds.]

(1) A co. was formed for insurance on lives & survivorship, & during sickness, & for granting annuities. The capital of the co. was advertised as £50,000, in shares of £50 each. Under the deed of settlement it was provided, that the proprietors should not be answerable, indirectly or directly, further or otherwise than as to their respective shares in the co. The full amount of the shares had not been paid up when the co. suspended business:—*Held*: each proprietor was liable to the persons insured, to the extent of the unpaid portion of his share in the capital of the concern, but not to the full extent of the sum advertised as the capital of the co.

(2) Pltfs. were eleven of the insured, who had effected insurances for payment of a sum of money upon death or during sickness. Some had received policies, & others had only free tickets entitling them to demand policies after paying their premiums for six months:—*Held*: the interests of pltfs. were identical with the rest of the insured; & they might represent the whole body, amounting to about £2,000.

(3) The directors had declared a dividend, which was not warranted by the state of the funds of the society:—*Held*: those directors who had been parties to declaring the dividend were liable to make good the amount of the dividend.

(4) The directors having bought up a number of shares with the funds of the society:—*Held*: they were liable for the amount so applied, this being a dealing with the funds altogether at variance with the scope of the deed of settlement.—*EVANS v. COVENTRY* (1856), 25 L. J. Ch. 489; 27 L. T. O. S. 85; 2 Jur. N. S. 557; 4 W. R. 466; *S. C. sub nom. Re GENERAL BENEFIT LIFE INSURANCE LOAN SOCIETY*, 20 J. P. 691; *on appeal* (1857), 8 De G. M. & G. 835, L. JJ.

Annotations:—*As to* (1) *Reid. Re Athenæum Soc. & Prince of Wales Soc., Durham's Case* (1858), 4 K. & J. 517. *As to* (3) *Reid. Re National Funds Assce.* (1878), 10 Ch. D. 118. *Generally, Mentd. Re Montrotier Asphalte Co., Perry's Case* (1876), 34 L. T. 716.

3279. — Value of assets in jeopardy bonâ fide estimated—Subsequent loss.]—The ct. has summary power, under 1862 Act, ss. 101, 165, to order a contributory or director to repay a dividend declared & paid under a delusive & fraudulent balance. But the balance-sheet of a co. engaged in a hazardous trade will not be considered delusive & fraudulent merely because an estimated value was put upon assets of the co. which were then in jeopardy & were subsequently lost, or because the co. was obliged to borrow money to pay the dividend, provided the facts fairly appeared on the balance-sheet, & the balance fairly represented profits.

PART III. SECT. 28, SUB-SECT. 6.— E. (f).

*g. General rule.]—*A director who concurs in the payment of a dividend out of capital in the honest belief that the co. had profits out of which it

might properly be paid, or at least in ignorance of the fact that it was being paid out of capital, is liable to repay such dividends to the liquidator if he has been guilty of complete neglect of his duties & has not used ordinary prudence in the circumstances such as

he would have been expected to use in his own behalf.—*NORTHERN TRUST CO. v. BUTCHART*, [1917] 2 W. W. R. 405.—CAN.

*h. Dividend not warranted by state of funds.]—*Payment of a dividend

Sect. 28.—Directors: Sub-sect. 6, E. (f).]

A co. was formed under 1862 Act, for running the blockade during the civil war in America. The arts. provided that dividends should not be paid except out of profits, & the directors should declare a dividend as often as the profits in hand were sufficient to pay £5 per cent. on the capital, subject to the resolutions of a general meeting. In 1864, a dividend was declared & sanctioned at a general meeting, & subsequently paid, upon a balance-sheet in which a debt due from the Confederate Govt., & cotton in the Confederate States, & also ships engaged in running the blockade, were estimated at the full nominal value. All these assets were lost, & the co. was wound up:—*Held*: as the estimate was made *bona fide*, & the facts appeared truly in the balance-sheet, the balance-sheet was not delusive, & the dividend must be considered to have been made out of profits, although the co. had actually to borrow the money to pay it.—*Re* MERCANTILE TRADING CO., STRINGER'S CASE (1869), 4 Ch. App. 475; 20 L. T. 591; 17 W. R. 694; *sub nom.* *Re* MERCANTILE TRADING CO., *Ex p.* OFFICIAL LIQUIDATOR, 38 L. J. Ch. 698, L. JJ.

Annotations:—*Consd.* *Re* County Marine Insee., Rance's Case (1870), 6 Ch. App. 104. *Distd.* *Re* Alexandra Palace Co. (1882), 21 Ch. D. 149. *Apld.* *Re* London & General Bank (1894), 72 L. T. 227. *Consd.* *Re* Kingston Cotton Mill Co. (No. 2), [1896] 1 Ch. 331. *Apprvd.* Dovey v. Cory, [1901] A. C. 477. *Refd.* Overend, Gurney v. Gurney (1869), 20 L. T. 652; *Re* Mercantile Trading Co., Schroder's Case (1870), L. R. 11 Eq. 131; *Re* Star & Garter (1873), 42 L. J. Ch. 374; *Re* National Funds Assoc. (1878), 10 Ch. D. 118; *Re* British Guardian Life Assoc. (1880), 14 Ch. D. 335; *Re* Mammoth Copperopolis of Utah (1880), 50 L. J. Ch. 11; *Re* Exchange Banking Co., Flitcroft's Case (1882), 31 W. R. 174; Leeds Estate Bldg. & Investment Co. v. Shepherd (1887), 36 Ch. D. 787; Lee v. Neuchatel Asphalte Co. (1889), 41 Ch. D. 1; Municipal Freehold Land Co. v. Pollington (1890), 63 L. T. 238; *Re* Sharpe, *Re* Bennett, Masonic & General Life Assoc. v. Sharpe, [1892] 1 Ch. 154.

Compare No. 3949, *post*.

3280. — Directors relying on manager's valuation of stock-in-trade.—Directors who pay away the funds of their co. honestly, & reasonably believing in a state of facts which would justify the payment, are not bound to replace the funds because it subsequently turns out that on the true facts the payment was *ultra vires*.

Ordinary directors of a co. are entitled to rely on certificates of its manager as to the value of its stock-in-trade.

For some years before a co. was wound up balance-sheets, signed by its auditors, were published by the directors to the shareholders, in which (a) the value of the co.'s mill & machinery, & (b) the value of its stock-in-trade, were greatly overstated. The directors knew that (a) was an overvalue, but none of them knew that (b) was, but they believed & relied on certificates, deliberately false, given by J., one of the directors who was also manager. Dividends were for some years paid on the footing that the balance-sheets were correct. If the excess in value in respect of (a) & (b), or either of them, had been deducted, there would have been no profits available for dividend. But taking the stock-in-trade at the amounts stated in the certificates, & the mill, machinery, & site at their true value, the co. was not insolvent until the last year of its existence. In the winding up of the co. it was sought to make the directors liable for the dividends, & for the damages alleged to have resulted from continuing

the co.'s business on the footing that the balance-sheets were correct:—*Held*: the directors, other than J., were not, though J. was, liable for the dividends; but the damages were too remote, & the directors were not liable for them.—*Re* KINGSTON COTTON MILL CO. (No. 2), [1896] 1 Ch. 331; 65 L. J. Ch. 290; 73 L. T. 745; 44 W. R. 363; 12 T. L. R. 123; 40 Sol. Jo. 144; 3 Mans. 75; *on appeal*, [1896] 2 Ch. 279, C. A.

Annotations:—*Mentd.* Dixon v. Kennaway, [1900] 1 Ch. 833; Squire, Cash Chemist v. Ball, Baker, Mead v. Ball, Baker (1911), 106 L. T. 197; *Re* Republic of Bolivia Exploration Syndicate, [1914] 1 Ch. 139.

3281. — Assets overvalued—Company not insolvent.—*Re* KINGSTON COTTON MILL CO. (No. 2), No. 3280, *ante*.

3282. Dividends paid out of borrowed money—Liability to proceedings under 1862 Act, s. 165.—

The arts. of assocn. of a co. provided that all dividends on shares should be made only out of the clear profits of the co., & all moneys borrowed by the co. & all moneys received under insurances of the co.'s property against destruction or damage by fire should be deemed capital. A building of the co. having been destroyed by fire, the co. resolved to increase the capital by £150,000 for the purpose of reconstructing the building, & to issue for this purpose 15,000 preference shares. These shares were issued, & during the reconstruction of the building, no profits having been earned by the co., the directors paid four dividends on the shares. The first dividend was paid out of moneys received from an insurance co. in respect of a loss occasioned by the fire. The other three dividends were paid by means of moneys borrowed expressly for the purpose from the contractors of the co. & a financial co., both of whom had notice of the purpose for which the money was borrowed, & both of whom held a large number of the preference shares:—*Held*: (1) the directors were, under 1862 Act, s. 165, jointly & severally liable to pay to the liquidator the amount of the first dividend; (2) with respect to the other three dividends, the result of the transactions as a whole, had been only to increase the amount of the proofs against the co. by the amount of the loans, & consequently the directors were jointly & severally liable to pay to the liquidator only such a sum as would enable him to pay on all the debts of the co. a dividend equal to that which would have been paid on all the debts other than the loans, in case no proof has been made in respect of the loans; (3) the order must be made without prejudice to the right of the directors to be indemnified by any shareholders or creditors of the co. who were parties or privies to the payment of the dividends out of capital, & three months from the date of the Chief Clerk's certificate of the amount payable by the directors must be given to them to make the payment.

(4) The dividends in question were paid in Jan. & July, 1874, & in Jan. & July, 1875. The order to wind up the co. was made in Nov. 1876. A liquidator was appointed in Dec. 1876; he afterwards retired, & his successor was appointed in Dec. 1878. The summons against the directors was issued in Feb. 1880:—*Held*: there had been no such delay as to disentitle the liquidator to make the application.—*Re* ALEXANDRA PALACE CO. (1882), 21 Ch. D. 149; 46 L. T. 730; 30 W. R. 771; *sub nom.* *Re* ALEXANDRA PALACE CO., LTD., GOODSON'S CASE, 51 L. J. Ch. 655.

Annotations:—*As to* (3) *Apld.* Moxham v. Grant (1899), 68

may be restrained if proper provision has not been made for expenses which ought to be paid out of income.

A note was presented under 1862

Act, s. 165 (1908 Act, s. 214) praying the ct. to ordain that directors should make payments of £311,667, the amount of such a dividend improperly

paid:—*Held*: barred by lapse of time.—CITY OF GLASGOW BANK (LIQUIDATORS) v. MACKINNON (1882), 9 R. (Ct. of Sess.) 535.—SCOT.

L. J. Q. B. 283. *As to (4) Rejd. Re Sharpe, Re Bennett, Masonic & General Life Assce. v. Sharpe*, [1892] 1 Ch. 154. *Generally, Rejd. Guinness v. Land Corpn. of Ireland* (1882), 22 Ch. D. 349.

See, generally, Sect. 36, sub-sect. 10, C., post.

3283. Dividend sanctioned by company—On faith of misrepresentations of directors.]—(1) The shareholders as a body cannot make the directors liable to repay the amount of dividends which have been declared by them in excess of the proper amount, the shareholders having sanctioned such payment upon reliance of the truth of misrepresentations made by the directors. Where a loss has accrued from the misrepresentations made by the directors, each individual shareholder has his remedy at law against the directors, but the shareholders, as a body, cannot maintain a suit in equity to recover the amount of the loss.

(2) The deed of settlement of a banking co. provided, that when one-fourth of the capital was lost, the directors should call a meeting, & the co. should be dissolved. Considerably more than one-fourth of the capital was lost, & the meeting was called, at which the shareholders resolved to continue the bank. Further losses were made, but no such meeting was called again:—*Held*: as the shareholders knew that the bank was going on after more than one-fourth of the capital was lost, the directors were not liable for continuing the bank.

(3) The directors of a banking co. are not liable to the co. for including in their accounts as good, debts which were in fact, bad, unless they can be fixed with knowledge of the fact. A bill seeking to make the directors liable for misrepresenting the value of the assets of a co., alleged that they had included amongst the assets as good a sum advanced by them to a director who had died insolvent & without having repaid the sum; & the bill prayed that debts might be declared liable for allowing directors & others to overdraw their accounts:—*Held*: as this was within the powers conferred on the directors by the deed of settlement on such a bill they could not be made liable for the sum so advanced & lost, on the ground that it had been improperly advanced.—*TURQUAND v. MARSHALL* (1869), 4 Ch. App. 376; 38 L. J. Ch. 639; 20 L. T. 766; 33 J. P. 708; 17 W. R. 935, L. C.

Annotations:—As to (1) Distd. Re National Bank of Wales, [1899] 2 Ch. 629. (*See sub nom. Dovey v. Cory*, [1901] A. C. 477.) *Rejd. Salisbury v. Met. Ry.* (1870), 22 L. T. 839. *As to (3) Expld. Overend & Gurney Co. v. Gibb* (1872), L. R. 5 H. L. 480. *Rejd. Re Mercantile Trading Co., Stringer's Case* (1869), 4 Ch. App. 475; *Parker v. Lewis* (1873), 28 L. T. 91; *Leeds Estate Bldg. & Investment Co. v. Shepherd* (1887), 36 Ch. D. 787.

3284. ———.]—The directors of a limited co. for several years presented to the general meetings of shareholders reports & balance-sheets in which various debts known by the directors to be bad were entered as assets, so that an apparent profit was shown though in fact there was none. The shareholders, relying on these documents, passed resolutions declaring dividends, which the directors accordingly paid. An order having been made to wind up the co. the liquidator applied, under 1862 Act, s. 165, for an order on the directors to replace the amount of dividends thus paid out of capital:—*Held*: (1) as regards each half-yearly dividend the persons who were directors when it was paid were liable for the whole amount paid for the dividends of that half-year; (2) the claim was for a breach of trust, & Stat. Limitations could not be set up; (3) the directors could not set off any money due from the co. to them against the amounts which they were ordered to replace.—*Re EXCHANGE BANKING CO., FLITCROFT'S CASE*

(1882), 21 Ch. D. 519; 52 L. J. Ch. 217; 48 L. T. 86; 31 W. R. 174, C. A.

Annotations:—As to (1) Consd. London Financial Asscn. v. Kelk (1884), 26 Ch. D. 107; *Leeds Estate Bldg. & Investment Co. v. Shepherd* (1887), 36 Ch. D. 787; *Lucas v. Fitzgerald* (1903), 20 T. L. R. 13. *Rejd. Guinness v. Land Corpn. of Ireland* (1882), 22 Ch. D. 349; *Re Oxford Benefit Bldg. & Investment Soc.* (1886), 35 Ch. D. 502; *Re Liverpool Household Stores Asscn.* (1890), 59 L. J. Ch. 616; *Re Kingston Cotton Mill Co. (No. 2)*, [1896] 1 Ch. 331; *Re National Bank of Wales*, [1899] 2 Ch. 629 (*see sub nom. Dovey v. Cory*, [1901] A. C. 477); *Moxham v. Grant*, [1900] 1 Q. B. 88; *Towers v. African Tug Co.*, [1904] 1 Ch. 558. *As to (2) Apld. Re Sharpe, Re Bennett, Masonic & General Life Assce. v. Sharpe*, [1892] 1 Ch. 154. *Rejd. Re Oxford Benefit Bldg. & Investment Soc.* (1886), 35 Ch. D. 502; *Municipal Freehold Land Co. v. Pollington* (1890), 63 L. T. 238. *As to (3) Rejd. Re Bassett, Ex p. Lewis* (1895), 2 Mans. 177. *Generally, Mentd. Re Denham* (1883), 25 Ch. D. 752; *Re Faure Electric Accumulator Co.* (1888), 40 Ch. D. 141; *Verner v. General & Commercial Investment Trust*, [1894] 2 Ch. 239.

3285. ——— Liability for fraud of co-directors.]—(1) An innocent director of a co. is not liable for the fraud of his co-directors in issuing to the shareholders false & fraudulent reports & balance-sheets if the books & accounts of the co. have been kept & audited by duly appointed & responsible officers, & he has no ground for suspecting fraud. Consequently, if such a director has received together with the other shareholders, dividends declared & paid in pursuance of such reports & balance-sheets, such dividends having been, in fact, payments out of capital, he cannot be called upon, under 1862 Act, s. 155, to repay the dividends so paid, nor even the dividends received by himself.

The arts. of assocn. of a co. conferred on D., one of the directors, the supreme control over the management & affairs of the co. D. prepared fraudulent balance-sheets, which purported to show that large profits had been made by the co. The balance-sheets & certain reports were adopted at board meetings. C., another of the directors, was not present at any of such board meetings. In consequence of such balance-sheets & reports, dividends were declared, which were, in fact, paid out of capital. On an application in the winding up of the co., to make C. liable for the amount of the dividends so paid:—*Held*: as C. had no suspicion of the fraud, & did not wilfully abstain from making inquiries for the purposes of permitting his co-directors to commit fraud, he was not guilty of such gross & wilful negligence as was equivalent to fraud, & he was not liable for the dividends paid out of capital, either to himself or to other shareholders.

(2) A director is not bound to examine entries in any of the co.'s books nor is the doctrine of constructive notice to be so extended as to impute to him a knowledge of the contents of the books.—*Re DENHAM & Co.* (1883), 25 Ch. D. 752; 50 L. T. 523; 32 W. R. 487.

Annotations:—As to (1) Apld. Re Kingston Cotton Mill Co. (No. 2), [1896] 1 Ch. 331. *Foldd. Lucas v. Fitzgerald* (1903), 20 T. L. R. 16. *Rejd. Re Cardiff Savings Bank, Bute's Case*, [1892] 2 Ch. 100. *As to (2) Apprvd. Dovey v. Cory*, [1901] A. C. 477. *Generally, Rejd. Re Portuguese Consolidated Copper Mines, Ex p. Inchiquin*, [1891] 3 Ch. 28; *Dixon v. Kennaway*, [1900] 1 Ch. 833.

——— **Directors relying on company's officials.]—***See Nos. 3060–3063, ante.*

3286. ——— On faith of fraudulent report of manager.]—*LEEDS ESTATE BUILDING & INVESTMENT CO., LTD. v. SHEPHERD*, No. 3668, *post.*

3287. ——— Directors liable to refund dividends paid during directorship.]—(1) Directors of a co., pursuant to a resolution of shareholders, paid interest on the fully paid-up capital. This interest was in fact paid out of capital, there having been no profits of the business of the co. But such payments were, from time to time, approved of at the

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annual general meetings of the co.:—*Held*: (1) the directors had been guilty of misfeasance within 1862 Act, s. 165, & were personally liable to repay not only the interest which they themselves had received, but the interest paid to the shareholders, during the time they were respectively directors; (2) the directors had, in making payments to shareholders out of capital, acted *ultra vires* & committed a breach of trust, & they were therefore liable jointly & severally to make good the amount of such payments, but without prejudice to their right to recover from each shareholder the amount of capital he had received.—*Re NATIONAL FUNDS ASSURANCE CO.* (1878), 10 Ch. D. 118; 48 L. J. Ch. 163; 39 L. T. 420; 27 W. R. 302.

Annotations:—*As to* (1) *Folld. Re Exchange Banking Co., Flitcroft's Case* (1882), 21 Ch. D. 519. *Distd. Leeds Estate Bldg. & Investment Co. v. Shepherd* (1887), 36 Ch. D. 787. *Consd. Ammonia Soda Co. v. Chamberlain*, [1918] 1 Ch. 266. *Reid. Re Denham* (1883), 25 Ch. D. 752; *Re Oxford Benefit Bldg. & Investment Soc.* (1886), 35 Ch. D. 502; *Re Kingston Cotton Mill Co. (No. 2)*, [1896] 1 Ch. 331. *As to* (2) *Folld. Moxham v. Grant* (1899), 68 L. J. Q. B. 283. *Generally, Reid. Guinness v. Land Corp'n. of Ireland* (1882), 22 Ch. D. 349; *Re Liverpool Household Stores Assocn.* (1890), 59 L. J. Ch. 616; *Mentd. Re British Guardian Life Assco.* (1880), 14 Ch. D. 335; *Wye Valley Ry. v. Hawes* (1880), 29 W. R. 177.

3288. ——— Plea of Statute of Limitations.]

—*MUNICIPAL FREEHOLD LAND CO., LTD. v. POLLINGTON*, No. 3061, *ante*.

3289. ——— Remedy against shareholders.]—Re

NATIONAL FUNDS ASSURANCE CO., No. 3287, *ante*.

3290. ———.]—Re ALEXANDRA PALACE

Co., No. 3282, *ante*.

—**Remedy against co-directors.]—See** Sub-sect. 4, E., *ante*.

3291. Dividend paid in reliance on statement of general manager.]—A director of a joint-stock banking co. in assenting to the payment of dividends out of capital & to advances on improper security honestly relied on the judgment, information, & advice of the chairman & general manager of the bank, by whose statements he was misled & whose integrity, skill, & competence he had no reason for suspecting:—*Held*: upon the true view of the facts, he was not negligent of his duties as director & was not liable in the winding up.—*DOVEY v. CORY*, [1901] A. C. 477; 70 L. J. Ch. 753; 85 L. T. 257; 50 W. R. 65; 17 T. L. R. 732; 8 Mans. 346, H. L.; *affg. S. C. sub nom. Re NATIONAL BANK OF WALES, LTD.*, [1899] 2 Ch. 629, C. A.

Annotations:—*Reid. Merchants' Fire Office v. Armstrong* (1901), 17 T. L. R. 709; *Lucas v. Fitzgerald* (1903), 20 T. L. R. 16; *Exploring Land & Minerals Co. v. Kolckmann* (1905), 94 L. T. 234; *Prefontaine v. Grenier*, [1907] A. C. 101; *Schulze v. Bensted* (1915), 7 Tax Cas. 30; *Ammonia Soda Co. v. Chamberlain*, [1918] 1 Ch. 266. *Mentd. Bond v. Barrow Hematite Steel Co.*, [1902] 1 Ch. 353; *Re Crichton's Oil Co.*, [1902] 2 Ch. 86; *Re Welsbach Incandescent Gas Light Co.*, [1904] 1 Ch. 87.

Dividends paid out of capital generally, see Sect. 30, sub-sect. 7, D. (b), *post*.

3292. Interim dividend—Director not a party not liable.]—LUCAS v. FITZGERALD (1903), 20 T. L. R. 16.

3293. Extent of liability—Payments during directorship.]—Re NATIONAL FUNDS ASSURANCE CO., No. 3287, *ante*.

3294. ——— Interest.]—MUNICIPAL FREEHOLD LAND CO., LTD. v. POLLINGTON, No. 3061, *ante*.

3295. ———.]—Re SHARPE, Re BENNETT, MASONIC & GENERAL LIFE ASSURANCE CO. v. SHARPE, No. 3377, *post*.

3296. ——— Dividends paid out of borrowed money—Loss to creditors other than lenders.]—Re

3297. ——— Amount received by director.]—The ct. has summary power in a voluntary winding up, on the application of the liquidator, to make an order under 1862 Act, ss. 138, 165, calling upon a director to repay a dividend or bonus declared & paid to him under a delusive balance-sheet.

Where a bonus was declared & credited to a director against arrears of calls then due from him:—*Held*: a payment within the section.

Where directors, after proper investigation of the financial position of the co., declare & the shareholders agree to, a dividend or bonus, the ct. will not lightly interfere with the payment of such dividend or bonus, on the ground that the estimates on which it was founded have turned out to be erroneous. But where the directors declare a dividend or bonus without proper investigation or professional assistance, & it is afterwards called in question, the burden lies on them to show that it was fairly paid out of profits; & if they are unable to do so, the ct. will order them to refund what they have received.

The directors of a marine insurance co. declared a bonus of 10s. per share, which was agreed to at a general meeting & paid. The directors prepared no profit & loss account, but only an account of the receipts & payments of the co., which made no allowance for the risks to which the co. was liable. The co. having resolved to wind up voluntarily:—*Held*: an order ought to be made on a director to repay the bonus paid to him.—*Re COUNTY MARINE INSURANCE CO., RANCE'S CASE* (1870), 6 Ch. App. 104; 40 L. J. Ch. 277; 23 L. T. 828; 19 W. R. 291, L. J.J.

Annotations:—*Distd. Re National Funds Assco.* (1878), 10 Ch. D. 118. *Consd. Leeds Estate Bldg. & Investment Co. v. Shepherd* (1887), 36 Ch. D. 787. *Apld. Municipal Freehold Land Co. v. Pollington* (1890), 63 L. T. 238. *Folld. Re Sharpe, Re Bennett, Masonic & General Life Assco. v. Sharpe*, [1892] 1 Ch. 154. *Apld. Re Kingston Cotton Mill Co. (No. 2)*, [1896] 1 Ch. 331. *Consd. Dovey v. Cory*, [1901] A. C. 477. *Reid. Guinness v. Land Corp'n. of Ireland* (1882), 22 Ch. D. 349; *Re Denham* (1883), 25 Ch. D. 752; *Lee v. Neuchatel Asphalte Co.* (1889), 41 Ch. D. 1; *Ammonia Soda Co. v. Chamberlain*, [1918] 1 Ch. 266. *Mentd. Clark v. Sun Insce. Office* (1911), 104 L. T. 520.

3298. ———.]—Where dividends have been improperly paid out of capital, a director is not liable for anything beyond what he has himself received.—*Re KENNARD, KENNARD v. COLLINS* (1895), 11 T. L. R. 283.

3299. Time for taking proceedings.]—Re ALEXANDRA PALACE CO., No. 3282, *ante*.

3300. Liability in winding up—Where all creditors satisfied.]—Re NATIONAL BANK OF WALES, LTD., No. 3142, *ante*.

3301. Estoppel of shareholders.]—The accounts of a limited co., at the commencement of their financial year, in 1900, showed a considerable debit balance on the previous year's trading, but the directors illegally though honestly applied a profit made in the earlier part of 1900 in payment of an interim dividend instead of in reduction of the debit balance, thus in effect, paying a dividend out of capital. The balance-sheet for 1900 showing the debit balance & also the payment of the dividend was submitted to & approved by the shareholders in general meeting. Subsequently, the directors, recognising their mistake, proposed to apply any future profits in wiping out the debit balance, & this was almost entirely accomplished out of profits in 1901 & 1902, as appeared from the balance-sheets for those years submitted to & approved by the shareholders in general meeting. In 1903 two of the shareholders, who had themselves received their portions of the dividend, & concurred in passing the balance-sheets, com-

other the shareholders of the co." against the co., & the directors to compel the directors to repay to the co. the amount of the dividend. Afterwards the other shareholders were, at their own request, joined as defts. All defts. counter-claimed, in the event of the ct. holding that the dividend had been illegally paid, for repayment by pltfs. of the portions received by them:—*Held*: in the circumstances pltfs. were not entitled to maintain the action, but the judgment on the counterclaim must stand.

A shareholder in a limited co. who has, with full notice or knowledge of the facts, himself received part of the proceeds of an *ultra vires* act committed by the directors, such as payment of a dividend out of capital, & who still retains the money, cannot, either individually or as suing on behalf of the general body of shareholders, maintain an action against those directors; nor can he do so even if, after action brought & before trial, he repays the money he has wrongfully received. *Qu*: whether he can do so if, before action, he repays the money.—*TOWERS v. AFRICAN TUG CO.*, [1904] 1 Ch. 558; 73 L. J. Ch. 395; 90 L. T. 298; 52 W. R. 532; 20 T. L. R. 292; 48 Sol. Jo. 311; 11 Mans. 198, C. A.

Annotations:—*Distd.* Mosely v. Koffyfontein Mines, [1911] 1 Ch. 73. *Reid.* Lawrence v. West Somerset Mineral Ry., [1918] 2 Ch. 250.

Liability to proceedings under 1908 Act, s. 215.]—
See Sect. 36, sub-sect. 10, C. (c), *post*.

F. In connection with Company's Business.

(a) *Acquisition of Shares.*

3302. Purchase of company's own shares—Purchase ultra vires—Liability of directors.]—*EVANS v. COVENTRY*, No. 3278, *ante*.

3303. — Transfer to nominee—To raise market price—One director not cognisant.]—The directors of a co., part of the business of which was to make loans, appointed an executive committee. The committee, in order to raise the price of the shares, bought shares in the names of the secretary & another, & in order to pay for these shares drew cheques on the bankers of the co. These cheques were reported to a meeting of the directors as having been drawn for loans & approved of by them, & the money was applied accordingly. There was evidence that the transaction was explained to some of the directors; but one of the directors was present during part of the meeting only, & denied all knowledge of the transaction. On appeal:—*Held*: the director, who denied all knowledge of the transaction, was, under the circumstances, not liable to repay the money.—*LAND CREDIT CO. OF IRELAND v. FERMOY (LORD)* (1870), 5 Ch. App. 763; 23 L. T. 439; 18 W. R. 1089, L. C. & L. J.

Annotations:—*Distd.* Ashhurst v. Mason, Ashhurst v. Fowler (1875), L. R. 20 Eq. 225. *Reid.* Ship v. Crosskill (1870), 39 L. J. Ch. 550; Parker v. Lewis (1873), 28 L. T. 91; Phosphate Sewage Co. v. Hartmont (1877), 5 Ch. D. 394; Re Ry. & General Light Improvement Co., Marzetti's Case (1880), 42 L. T. 206; Re Denham (1883), 25 Ch. D. 752.

3304. — Liability for calls—Right of contribution by co-directors.]—*ASHHURST v. MASON, ASHHURST v. FOWLER*, No. 3091, *ante*.

3305. — Sanctioned by company.]—One of the arts. of assocn. of a Scottish joint-stock limited co. enacted that "No transfer of any shares of the co.'s stock, either upon a sale, or in consequence of the bkpcy. or insolvency of any shareholder, or in consequence of the marriage of any female shareholder, shall be valid or effectual without the consent of a majority of the other shareholders expressed in writing; but in the event of the other share-

holders declining to consent to any such proposed transfer of shares in the co., they shall be bound to take such shares at the price offered in the case of a proposed sale, & at the market price of the day in the case of a proposed transfer for any other cause." Added subsequently by special resolution: "Unless such shares shall not at the time be fully paid up, & the reason for declining to consent be that the directors are not satisfied with the proposed transferee." Trustees entered upon the register were anxious in the discharge of their duty to dispose of their trust shares, which consisted of 100 £100 shares, fifty being fully paid up, & fifty on which £1 per share had been paid. After negotiations, the four directors by special minute approved of the purchase by three of themselves of these shares to be held in trust for the co. A transfer was executed in favour of the three directors "in trust for the co.", & their names were entered upon the register of members, with the same designation. The money paid for the shares came out of the funds of the co., & thereafter the selling trustees ceased to be treated as having any interest therein. At the next general meeting the purchase was approved of by a majority of the shareholders. There was no other transfer or transferees proposed. More than fifteen months after the transaction the co. was wound up voluntarily, & calls were necessary to pay creditors. In an application by the liquidator substantially for rectification of the register, by substituting the names of the selling trustees for those of the three directors, it being admitted that all parties had acted with perfect good faith:—*Held*: (1) the names of the three persons, the three directors, now appearing upon the register as holding these shares could not be disturbed; the transfer to them being valid & effectual, & the rights of creditors having intervened; (2) the above art. did not give any power to the co. to become the purchaser of its own shares, nor had the transaction been carried on under its provisions.

The directors held out to the world that these shares were owned by individuals, & to this the individuals assented. Beyond this creditors had no occasion to look, & they would be entitled to assume that whatever amount of liability attached to the shares was assumed by the individuals in whose name they stood, & that this liability was not in any way diminished by reference to the trust on which they were held (*LORD CAIRNS, C.*).—*CREE v. SOMERVAIL* (1879), 4 App. Cas. 648; 41 L. T. 353; 28 W. R. 34, H. L.

Annotation:—As to (1) *Reid.* Re Castle Crag S.S. Co., Raine's Case (1888), 4 T. L. R. 302.

3306. Shares held in trust for company—Transfer not registered.]—As a security for the performance by A., a vendor, of his engagement to guarantee the purchasing co. a certain dividend for a period of years, it was agreed, & such agreement was incorporated into the arts. of assocn., that the shares which formed part of A.'s purchase-money should be placed in the power of the co. by means of a transfer to two of the directors as trustees for the co., but who were not to be registered as holders of the shares except by their own direction. The shares were transferred by A. to B. & C., two of the directors, & the share certificates, the deed of transfer, & the certificate of registration in the books of the co. of the transfer deed were deposited with the bankers of the co. for safe custody, but afterwards withdrawn from them to prevent their claiming any lien. After the winding-up order the names of B. & C. were for the first time placed by the official liquidator on the register of

(d) *Negotiable Instruments, Cheques, and Guarantees.*

Whether personal liability pledged.]—See, generally, AGENCY, Vol. I., pp. 628 *et seq.*, 643 *et seq.*; BILLS OF EXCHANGE, PROMISSORY NOTES & NEGOTIABLE INSTRUMENTS, Vol. VI., pp. 112 *et seq.*

Signature by chairman—"On behalf of" company.]—See No. 3516, *post*.

Directors acting ultra vires.]—See AGENCY, Vol. I., pp. 663, 664.

3316. Name of company not properly set out.]—A co. was registered by the title of "The South Shields Salt Water Baths Company (Limited)." Pltfs. drew the following bill of exchange: "Six months after date pay to our order the sum of £125 for value received.—Salt Water Baths Company (Limited), South Shields," which was accepted as follows: "Accepted payable Messrs. Hodgkin, Barnett & Co.'s Bank, So. Shields,—J. P. W., Chairman, T. S. B. & J. S. B., Directors, South Shields Salt Water Baths Co." An action having been brought upon the bill by the pltfs. against the chairman & directors:—*Held*: the two variations from the proper designation of the co. were sufficient to bring defts. within the provisions of 1862 Act, s. 42, the intention of which was to insure extreme strictness in regard to the use of the registered name of the co., not only in enforcing the use of the word "Limited," but in all other respects, & pltfs. were entitled to judgment.—ATKINS & Co. v. WARDLE (1889), 58 L. J. Q. B. 377; 61 L. T. 23; *affd.*, 5 T. L. R. 734, C. A.

Annotation:—Consd. Stacey v. Wallis (1912), 106 L. T. 544.

See, now, 1908 Act, s. 63 (3).

3317. Where bank instructed to honour directors' signatures to cheques—Whether directors personally liable for amounts.]—Directors of a co. held not to be personally liable to find cash for cheques drawn by them as officers of their co. upon their co.'s bank, & which the bank honoured when the co. had no funds at the bank, by reason of a letter written by such directors, at a time when the co. had funds at the bank, requesting the bankers to honour cheques of the co. drawn in a particular manner, such letter being only an intimation not to treat cheques as cheques of the co., unless signed in that manner; such a letter is not any representation either of any authority in the directors to overdraw the account or that there will be funds forthcoming to answer the cheques, & it does not imply any undertaking on the part of any of the directors signing it that he will personally pay or be answerable for any cheques, though drawn in that particular manner, if they should not be paid by the co.

As neither the directors, who signed such letter, nor those who, by cheques drawn in conformity therewith, subsequently overdrawed the account, incurred any personal liability, so neither did such

directors as at subsequent meetings confirmed the letter, or acquiesced in the cheques drawn in conformity with it.—BEATTIE v. EBURY (LORD) (1874), L. R. 7 H. L. 102; 44 L. J. Ch. 20; 30 L. T. 581; 38 J. P. 564; 22 W. R. 897, H. L.

Annotations:—*Refd.* West London Commercial Bank v. Kitson (1884), 13 Q. B. D. 360. *Mentd.* Weeks v. Probert (1873), L. R. 8 C. P. 427; McCollin v. Gilpin (1880), 5 Q. B. D. 390; Yorkshire Ry. Waggon Co. v. Maclure & Cornwall Minerals Ry. (1881), 45 L. T. 747; Robertson v. Harris, [1900] 2 Q. B. 117; Halbot v. Lens, [1901] 1 Ch. 344; Oliver v. Bank of England, Starkey, Leveson & Cooke, Third Parties, [1901] 1 Ch. 652; Rainford v. Keith & Blackman Co., [1905] 1 Ch. 296.

Guarantee by directors.]—See, generally, GUARANTEE.

3318. Joint note given in substitution for joint & several note—Subsequent alteration to joint & several—Liability of director not consenting.]—Certain persons, directors of a co., borrowed of certain bankers, for the use of the co., £2,000, for which they gave a joint & several note. Shortly afterwards, at a meeting of the directors, at which one of them was not present, half the money was paid off, & a joint promissory note drawn, to which the signatures of all the directors were obtained; this note, on being tendered to the bankers, was refused; upon which the secretary of the co., who had no general authority, consulted with two of the directors, neither of them being the one who did not attend the meeting, & with their permission, added to the note the words "jointly & severally":—*Held*: he was not liable, though, on being written to for payment, his only reply was, that, from the death of a relation, he could not then attend to the subject, but would give it his earliest attention.—PERRING v. HONE (1826), 4 Bing. 28; 2 C. & P. 401; 12 Moore, C. P. 135; 5 L. J. O. S. C. P. 33; 130 E. R. 678.

Annotations:—*Refd.* Dickinson v. Valpy (1829), 5 Man. & Ry. K. B. 126; MacLae v. Sutherland (1854), 3 E. & B. 1. *Mentd.* Bourne v. Freeth (1829), 4 Man. & Ry. K. B. 512; Ellis v. Schmoeck (1829), 5 Bing. 521; Fox v. Clifton (1830), 6 Bing. 776.

See, generally, BILLS OF EXCHANGE, PROMISSORY NOTES & NEGOTIABLE INSTRUMENTS, Vol. VI., pp. 372 *et seq.*

(e) *Warrant of Authority.*

3319. General rule.]—Directors acting on behalf of a co. impliedly warrant their authority like other agents.

Two of the directors of a joint-stock co., by a letter to the co.'s bankers, notified that their manager had authority to draw cheques on account of the co. Such two directors did not form a majority of the directors of the co., as required by their Act of incorporation, so as to bind the co. Although the co.'s account was at the time overdrawn, & that fact was known to the two directors, the bankers honoured the manager's cheques on the authority so given to them. In an action brought by the bank against the two directors for advances made on account of the co. upon the faith of their letter:—*Held*: there

PART III. SECT. 28, SUB-SECT. 6.—
F. (d).

n. Whether personal liability pledged—Joint & several note.]—Upon a joint & several promissory note by the directors of a co. for value received on account of the co., such directors are personally liable.—McMULLEN v. O'CONNOR (1868), 5 W. W. & A'B. 200.—AUS.

o. — Drawn by secretary—Accepted by president.]—A bill drawn by one deft. as secretary on, & accepted by the other deft. as president of, a railway co., does not come within 18 Vict. c. 182, s. 13, as being accepted

by the president & countersigned by the secretary; & they are personally responsible.—BANK OF MONTREAL v. SMART (1860), 10 C. P. 15.—CAN.

p. Notes given by sole shareholder—In name of company.]—H. & M., carrying on the business of stock & commission agents, constituted themselves a private co. M. subsequently sold his interest to H. for £225, the nominal value of his shares, receiving £50 in cash & the remainder in promissory notes indorsed by H. for & on behalf of the co. On the co. going into liquidation, M. sought to prove as a creditor for the amount of the unpaid

promissory notes. All the promissory notes were dishonoured with one exception:—*Held*: as H., as director of the co., had within the knowledge of M. indorsed these notes for the co. in support of a private transaction in which they were both interested, & in which the co. was in no sense interested, the proof could not be allowed.—*Re* HUDSON & MARRIOTT, LTD., *Ex p.* MARRIOTT (1911), 30 N. Z. L. R. 483.—N.Z.

PART III. SECT. 28, SUB-SECT. 6.—
F. (e).

q. What amounts to warranty—Purchase of shares in another company

Sect. 28.—Directors: Sub-sect. 6, F. (e), (f) & (g).]

was an implied warranty on their part, & they were personally liable to the bank, & judgment was given to the extent of the sums overdrawn by the manager subsequent to the date of their letter.—*CHERRY & M'DOUGALL v. COLONIAL BANK OF AUSTRALASIA* (1869), L. R. 3 P. C. 24; 6 Moo. P. C. C. N. S. 235; 38 L. J. P. C. 49; 21 L. T. 356; 16 E. R. 714; *sub nom.* *COLONIAL BANK OF AUSTRALASIA v. CHERRY & MCDUGALL*, 17 W. R. 1029, 1031, P. C.

Annotations:—*Distd.* *Beattie v. Ebury* (1874), L. R. 7 H. L. 102. *Refd.* *Weeks v. Probert* (1873), L. R. 8 C. P. 427; *Lakeman v. Mountstephen* (1874), L. R. 7 H. L. 17. *Mentd.* *Colonial Bank of Australasia v. Willan* (1874), L. R. 5 P. C. 417; *Starkey v. Bank of England*, [1903] A. C. 114; *Sheffield Corpn. v. Barclay* (1905), 93 L. T. 83.

See, generally, AGENCY, Vol. I., pp. 657 *et seq.*

3320. What amounts to warranty—Issue of debenture-stock certificates — After borrowing powers exhausted.]—By an agreement made between a co. & a contractor engaged under a contract in carrying out works for the co., & executed at a meeting of the directors of the co., it was agreed that in consideration that the contractor would proceed with the works the co. would issue to him, in discharge of a debt then due to him under the contract, debenture stock of the co. Certificates of debenture stock were thereupon signed by two of the directors, & issued to the contractor. The co. had at the time exhausted its power of issuing debenture stock, but the directors were ignorant of the fact. There were no assets of the co. to satisfy the judgment if the contractor had recovered judgment against the co. for the debt due to him, but the debenture stock of the co. was & always had been, worth its nominal value. In an action by the contractor against the directors for breach of an implied warranty that they had power to issue valid debenture stock:—*Held*: the directors were liable, & the damages were the nominal value of the debenture stock purported to be issued.—*FIRBANK'S EXECUTORS v. HUMPHREYS* (1886), 18 Q. B. D. 54; 56 L. J. Q. B. 57; 56 L. T. 36; 35 W. R. 92; 3 T. L. R. 49, C. A.

Annotations:—*Distd.* *Elkington v. Hürter*, [1892] 2 Ch. 452. *Consd.* *Oliver v. Bank of England*, [1902] 1 Ch. 610. *Refd.* *Starkey v. Bank of England*, [1903] A. C. 114. *Mentd.* *Brown v. Law* (1894), 71 L. T. 770; *Yonge v. Toynbee*, [1910] 1 K. B. 215; *Fernée v. Gorlitz* (1914), 84 L. J. Ch. 404; *Edwards v. Porter*, *McNeali v. Hawes*, [1923] 2 K. B. 538.

3321. ——— Certificate signed by director.]—The M. Docks co. were empowered by their special Acts to issue debenture stock to a fixed amount.

Between Apr. 1881 & 1883 various transactions took place between the secretary of the Docks Co. & the London agents of plths. in respect of advances by plths. to the co., the usual arrangement being that plths. should take a bill of exchange drawn upon the co. by the contractors of the co., & also certificates of debenture-stock, accompanied by a letter from the secretary to the effect that the certificates were a collateral security.

The advances were renewed from time to time, & finally consolidated by an agreement of Oct. 20, 1882, made in consideration of a further advance. Some of these certificates were indorsed by G., one of the directors of the Docks Co., to the effect that the stock represented thereby was within the statutory limit. In Jan. 1883 it came to the knowledge of the Docks Co. that there had been

an over-issue of debenture-stock since Jan. 1881, & that the co. was insolvent. A special Act was obtained under which an arbitrator was appointed to settle the claims arising out of the condition of the co. Under that Act certain classes of debenture-stock were authorised to be issued. Stock under one of these classes was awarded & issued to plths. in respect of their loan & interest. The stock was admitted to be worthless, & plths. brought an action for damages against the directors & the secretary:—*Held*: (1) plths. advanced their money on the faith of the warranty contained in the indorsements on the certificates by G., & were, therefore, entitled to damages against him; (2) that the measure of such damages was the difference between the values of the certificates as delivered, & those which ought to have been delivered, which in this case was the whole amount advanced by the plths.—*WHITEHAVEN JOINT STOCK BANKING CO. v. REED* (1886), 54 L. T. 360; 2 T. L. R. 353, C. A.

3322. ——— Contract entered into by company—Knowledge of chairman.]—Plths. contracted to supply goods to a co. to be paid, as to £600, in first mtge. debentures of the co., & as to the balance by the co.'s acceptances. The contract was made at a board meeting of the co. at which deft. was chairman, & which was attended by plths.' representative. Plths. repeatedly pressed for their debentures, & were put off by promises contained in letters written by the secretary of the co. with the knowledge of deft. as a director; but eventually the co. was ordered to be wound up without plths. having obtained their debentures. At the time the contract was made deft. knew that the whole of the first mtge. debentures of the co. had been issued except £4,950, which were deposited with the bankers of the co. as security for the co.'s overdraft, which was also guaranteed by the directors, under an arrangement by which the co. could at any time withdraw any of the debentures on paying the nominal amount thereof in cash. In an action by plths. to make deft. personally liable for the £600 on the ground that his acts were a representation that he had authority to say the co. could issue the debentures at a time when he knew they had no debentures available for the purpose:—*Held*: that the deft. was not liable.—*ELKINGTON & CO. v. HÜRTER*, [1892] 2 Ch. 452; 61 L. J. Ch. 514; 66 L. T. 764.

3323. Measure of damages—Overissue of debentures.]—*WHITEHAVEN JOINT STOCK BANKING CO. v. REED*, No. 3321, *ante*.

3324. ———.]—*FIRBANK'S EXECUTORS v. HUMPHREYS*, No. 3320, *ante*.

(f) Acts of Other Agents of Company.

3325. Whether agent employed by director or company—Director also secretary & general manager & principal shareholder.]—Butter containing margarine was sold to resp.'s representative by an assistant at a shop of which a limited co. were the proprietors. Applt., a director of the co., was practically the only shareholder. He was also the secretary & general manager of the co.'s business, & was not on the premises at the time of the sale. Upon an information charging applt. with an offence under Sale of Food & Drugs Act, 1875 (c. 63), s. 6:—*Held*: the assistant was employed, not by applt., but by the co., which was a separate entity.—*BOOTH v. HELLIWELL*, [1914] 3 K. B. 252; 83 L. J. K. B. 1548; 111

—*Representation of law.*—A representation by the directors of a co. that they are authorised to buy & hold

shares in another co. is a pure representation of law upon which, if untrue, they cannot be made personally liable.

—*MCINTYRE v. SWYNY* (1893), 14 N. S. W. L. R. 436.—*AUS.*

L. T. 542; 78 J. P. 223; 30 T. L. R. 529; 24 Cox, C. C. 361; 12 L. G. R. 940, D. C.

See, further, Nos. 3547, 3548, 3549, *post*.

3326. Contract—Credit pledged by secretary—
Authority.]—Deft. authorised his name to be inserted as a director in the prospectus of a joint-stock co., limited. The prospectus was sent to deft., who suggested alterations in it. The secretary gave orders to pltf. to advertise the prospectus, which was done at an expense of £236. The co. was never registered:—*Held*: deft., by consenting to act as a director, had not authorised the secretary of the co. to pledge his credit, & he was not liable to pltf.—**BURBIDGE v. MORRIS** (1865), 3 H. & C. 664; 34 L. J. Ex. 131; 12 L. T. 426; 13 W. R. 921; 159 E. R. 692.

3327. Tort—Infringement of patent by company's servants.]—The workmen employed on the works of a joint-stock co., in the manufacture of certain foils & sheet metals, infringed, in the carrying out of the process upon which they were employed, pltf.'s patent for a certain method of combining lead & tin & a metal so produced:—*Held*: the directors & managers, as well as the co., were personally liable for the acts of the workmen, even on the supposition that the workmen had been directed by them not to infringe pltf.'s patent.—**BETTS v. NEILSON, BETTS v. DE VITRE** (1868), 3 Ch. App. 429; 37 L. J. Ch. 325; 18 L. T. 165; 32 J. P. 547; 16 W. R. 529, C. A.; *varied* on other grounds, *sub nom.* **NEILSON v. BETTS** (1871), L. R. 5 H. L. 1, H. L.; *sub nom.* **DE VITRE v. BETTS** (1873), L. R. 6 H. L. 319, H. L.

Annotations:—**Expld.** *Belvedere Fish Guano Co. v. Rainham Chemical Works, Feldman & Partridge, Ind, Coope v. Same*, [1920] 2 K. B. 487. **Mentd.** *Elmslie v. Boursier* (1869), L. R. 9 Eq. 217; *Plimpton v. Malcolmson* (1876), 3 Ch. D. 531; *Plimpton v. Spiller* (1877), 6 Ch. D. 412; *The Parlement Belge* (1880), 42 L. T. 273; *Von Heyden v. Neustadt* (1880), 50 L. J. Ch. 126; *Nobel's Explosives Co. v. Jones* (1882), 8 App. Cas. 5; *Watson v. Holliday* (1882), 20 Ch. D. 780; *Upmann v. Forester* (1883), 24 Ch. D. 231; *Newman v. Pinto* (1887), 57 L. T. 31; *United Horse-Shoe & Nail Co. v. Stewart* (1888), 13 App. Cas. 401; *Gadd & Mason v. Manchester Corpn.* (1892), 67 L. T. 569; *Badische Anilin und Soda Fabrik v. Johnson & Basle Chemical Works, Bindschedler*, [1897] 2 Ch. 322; *Saccharin Corpn. v. Chemicals & Drugs Co.*, [1900] 2 Ch. 556; *British Motor Syndicate v. Taylor*, [1901] 1 Ch. 122; *Meters v. Metropolitan Gas Meters* (1911), 104 L. T. 113.

3328. — Misrepresentation by agent or servant—General rule.]—A principal agent is not responsible for the act of a sub-agent with respect to a representation made in favour of his principal; & the directors of a limited co. cannot be held personally liable for a fraudulent representation made by an agent of the co., unless they have induced or authorised him to make it.

A co., of which the appts. were directors, was in negotiation with resp. for an advance upon the security of sheep & wool, the property of the co.; L., an agent of the co., wrote in answer to a question of resps.:—"The mortgage to N. is the only incumbrance on the sheep & wool"; in fact there were two other outstanding incum-

brances, but at the time of writing L. had them both in his possession on behalf of the co., under an agreement that they should be paid off out of the advance to be made by resps., which was in fact done:—*Held*: under these circumstances there was no evidence that L. was guilty of making a false representation of the position of the co.—**BEAR v. STEVENSON** (1874), 30 L. T. 177, P. C.

3329. — — — — —.]—**CARGILL v. BOWER**, No. 3181, *ante*.

3330. — — — — —.]—**SMITH v. REED**, No. 3548, *post*.

3331. — — — Misrepresentation of law.]—Pltf. alleged, that being desirous of advancing money on debentures, he applied to a secretary of a ry. co., who wrote, offering him a bond of the co. for £1,500, & stating that the co. were not yet in a position to issue permanent debentures, but that they expected to be able to do so in four or five months' time. With the letter was sent a prospectus, from which it appeared that the co. was incorporated by Act of Parliament, & that three persons named were directors. Pltf. advanced the money, & received in return a Lloyd's bond, signed by the secretary, whereby the co. purported to acknowledge the debt, & to covenant to pay the same with interest at 6 per cent. The co. having ceased to pay interest, & being in difficulties, pltf. filed a bill against two of the three directors, & the representatives of the third, praying that they might be decreed to pay the amount advanced by the pltf. with interest:—*Held*: the principle of relief on the ground of misrepresentation by third persons did not extend to an incorrect statement of a matter of law, & demurrer by the representatives of the third director allowed.—**RASHDALL v. FORD** (1866), L. R. 2 Eq. 750; 35 L. J. Ch. 769; 14 L. T. 790; 14 W. R. 950.

Annotations:—**Consd.** *Beattie v. Ebury* (1872), 7 Ch. App. 777. **Distd.** *West London Commercial Bank v. Kitson* (1884), 13 Q. B. D. 360. **Refd.** *Weeks v. Propert* (1873), L. R. 8 C. P. 427. **Mentd.** *Hirschfield v. L. B. & S. C. Ry.* (1876), 2 Q. B. D. 1; *Yorkshire Ry. Waggon Co. v. Maclure & Cornwall Minerals Ry.* (1881), 45 L. T. 747.

See, generally, **AGENCY**, Vol. I., pp. 395, 396, 587 *et seq.*

3332. Offence under Food & Drugs Act, 1875 (c. 63), sect. 6—Whether salesman employed by company or director.]—**BOOTH v. HELLIWELL**, No. 3325, *ante*.

See, generally, **AGENCY**, Vol. I., pp. 594 *et seq.*

(g) Contracts on behalf of Company.

3333. Directors holding themselves out as such—Contracts entered into when office no longer exercised.]—Where parties have been held out to the world, & have acted as directors of a joint-stock co., & have not done anything to divest themselves of the character of directors, they are liable for contracts entered into on the part of the co.; although the contracts be entered into after they

PART III. SECT. 28, SUB-SECT. 6.— F. (g).

r. Sale of company's business—Wilful default.]—By the arts. of assocn. of a co. it was provided that none of the directors should be answerable for the acts or defaults of the other or others of them or for any other loss, misfortune or damage which might happen in the execution of their respective offices or trusts or in relation thereto, except the same should happen by or through their own wilful default respectively.

The directors of pltf. co., entered into an agreement with A. for the sale of the co.'s undertaking for £170,000,

which might be satisfied by 170,000 shares of £1 each in a new co. to be formed by A. One of the provisions of the agreement, which A. insisted on, was that the new co. should out of its contributed capital discharge a debt of £20,000 owing by B. to A. as security for which debt A. held 40,000 shares in pltf. co. belonging to B. The agreement was carried out, the new co. was formed, pltf. co. received the 170,000 shares in the new co., the new co. paid the debt of £20,000 & A. purchased from B. the 40,000 shares:—*Held*: (1) it was a wilful default on the part of the directors of pltf. co. to make the agreement without providing that either pltf. co. or the new co. should

have the benefit of the 40,000 shares; (2) the measure of damages was the lessened value of the interest of pltf. co. in the new co. by reason of the new co. having to pay £20,000.—**GOULD & BIRBECK & BACON v. MOUNT OXIDE MINES, LTD.** (1916), 22 C. L. R. 490.—**AUS.**

s. Sale of goods—Company carrying on business under name of firm—Company's name not appearing—Penalty.]—Pltf. bought the business & goodwill of a partnership & registered themselves as a firm carrying on business in the name of the partnership. Goods were supplied to deft. under a contract in the name of the partner-

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have ceased to attend the meetings of the directors.—**DOUBLEDAY v. MUSKETT** (1830), 7 Bing. 110; 4 Moo. & P. 750; 131 E. R. 43; *sub nom.* **DOUBLEDAY v. MUSKETT**, **DOUBLEDAY v. LOUSADA**, 9 L. J. O. S. C. P. 35.

*Annotations:—***Refd.** Wood v. Argyll (1844), 7 Scott, N. R. 885; Collingwood v. Berkeley (1863), 15 C. B. N. S. 145. **Mentd.** Burls v. Smith (1831), 7 Bing. 705.

3334. Lease in directors' names—Liability after retirement.]—A. B. & other persons took premises for a year certain, with a proviso that they might have a lease for seven or fourteen years, upon giving a month's notice before the end of the year. They were the directors of a banking co., the business of which was carried on upon the premises. Before the end of eleven months from the making of the agreement, there was a change of directors; & no notice was given, in pursuance of the agree-

ment, for an extension of the term. Shortly before the expiration of the year, negotiations for a lease were commenced between the landlord & the new directors, but no notice was executed nor any agreement made. A few days before the expiration of the year, an application was made to the landlord by the new directors for a quarter's occupation from the end of the year; to which the landlord answered, "I will consider of it." No further negotiation was carried on between the parties, nor did it appear that any other communications passed between them, but the new directors continued in occupation of the premises for a quarter from the end of the year:—**Held:** the original tenants were liable in an action for use & occupation, for a quarter's rent, as holding over after the end of their term, there being no acceptance of the new directors as tenants, & no discharge of the liability of the original

ship, in which the name of pltf. co. did not appear. In an action to recover the price of the goods:—**Held:** assuming the contract to be a document within Cos. Act, 1899, s. 67, there was nothing in the Act to render it void or illegal, although a penalty might be enforced under s. 68 against the director or officer authorising its issue.—**MORELAND METAL CO. v. COWLESH-HEAD** (1919), 19 S. R. N. S. W. 231.—**AUS.**

*t. For services—Signed by president—Part payment by company.]—*Pltf. put in a memorandum of an agreement made between the directors of a co. of the first part & pltf., which contained an agreement by pltf. to do certain work for specified prices, which the party of the first part thereby agreed to pay, & was signed by deft., describing himself as president of the co., & by pltf. The co. had been duly incorporated & pltf. had received £350 from them on account of his work:—**Held:** deft. was not personally liable.—**JOHNSON v. HAMILTON** (1856), 13 U. C. R. 211.—**CAN.**

*a. — Signed by provisional directors—Part payment by company.]—*Pltf. claimed damages from deft. co. for wrongful dismissal, on the ground that he was employed under a special agreement, which had not terminated when his services were dispensed with. The agreement was in these words: "We, the undersigned, jointly & severally agree to engage () for the period of one year, from this date." The agreement was dated May 8, 1893, & was signed by three of the incorporators & provisional directors of deft. co. The co. was not organised until Aug. 1893, when the provisional directors named in the Act, in addition to those who signed the agreement, met for the first time. The directors, who signed the agreement with pltf., set him to work in May, 1893. Up to Oct. he was paid by R., one of such directors, but, after that date, the co. assumed control of the work, & pltf. was paid out of the treasury of the co. His employment continued up to the end of June, 1894, when he was notified by the treasurer that his services would be dispensed with, & he was paid in full up to that date. There was no resolution of the board, either in regard to his appointment or dismissal:—**Held:** (1) the contract was merely a joint & several contract of the directors who signed it, & not a contract binding upon the co., & the directors who signed that contract had no power to bind the co., even if they so intended; (2) the payments made to pltf. by the treasurer of the co. were not evidence of ratification of the contract of May 8, & would not be evidence of an implied contract of general hiring.—**O'DELL v. BOSTON & NOVA SCOTIA COAL CO., LTD.** (1897), 29 N. S. R. 385.—**CAN.**

*b. Purchase of goods—Value exceeding prescribed limit.]—*In an action against a co. for goods sold & delivered, the amount claimed being admitted, debts set up that their indebtedness when the goods were purchased largely exceeded the limits prescribed by R. S. O. 1897, c. 199, ss. 11, 40, & that the directors were personally liable, & not the co.:—**Held:** a motion for summary judgment must be dismissed.—**CANADIAN GENERAL ELECTRIC CO. v. TAGONA WATER & LIGHT CO.** (1903), 24 C. L. T. 61; 6 O. L. R. 641; 2 O. W. R. 1055.—**CAN.**

*c. Promotion expenses—Provisional directors—Named in prospectus.]—*Where a co. was sought to be promoted & floated & a prospectus was issued, & H. & K. signed it & agreed to act as directors, & figured as such on the prospectus, & certain advertising expenses were incurred on the promotion of the co. which was never floated:—**Held:** H. & K. were jointly & not jointly & severally liable for the expenses.—**HOLLIS v. ARGUS CO., LTD.** (1890), 7 S. C. 326.—**S. AF.**

*d. — — — — —.]—*The mere fact that persons agree to become provisional directors of a co. does not render them liable for goods supplied on the order of the attorney or secretary of the co., & they are not necessarily rendered liable by allowing their names to appear as provisional directors on the prospectus. Whether they are liable depends on the terms of the prospectus. If it merely states that they are provisional directors they will not be liable. If it represents that the attorney or secretary is not merely to act as such when the co. is formed, but is already appointed to act for such provisional directors, they will be liable for such business as is usually done by the attorney or secretary of persons who are forming a co.

Defts., provisional directors of a projected co., made it clear *inter se* & to their agent that they would not hold themselves responsible for the expenses of flotation & that the agent had no authority to pledge their credit, but an advertised prospectus disclosed that defts. were already engaged in functions usually discharged by promoters, & that the agent had already assumed the duties of his office:—**Held:** defts. could not escape liability on the ground that the agent contracted for a non-existent principal, known to pltf. to be non-existent, & pltf. was justified in assuming that defts. were promoting the co. & that their agent was authorised to incur on their behalf such expenses as an agent would usually incur, & defts. were liable to pltf. for the costs of the advertisement.—**DE DRUKKERS MAATSCHAPPIJ v. OOSTHUIZEN** (1915), 6 C. P. D. 401.—**S. AF.**

e. Employment of clerks or ser-

*vants.]—*Pltf., the manager of a co., paid out of his own money the amount due for wages by the co. to certain labourers, & having obtained assignments of their claims, recovered a judgment against the co. for the amount, together with a sum of money owed to him by the co., for services. After an execution against the co. had been returned unsatisfied, he brought this action on behalf of himself & the labourers against two of the directors under R. S. O. 1897 (c. 197), s. 8, to make them personally liable for the amount due on the execution:—**Held:** the action brought against the co. was not such a one as is contemplated under the sect., & there being no dispute as to the facts, this action was dismissed on a motion under Con. Rule 616.—**HERMAN v. WILSON** (1900), 32 O. R. 60.—**CAN.**

*f. — — — — —.]—***RISLER v. ALBERTA NEWSPAPERS, LTD.**, [1919] 1 W. W. R. 740.—**CAN.**

*g. — — — — —.]—***Director not holding shares in own right—Manitoba Joint-Stock Companies Act, 1902 (c. 30).]**—(1) Persons who accept transfers of shares in a co. incorporated under Manitoba Joint-Stock Companies Act, R. S. M. 1902 (c. 30), & are elected & act as directors of the co., cannot escape the liability for wages of employees imposed upon directors by sect. 33 of the Act by showing that they do not hold the shares absolutely in their own right, but only as security or in trust, notwithstanding that, under sect. 27 of the Act, such persons are not legally qualified to be directors.

(2) The provisions of sect. 33 are remedial & not penal in their nature, being only the withholding from directors, in respect of wages, of the freedom which the statute would otherwise give them from personal liability for all debts of the company.—**MACDONALD v. DRAKE** (1906), 16 Man. L. R. 220.—**CAN.**

*h. — — — — —.]—***Judgment against company—Unsatisfied execution—Whether sheriff's return final.]—****CREW v. DALLAS** (1908), 9 W. L. R. 598.—**CAN.**

*k. — — — — —.]—*Actions were brought under Ontario Companies Act, 394, against directors of a co., for sums due to pltf. for wages earned by them as servants, labourers or apprentices of the co., & in respect of which executions against the co. had been returned unsatisfied:—**Held:** in order to lay the foundation for the statutory action, the return of the sheriff must be based on diligent efforts to locate assets & cannot be formal or illusory.—**PUKULSKI v. JARDINE, PERRYMAN v. JARDINE** (1912), 21 O. W. R. 983; 3 O. W. N. 1172; 26 O. L. R. 323; 5 D. L. R. 242.—**CAN.**

*l. — — — — —.]—*Motion for judgment under C. R. 603 against defts., directors of a co., in respect

tenants.—CHRISTY v. TANCRED (1840), 7 M. & W. 127; H. & W. 50; 10 L. J. Ex. 228; 4 Jur. 1064; 151 E. R. 706.

Annotations:—Mentd. Christy v. Tancred (1842), 9 M. & W. 438; Henderson v. Squire (1869), L. R. 4 Q. B. 170.

3335. Where personal liability excluded.]—The directors of a provisionally registered co. agreed with pltf. to use their endeavours to obtain a charter of incorporation for the co., the object of which was to raise a sum of money to assist pltf. in laying down a submarine telegraph, & in consideration of pltf.'s performing such work, the directors agreed, among other things, that pltf. should be paid out of the funds to be raised by the co. a certain amount in paid-up shares of the co. as soon as the general allotment of shares should be made. By a subsequent clause in the agreement it was provided that none of the directors should be held personally responsible for payment of the said amount in paid-up shares or otherwise

under the agreement, it being expressly understood & agreed that pltf.'s right to recover should be dependent entirely & exclusively on there being sufficient capital raised by the co. to meet such payment, & the same should not be demanded or enforced until a sufficient sum should be applicable for such purpose in the hands of the co.:—*Held*: although from the form of the pleadings it must be taken that there was a sufficient sum in the hands of the co. to satisfy pltf.'s claim, no action would lie against the directors for non-payment of the stipulated amount in paid-up shares.—WEST v. BILLING (1855), 3 W. R. 569.

(h) Misapplication of Funds.

3336. General rule.]—PICKERING v. STEPHENSON, No. 3145, ante.

3337. Where funds misapplied by director's firm—Director a bankrupt—Double proof.]—Where

claims for wages incurred while they were occupying the position of directors & for which judgment by default had been obtained against the co. & a return of *nulla bona* made by the sheriff:—*Held*: a default judgment was not binding on debts, so as to preclude an inquiry into the *bona fides* of the claim.—ROGERS v. WOOD (1912), 22 O. W. R. 48; 3 O. W. N. 1241; 2 D. L. R. 914.—CAN.

m. ———— Effect of judgment against company.]—GUENARD v. COE (1914), 26 W. L. R. 626.—CAN.

n. ———— Joinder of wages claim with another claim.]—WILLIAMS v. GRAHAM (1916), 34 W. L. R. 855.—CAN.

o. ———— In this action pltf. sought payment from debts, as directors of a co. of the amount of a judgment recovered by him against the co. for wages due to him as a workman employed by the co. The action was begun within a year from the time debts ceased to be directors; but, after the expiration of the year it was discontinued against debt. K., who was resident in a foreign country:—*Held*: as the liability of debts, as directors under Ontario Cos. Act 2, Geo. 5, c. 31, s. 96, was several as well as joint, pltf. was entitled to sue them separately & was not bound to join all of them as debts, he was entitled also, under Rule 67, to sue one or more or all of them in the same action.—REUCKWALD v. MURPHY (1914), 7 O. W. N. 191; 32 O. L. R. 133.—CAN.

p. ———— Pltf. kept a store near the mine of a co. Pursuant to an arrangement made between him & the co., the men employed by the co. who bought goods from pltf. had the price of the goods charged against their wages. The purchasers initialled the vouchers, which were sent to the co.; when the pay-cheques were drawn, a separate cheque was made out for each workman's store-bill, payable to the workman; the men then indorsed these cheques, & they were retained by the co. An adjustment was made monthly between pltf. & the co., he was given credit for the amount of these cheques so held & for any goods he had sold to the co.; he was charged with the rent of his store, which was owned by the co., & for anything else which he owed to the co.; & was then given a cheque for his net balance. Pltf. recovered judgment against the co. for the amount of a claim made up of balances due for wages, represented by the original cheques in favour of the men, which had never been handed over to pltf. Execution having been issued & returned unsatisfied, this action was brought against the directors of the co. to enforce a claim under Cos. Act, R. S. O., 1914 (c. 178), s. 98:—*Held*:

the money became payable to pltf. by virtue of his direct contract with the co. when the adjustment took place & he accepted the cheque, there was then a novation, & under this new contract pltf. became a creditor of the co. in respect of the cheques given to him, & the demands ceased to be demands for wages within the meaning of the statute.—COVENEY v. GLENDENNING (1915), 8 O. W. N. 320; 33 O. L. R. 571.—CAN.

q. ———— Who may be sued—De facto directors.]—Pltf. recovered judgment against a co. for wages due under a hiring by the co. Execution was issued & returned *nulla bona*. Pltf. then brought action under Manitoba Joint-Stock Act, 1902 (c. 30), s. 33, against debts, as directors of the co. Debts pleaded that the sect. was a penal provision to be strictly construed & not enforceable against other than *de jure* directors whereas they were not lawfully directors, neither of them having the necessary qualification of owning stock absolutely in his own right:—*Held*: both having been chosen in a manner which, if they had been qualified, would have made them directors *de jure* & both having acted as *de jure* directors, they could not take advantage of their own wrong when dealing with third parties acting *bona fide* & they must be held liable.

Held also s. 33 is not a penal provision (cf. *Huntington v. Attrill*, [1893] A. C. 150).—MACDONALD v. DRAKE (1906), 4 W. L. R. 434.—CAN.

r. ———— Whether all directors must be sued.]—A pltf., who is a labourer within Alberta Cos. Ordinance, 1905, s. 54, & has a judgment against a co. & an execution returned *nulla bona*, may, if he wishes, sue two directors when there are more.—CREW v. DALLAS (1908), 9 W. L. R. 598.—CAN.

s. ———— Meaning of "labourer or servant."—TURNER v. FEE, 24 C. L. T. 402.—CAN.

t. ———— A person employed as foreman of works, who hires & dismisses men, makes out pay-rolls, receives & pays out money for wages, & does no manual labour, & in addition to receiving pay for his own services at the rate of \$5 a day, payable fortnightly, is paid for the use of machinery belonging to him & of horses hired by him, is not a labourer, servant or apprentice within Joint-Stock Cos. Letters Patent Act, R. S. O. 1887, c. 157, s. 68, & cannot recover against the directors personally.—WELCH v. ELLIS (1895), 22 A. R. 255.—CAN.

u. ———— Pltf., who had judgment against a co., & an execution returned *nulla bona*, now sued two directors under Alberta Companies' Ordinance, 1905, s. 54. As a miner he was paid by the co.:—*Held*: he was a "labourer" within above

section, & the directors were liable.—CREW v. DALLAS (1908), 9 W. L. R. 598.—CAN.

b. ———— Meaning of "wages."—Action by a boarding-house keeper against the directors of a co. for \$2,125.94, the amount of a judgment obtained against the co. for costs & interest, under 7 Edw. 7, c. 34, s. 94, which made directors liable for wages due by the co. under certain conditions. The co. & pltf. had entered into an agreement by which the co. were to furnish a boarding-house & heat free for pltf., who was to operate it for the co.'s employees, furnishing them free lodging & meals at 25 cents a head. The sums due for meals were to be deducted from the men's wages by the co., & carried to pltf.'s credit in the co.'s books. The men were notified of the arrangement & accepted the situation. On May 15, 1911, the co. were indebted to pltf. for \$2,396.55, in respect of the above arrangement, & \$132.55, in respect of other matters, a total of \$2,529.10. They paid \$500 in cash & gave their note for \$2,029.10, the balance. The note was unpaid on maturity & pltf. recovered judgment against the co. for the amount & thereupon sued debt., claiming to be an equitable assignee of the workmen's claims for wages:—*Held*: the amount due was never due as "wages," being never due to the workmen, but directly to pltf. under his contract with the co., & there could be no equitable assignment to pltf., & even if the money due could, at any time, be regarded as "wages," it changed its character when pltf. accepted, from the co., a payment on account & a note for the balance.—OLSON v. MACHIN (1912), 23 O. W. R. 531; 4 O. W. N. 287; 8 D. L. R. 188.—CAN.

PART III. SECT. 28, SUB-SECT. 6.—F. (h)

c. Gratuitous payments made to vendors of goods.]—ATHERTON v. PLAIN CREEK CENTRAL MILL CO., LTD., [1914] S. R. Q. 73.—AUS.

d. Division of proceeds of sale of company's property—Debts not provided for.]—The only three members of a co., who were also directors, without any declaration of dividend, divided among themselves the proceeds of sale of its lands. By a previous arrangement one of them had agreed to pay certain debts of the co., which he failed to do. On a subsequent assignment by the co. for the benefit of creditors:—*Held*: the assignee could recover from the said three members the amount so divided as aforesaid.—NATIONAL TRUST CO., LTD. v. GILBART & GILBART, [1921] 1 W. W. R. 359.—CAN.

e. Speculative dealings in shares.]—Pltf. co. was formed in 1864. By its memorandum of assocn. its object

Sect. 28.—Directors: Sub-sect. 6, F. (h), (i), (j) & (k).]

the bkpt. was a director of a co. & also a partner in the bkpt. firm, & he or his firm, who were general managers & agents to the co., improperly pledged bills of lading of the co. for advances of money which they wrongfully used for the purposes of the firm:—*Held*: the bkpt. had been guilty of a breach of trust in his capacity as a director of the co., & the co. were under Bkptcy. Act, 1883 (c. 52), sched. 11, r. 18, entitled to prove, in respect of the contractual liability arising out of his breach of trust, against his separate estate as well as against the joint estate of his firm.—*Re MACFADYEN, Ex p. VIZIANAGARAM MINING Co., LTD.*, [1908] 2 K. B. 817; 77 L. J. K. B. 1027; 99 L. T. 759; 52 Sol. Jo. 727; 15 Mans. 313, C. A.

Annotation:—*Consd. Re Kent County Gas Light & Coke Co.*, [1913] 1 Ch. 92.

In remuneration of directors.]—See Sub-sect. 6, D. (b), ante.

For purposes ultra vires.]—See Sub-sect. 6, F. (i), post.

In payment for directors' qualification shares.]—See Sub-sect. 6, C. (b), ante.

Dividends improperly paid.]—See Sub-sect. 6, E. (f), ante.

(i) *Ultra vires Acts.*

3338. General rule.]—Re WORCESTER CORN EXCHANGE Co., No. 3348, post.

3339. —.]—The deed of settlement of a benefit & loan society provided that 5s. should be paid to each director for each attendance at the board. The directors passed a resolution increasing the amount to 10s. which amount was afterwards paid:—*Held*: the directors were liable to make good the difference with interest at 4 per cent.—*EVANS v. COVENTRY* (1857), 8 De G. M. & G. 835; 26 L. J. Ch. 400; 29 L. T. O. S. 118; 22 J. P. 19; 3 Jur. N. S. 1225; 5 W. R. 436; 44 E. R. 612, L. JJ.

Annotations:—*Reid. Re Oxford Benefit Bldg. & Investment Soc.* (1886), 35 Ch. D. 502; *Cullerne v. London, & Suburban General Permanent Bldg. Soc.* (1890), 25 Q. B. D. 485. *Mentd. Re Athenaeum Soc., Re Prince of Wales Soc., Durham's Case* (1858), 4 K. & J. 517; *Re English, & Irish Church, & University Assoc. Soc.* (1862), 1 Hem. & M. 79; *Re Stato Fire Insee.* (1863), 1 De G. J. & Sm. 634; *Kearns v. Leaf, Aldebert v. Kearns* (1864), 1 Hem. & M. 681; *Re Mercantile Trading Co., Stringer's Case* (1869), 4 Ch. App. 475; *Salisbury v. Met. Ry.* (1870), 22 L. T. 839; *Re Montrotier Asphalte Co., Perry's Case* (1876), 34 L. T. 716; *Re National Funds Assoc.* (1878), 10 Ch. D. 118; *Re Exchange Banking Co., Flitcroft's*

Case (1882), 21 Ch. D. 519; *Coxon v. Gorst*, [1891] 2 Ch. 73; *Re Sharpe, Re Bennett, Masonic & General Life Assoc. v. Sharpe*, [1892] 1 Ch. 154.

3340. Contract not binding on company—Remedies against directors—Action for damages only.]—Directors having entered into a contract, ultra vires, & which was not binding on the co.:—*Held*: it could be neither specifically performed, nor could the ct. order them to make good their representations & the remedy was at law in an action for damages.—*ELLIS v. COLMAN, BATES & HUSLER* (1858), 25 Beav. 662; 27 L. J. Ch. 611; 31 L. T. O. S. 144; 4 Jur. N. S. 350; 6 W. R. 360; 53 E. R. 790.

3341. Act sanctioned by company.]—TURQUAND v. MARSHALL, No. 3283, ante.

3342. Act incapable of sanction by company.]—If directors of a limited co. apply the money of the co. for purposes so outside its powers that the co. could not sanction such application, they may be made personally liable as for a breach of trust; but if they apply the money of the co., or exercise any of its powers, in a manner which is not ultra vires, then a strong & clear case of misfeasance must be made out to render them liable for a loss thereby occasioned to the co.

Directors permitted a transfer of 19,528 shares from a substantial holder to P., a director & shareholder of the co. They had previously refused to allot these shares to him, & at the time of the transfer they had notice of a charge, an injunction, & two charging orders against other shares held by him. They alleged that they believed that he was again in possession of considerable funds, & that they examined into the matter & approved him as transferee within the terms of their articles, which provided that every transferee must be approved by the directors. P. subsequently became insolvent, & all his shares were forfeited:—*Held*: directors are not in the same position as ordinary trustees; the directors had in fact approved P. as transferee; & even if they had made a mistake, they could not be made personally liable for the consequences.—*Re FAURE ELECTRIC ACCUMULATOR Co.* (1888), 40 Ch. D. 141; 58 L. J. Ch. 48; 59 L. T. 918; 37 W. R. 116; 5 T. L. R. 63; 1 Meg. 99.

Annotations:—*Distd. Metropolitan Coal Consumers' Assocn. v. Scrimgeour*, [1895] 2 Q. B. 604. *Consd. Re Kingston Cotton Mill Co. (No. 2)*, [1896] 1 Ch. 331. *Reid. Sheffield & South Yorkshire Permanent Bldg. Soc. v. Aizlewood* (1889), 44 Ch. D. 412; *Re Liverpool Household Stores Assocn.* (1890), 59 L. J. Ch. 616; *Re New Mashonaland Exploration Co.* (1892), 8 T. L. R. 738; *Re Lands Allotment Co.* (1894), 63 L. J. Ch. 291.

was declared to be commission agency & general trading in cotton & other goods suited for the market in the interior of India. The co. went into liquidation in 1867. In Apr. 1890, the present suit was filed against deft., who had been one of the directors of the co., & it was alleged that after the formation of the co. deft. & his co-directors had carried on speculative dealings in shares of other cos. & had used the funds of the co. for this purpose, which was not warranted by the memorandum of assocn. Pltfs. alleged that their dealings had resulted in a heavy loss to the co., which they now sought to recover from the deft. There had been originally five directors of the co., but at the date of suit two of them were dead, & two had become insolvent:—*Held*: (1) the memorandum of assocn. did not justify the directors of the co. in dealing in shares of other cos., & the transactions complained of by pltfs. were ultra vires; (2) the directors were liable to replace the money of the co. which they had misapplied by applying it to a purpose which was ultra vires.—*KATHIAWAR*

TRADING Co., LTD. v. VIRCHAND DIPCHAND (1893), 1 L. R. 18 Bom. 119.—*IND.*

1. Cheques drawn against company's banking account—For director's private purposes—Larger amounts paid in—Liability for costs.]—J., M., & I. were directors of a co., which was being wound up voluntarily. In the course of liquidation it appeared that cheques signed by J. & M. had been drawn against the banking account of the co. for purposes in which I. alone was interested; but that on the whole account, lodgments had been made by I. to the credit of the co. to an amount larger than the sums drawn out upon the cheques so signed by J. & M. On a summons by the liquidator under Cos. Act, 1862 (c. 89), s. 165, to determine whether these sums had been expended ultra vires & in breach of trust it was found that no money loss had been sustained by the co.:—*Held*: the ct. had jurisdiction to make an order that the directors should pay the costs although the claim of the liquidator for repayment of the money

had failed.—*Re IRELAND (DAVID) & Co.*, [1905] 1 I. R. 133.—*IR.*

2. Misapplication of fund — Remitted for specified purpose.]—A co. which consisted of two shareholders only, who were also its sole directors, received from their foreign correspondents a sum of £1,000 for the purpose, expressed in a covering letter, of meeting three named bills drawn by them upon the co., which were shortly to become due. The co. did not meet the bills on maturity, but the £1,000 was applied to the extent of £600 in repaying to one of the directors outlays averred to have been incurred by him on behalf of the co. In an action by the foreign correspondent against the two directors personally, to which the co. were not called as defenders:—*Held*: the directors' actings constituted not merely a breach of contract but a breach of trust for which they were personally liable, & a decree was pronounced against them jointly & severally for payment of the £600 claimed.—*BRENES & Co. v. DOWNIE*, [1914] S. C. 97.—*SCOT.*

3343. Honesty of intention.]—(1) Directors are liable for losses occasioned through acts done by them as directors in matters which are *ultra vires* the co., & this liability is not dependent upon any question of honesty of intention.

(2) Where a board of directors delegate their powers to a committee, without any provision as to the committee acting by a quorum, all acts of the committee must be done in the presence of all the members of the committee.

(3) The applications for shares in a co. fell short of expectation, & although the whole amount payable on the shares would be inadequate to purchase certain property without which the co. could not proceed to business, & although certain directors named in the prospectus had resigned, still the remaining directors resolved on allotting, & entered into contracts for purchasing & repairing the property. In proceedings against the directors under 1862 Act, s. 165, for the invalid & improper allotment of shares:—*Held*: the allotment could not be made a subject of complaint under that sect., as no loss was occasioned to the co. by an act, the only direct result of which was that money was paid on the shares to the credit of the co.'s banking account.—*Re LIVERPOOL HOUSEHOLD STORES ASSOCN., LTD.* (1890), 59 L. J. Ch. 616; 62 L. T. 873; 2 Meg. 217.

Annotations:—As to (3) *Consd.* *Re North Australian Territory Co., Archer's Case*, [1892] 1 Ch. 322. *Generally, Mentd.* *Finch v. Oake* (1896), 60 J. P. 309.

3344. — Reasonable mistake as to company's powers.]—*LONDON TRUST CO., LTD. v. MACKENZIE*, No. 3176, *ante*.

3345. — Relief under 1908 Act, s. 279.]—Under 1908 Act, s. 279, a director may be relieved from liability for "negligence or breach of trust" if he "has acted honestly & reasonably, & ought fairly to be excused":—*Held*: the above sect. extended to a transaction in fact wholly *ultra vires* the co., but which the director, acting on counsel's considered opinion, honestly & reasonably thought to be *intra vires*.—*Re CLARIDGE'S PATENT ASPHALTE CO., LTD.*, [1921] 1 Ch. 543; 90 L. J. Ch. 273; 125 L. T. 255; 37 T. L. R. 465; 65 Sol. Jo. 455.

3346. Payment of unauthorised remuneration.]—*EVANS v. COVENTRY*, No. 3278, *ante*.

3347. Excessive payment to promoter.]—The directors of a co. passed a resolution to pay £3,000 to P., who was one of the promoters, for services rendered, upon an understanding, which was not reduced into writing, that he should expend £400 in advertisements & advance the residue to the co. on the security of debentures. The directors accordingly paid P. the money & he spent £400 as arranged, & advanced the remaining £2,600 to the co. on debentures, which he divided between himself & certain of the directors. The co. was afterwards wound up:—*Held*: (1) the directors were jointly & severally liable to repay the £2,600 to the co.; (2) the advance of the money to the co. on debentures was not a repayment to the co.; (3) made no difference whether the arrangement to invest the money in debentures under which it was originally paid to P., was binding or not.

At the time of the winding-up the co. was indebted to one of the directors, who were thus

held liable, for money advanced for expenses:—*Held*: (4) he could not set off the debt against his liability for the misappropriation of the co.'s money.—*Re ANGLO-FRENCH CO-OPERATIVE SOCIETY, Ex p. PELLY* (1882), 21 Ch. D. 492; 47 L. T. 638; 31 W. R. 177, C. A.

Annotations:—As to (4) *Fold.* *Re Exchange Banking Co., Flitcroft's Case* (1882), 21 Ch. D. 519; *Re Carriage Co-op. Asscn.* (1884), 27 Ch. D. 322. *Reid.* *Re Auriferous Properties*, [1898] 1 Ch. 691; *Re Leeds & Hanley Theatres of Varieties*, [1904] 2 Ch. 45.

Improper payment of dividends.]—*See* Sub-sect. 6, E. (f), *ante*.

Purchase of company's own shares.]—*See* No. 3278, *ante*, & generally, Sub-sect. 6. F. (a), *post*.

(j) Borrowing in Excess of Powers.

3348. Directors primarily liable for excess.]—The deed of settlement of a joint-stock co. established for erecting & maintaining a corn exchange, provided, that the capital of the co. should consist of a sum of £4,000 divided into shares of £5 each; & the directors were empowered from time to time to make calls upon the shareholders not exceeding the amount of their shares unpaid, & also to borrow money to the extent of £2,000 for the purchase of the site and for erecting the building, instead of calling for instalments upon the shares. In the purchase of the site & the erection of the building the directors expended more than double the amount of the capital, having borrowed the money of the shareholders & of their bankers, one of whom was a director of the co. An order was made for winding-up the co. & a general call was made upon all the shareholders:—*Held*: (1) upon the construction of the deed, the directors had power to borrow only to the extent of the unpaid capital; (2) the liability of the shareholders was limited to the amount of their respective shares unpaid, & the directors were primarily answerable for the excess of expenditure; (3) a creditor, having notice of the limited liability under the deed, was bound by such notice; (4) the co. was not a trading partnership, & the directors could not, in excess of their authority under the deed, pledge the credit of the shareholders even to a creditor who had no notice of the deed.—*Re WORCESTER CORN EXCHANGE CO.* (1853), 3 De G. M. & G. 180; 22 L. J. Ch. 593; 21 L. T. O. S. 38; 17 Jur. 721; 1 W. R. 171; 43 E. R. 71, L. C.

Annotations:—As to (2) *Distd.* *Re German Mining Co., Ex p. Chippendale* (1853), 4 De G. M. & G. 19. *Consd.* *Re Cork & Youghal Ry.* (1869), 4 Ch. App. 753, n. *Reid.* *Re Norwich Yarn Co., Ex p. Bignold* (1856), 22 Beav. 143.

See, generally, Sect. 34, *post*.

Liability on warranty of authority.]—*See* Sub-sect. 6, F. (e), *ante*.

(k) Legal Proceedings.

3349. Liability for costs—Costs of company—Costs where director a party—Opposing petition to wind up.]—A director is not liable to his solr. for legal expenses incurred by his co., nor is a liquidator in a voluntary winding-up. But a director is liable for costs of defending a suit to which he is made party as director, & for costs of opposing a winding-up petition in his own name.—*Re TRUEMAN'S ESTATE, HOOKE v. PIPER*

PART III. SECT. 28, SUB-SECT. 6.— F. (k).

h. Liability for costs — Litigation caused by directors' neglect & breach of duty.]—J., M., & I. were directors of a co. which was being wound up voluntarily. In the course of the liquidation

it appeared that cheques signed by J. & M. had been drawn against the bank account of the co. for purposes in which I. alone was interested; but that, on the whole account, lodgments had been made by I. to the credit of the co. to an amount larger than the sums drawn out upon the cheques so

signed by J. & M. On a summons by the liquidator, under Companies Act, 1862 (c. 89), s. 165, to determine whether these sums had been expended *ultra vires*, & in breach of trust, & if so, that the directors should repay the sums, it was found that no money loss had been sustained by the co.:—

Sect. 28.—Directors: Sub-sect. 6, F. (k) & G. (a) & (b).]

(1872), L. R. 14 Eq. 278; 41 L. J. Ch. 585; 20 W. R. 700.

Annotations:—Apprvd. Re Anglo-Moravian Hungarian Junction Ry., Ex p. Watkin (1875), 1 Ch. D. 130. Reifd. Re Sanitary Burial Assocn., [1900] 2 Ch. 289.

3350. — Costs of suit where defendant as director.]—Re TRUEMAN'S ESTATE, HOOKE v. PIPER, No. 3349, ante.

3351. — Costs of opposing winding-up petition in own name.]—Re TRUEMAN'S ESTATE, HOOKE v. PIPER, No. 3349, ante.

See, generally, Sects. 35–38, post.

3352. — Prosecution for libel.]—PICKERING v. STEPHENSON, No. 3145, ante.

3353. — Libel on company & directors—Prosecution in interest of company.]—The costs of actions for libel affecting the private characters of directors, & only incidentally injuring a co., ought not to be paid out of the funds of the co.; but the costs of proceedings for libel directly affecting the co. may be rightly paid out of the co.'s funds.—STUDDERT v. GROSVENOR (1886), 33 Ch. D. 528; 55 L. J. Ch. 689; 55 L. T. 171; 50 J. P. 710; 34 W. R. 754; 2 T. L. R. 811.

Annotations:—Reifd. Re Liverpool Household Stores Assocn. (1890), 59 L. J. Ch. 616. Mentd. Re Fauvre Electric Accumulator Co. (1888), 40 Ch. D. 141; Cullerne v. London & Suburban General Permanent Bldg. Soc. (1890), 25 Q. B. D. 485; Re Kingsbury Collieries, & Moore's Contract, [1907] 2 Ch. 259; Peel v. L. & N. W. Ry., [1907] 1 Ch. 5.

— Motion for rectification of register.]—See Sect. 13, sub-sect. 5, B. (e) v., ante.

G. Proceedings against Directors.

(a) In General.

3354. When proceedings may be taken—By company—Where majority of members oppose—Court will not allow minority to bring.]—Two directors of a co. were alleged to have been concerned in the promotion of the co., & to have received a large amount in money & shares from the vendors to the co. The opinion of counsel having been taken, he advised that an action might be brought against such directors to enforce the return of the money & shares, or a portion of the same, with a probability of success; but upon a general meeting of the co. being held it was decided by a large majority that no proceedings should be commenced. The shareholders in a minority applied to the ct. to allow an action to be brought by them in the name of the co.:—*Held*: as the co. had fairly & honestly determined not to prosecute the claim the ct. ought not to interfere.—*Re TRANSVAAL GOLD EXPLORATION & LAND CO., LTD.* (1885), 1 T. L. R. 604.

Held: as the directors were guilty of gross neglect & breach of duty, & such neglect & breach of duty were the cause of the litigation, the co. had jurisdiction to make an order that the directors should pay the costs, although the claim of the liquidator for re-payment of money had failed.—*Re IRELAND (DAVID) & CO., [1905] 1 I. R. 133; 39 I. L. T. 34.—IR.*

k. — Unsuccessful appeal to House of Lords.]—Directors of a co. were found personally liable by the House of Lords for the expenses of an unsuccessful appeal to that house.—PATERSON v. PATERSON & SONS, [1917] S. C. (H. L.) 13.—SCOT.

PART III. SECT. 28, SUB-SECT. 6.—G. (a).

1. Discontinuance of action against one director—Right to proceed against others.]—Pltf. discontinued his action against one of several defts. as directors

of a co.:—Held: pltf. had not lost his right against the directors against whom he had not discontinued his action.—*REUCKWALD v. MURPHY* (1914), 32 O. L. R. 133.—CAN.

m. When proceedings may be taken—By representative shareholder—Where majority of members oppose.]—A shareholder who has known of & acquiesced in the making of secret profits by directors on a sale of land to the co. is disqualified from suing (even on behalf of himself & other shareholders), against the will of the majority of the shareholders, for repayment thereof to the co.—CRAWFORD v. FULLERTON, [1919] 3 W. W. R. 843.—CAN.

n. — By individual shareholder—Alleged wrong to company.]—Articles of assocn. provided that the co. notwithstanding that the whole number of shares in the capital might not be subscribed for or issued might

3355. — By individual shareholder—No prior application to company for relief.]—The directors are the servants, not of the individual shareholders, but of the co., & if a shareholder is aggrieved by their misconduct, his course is to call upon the co. to bring the directors to account, & then, that being done, to get relief from the co. itself.—*ORR v. GLASGOW, AIRDRIE & MONKLANDS RY. CO.* (1860), 2 L. T. 550; 6 Jur. N. S. 877; 8 W. R. 643, H. L.

3356. — Act capable of confirmation by company.]—NORMANDY v. IND, COOPE, & CO. LTD., No. 3536, post.

Nature of proceedings—Misfeasance proceedings—Under 1908 Act, s. 215.]—See Sect. 36, sub-sect. 10, C., post.

— Civil proceedings—In respect of misrepresentations—To secure Stock Exchange quotation.]—See Sub-sect. 6, B. (c), ante.

— In prospectus.]—See Sect. 8, sub-sect. 3, D., ante.

3357. — Criminal proceedings—Embezzlement—Director also clerk or servant.]—A director of a limited co., who is also employed as a servant to collect money for the co. is liable to be convicted of embezzlement of such money as a clerk or servant of the co.—*R. v. STUART*, [1894] 1 Q. B. 310; 63 L. J. M. C. 63; 58 J. P. 299; 42 W. R. 303; 10 T. L. R. 166; 38 Sol. Jo. 131; 10 R. 124; *sub nom.* *R. v. STEWARD*, 70 L. T. 44; 17 Cox, C. C. 723, C. C. R.

Annotation:—Mentd. Moriarty v. Regent's Garage Co., [1921] 1 K. B. 423.

— Conspiracy—Misrepresentation to secure Stock Exchange quotation.]—See No. 3190, ante.

3358. Committal for contempt of court—Breach of undertaking by company.]—A.-G. v. WHEATLEY & CO., LTD. (1903), 48 Sol. Jo. 116.

3359. Proceedings to restrain director from acting—Dispute as to validity of appointment—Whether dispute between company & member—Construction of articles.]—Art. 60 of the arts. of assocn. of a co. provided that "any instrument appointing a proxy shall as nearly as circumstances will admit be in the following form," & then followed a form applicable to voting at one particular meeting. Art. 101 provided that if any difference should arise between the co. & any member in regard to rights under the arts. it should be referred to arbitration. At an extraordinary meeting of the co. a resolution that the directors, of whom there were three, should be not more than five & that two named persons should be appointed directors, received a majority of votes on a poll but the chairman declared it

commence business where in the judgment of the directors, a sufficient number of shares had been subscribed for to justify them in so doing.

After the publication of the first balance-sheet which showed a loss on the year's working, an action was raised by a shareholder, whose share had been allotted to him after the incorporation of the co., to have A. & other directors of the co. at the date of allotment ordained to accept a transfer of these shares & to repay to him the amount of his subscription. He averred that at the date of the allotment no sufficient capital had been subscribed to justify defenders proceeding to allotment or commencing business, that they had done so recklessly & negligently & without exercising any judgment in the matter as they were bound to do & that in so acting they had acted *ultra vires* & in breach of their duty to the pursuer:—*Held*: pursuer as an individual share-

lost on the ground that the proxies for certain votes which were recorded in favour of the resolution & without which it would not have received a majority were for voting at any meeting & not at the particular meeting only. The three previous directors then held a directors' meeting & two of them appointed a fourth director, & thereupon the co. & the third of the previous directors & the two persons named as directors in the resolution brought an action against the other directors for a declaration that the appointment contained in the resolution was valid. Defts. moved for a stay under Arbitration Act, 1889 (c. 49), & pltf. asked for an interlocutory injunction to restrain the exclusion of the directors named in the resolution from acting as such:—*Held*: art. 101 referred to differences between the co. & a member in his capacity as such & that as the real difference in the case was between rival sets of directors the stay must be refused, & art. 60 was merely directory & therefore the proxies were valid & pltf. should have an injunction until trial.—*ISAACS v. CHAPMAN* (1916), 32 T. L. R. 237, C. A.

(b) Practice.

See, generally, PRACTICE & PROCEDURE.

3360. Parties—Whether all shareholders necessary parties.]—A demurrer will not hold to a bill filed by some of the shareholders of a mining co. against the directors of the same co., on the ground that the rest of the shareholders are not made parties.—*VIGORS v. AUDLEY (LORD)* (1837), Donnelly, 246; 47 E. R. 349, L. C.

3361. ———.]—*COOPER v. POWIS (EARL)* (1851), 18 L. T. O. S. 135; *previous proceedings* (1850), 3 De G. & Sm. 688.

Annotation:—*Mentd. Ffooks v. L. & S. W. Ry.* (1853), 17 Jur. 365.

3362. ——— Representative action—Suit to disturb settlement & release executed by majority.]—In Feb. 1845, a scheme for making a railway was projected, & pltf. S. took shares, on which he paid a deposit. In 1846, it was ascertained that the undertaking could not be proceeded with, & a public meeting of the shareholders was held, at which the majority present resolved that the affairs of the co. should be wound up, & the balance in hand returned to the shareholders, a great many of whom shortly afterwards received the dividend & signed a release, but pltf., though he refused to receive the dividend, made no objection to any of the proceedings. In 1849 pltf. filed a bill against the managing committee, & M., one of the shareholders who had received the dividend, for an account, & also that two sums of the co.'s funds, which the committee had

expended in buying up shares might be declared fraudulent, & be decreed to be repaid:—*Held*: pltf., who, after three years' acquiescence, sought a general account, without any evidence of fraud or mistake, after an account regularly stated by the directors of the co., & approved at a public general meeting convened on due notice, followed by payment to the majority of the shareholders, who approved the account, was not entitled to relief. *Semle*: the frame of the suit in making M. a deft. as one of a class, in order that he might represent the whole class, & thus get rid of a difficulty, was imperfect. Where a bill seeks to disturb a settlement & release executed by a great majority of the members of an assocn. on the footing of an account stated as to the whole affairs of the assocn., submitted to all its members, the principle of allowing an individual to represent a class cannot well be applied.—*STUPART v. ARROWSMITH* (1856), 3 Sm. & G. 176; 25 L. J. Ch. 153; 26 L. T. O. S. 290; 2 Jur. N. S. 153; 4 W. R. 219; 65 E. R. 613.

See, also, Nos. 3355, 3356, *ante*.

3363. ——— Recovery of undisclosed payment.]—*CLARKSON v. DAVIES*, No. 3237, *ante*.

See Ord. 16, r. 1, & generally, PRACTICE & PROCEDURE.

3364. ——— Joinder of claims—Claims arising out of same cause of action—Misrepresentation in prospectus.]—Where several persons, separately, apply for debentures in a co., relying on a prospectus & covering letter which contains misrepresentations, they may jointly sue the directors, as they have, within Ord. 16, r. 1, a claim for relief arising out of the "same transaction."—*DRINCQUIER v. WOOD*, [1899] 1 Ch. 393; 68 L. J. Ch. 181; 79 L. T. 548; 47 W. R. 252; 15 T. L. R. 18; 43 Sol. Jo. 29; 6 Mans. 76.

Annotations:—*Mentd. Greenwood v. Leather Shod Wheel Co.*, [1900] 1 Ch. 421; *Markt v. Knight S.S. Co.*, Sale & Frazar v. Knight S.S. Co. (1910), 103 L. T. 369.

3365. Joinder of causes of action—Damages for misrepresentation—& declaration of liability in respect of dividend improperly paid.]—Pltf. in his statement of claim on his own behalf claimed damages from defts., who were directors of a co., for inducing him by fraud to purchase shares in the co., & stated in his particulars of the alleged fraud among other things that defts. had declared & paid a dividend on the shares of the co. when there were no profits; & he claimed in the same action on behalf of himself & all other the shareholders of the co. a declaration that the payment of the dividend was *ultra vires* & illegal, & judgment against defts. for repayment of the amount of the dividend to the co.:—*Held*: pltf. was not entitled under Ord. 16, r. 1, to join both causes

holder of a co. still carrying on business was not entitled to sue the directors for damages to himself arising from an alleged wrong to the co. by acts of the directors of such nature as might be sanctioned & confirmed by the co.—*BROWN v. STEWART* (1898), 1 F. (Ct. of Sess.) 316; 36 Sc. L. R. 221.—*SCOT*.

o. Proceedings to restrain directors from acting.]—*ELLIOT v. HATZIO PRAIRIE, LTD.* (1912), 21 W. L. R. 897.—*CAN*.

p. Against whom proceedings may be taken—Indian Companies Act, 1882, s. 214.]—Indian Companies Act, 1882, s. 214, gives a summary remedy only against such directors as have been personally guilty of some act of misfeasance, & does not give the ct. power to make an order against the directors *en masse* for all acts of misfeasance without any specific finding against

the individuals who are actually responsible for the particular acts of misfeasance, as contemplated by that section.—*JADU NANDAN GOSWAMI v. ASHUTOSH GOSWAMI* (1902), 1 L. R. 29 Calc. 688.—*IND*.

PART III. SECT. 28, SUB-SECT. 6.—
G. (b).

q. Parties—Representative action.]—A shareholder cannot, as such shareholder & without in any way referring to or binding other shareholders, institute an action to obtain his proportion of damage alleged to have resulted from a mere irregularity on the part of the directors, affecting him in common with all other shareholders.—*STANLEY v. MOORE* (1891), 17 V. L. R. 285.—*AUS*.

r. ———.]—Where an individual shareholder sues on behalf of

himself & all other shareholders in the co., except the defts., the directors of the co. & the co., to have it declared that certain transactions entered into between the co. & other persons were *ultra vires* of the directors & therefore void, & seeking to make the directors personally refund the loss sustained by the co., thereon, such other persons are necessary parties to the action.

In the absence of any special circumstances, such as if it is not possible to get the co. to sue, or if the majority of the shareholders in the co. are against taking proceedings, the co., in liquidation, is the only proper pltf. to sue the directors to recover money of the co. expended in transactions which were *ultra vires*. An action for such a purpose by a shareholder on behalf of himself & all other shareholders except the directors, making the co. a deft. cannot be maintained in the absence

Sect. 28.—Directors: Sub-sect. 6, G. (b) & H.]

of action in one action, as the right to relief claimed in his personal capacity & the right to relief claimed by him as representing the shareholders did not arise out of the same transaction or series of transactions within the meaning of the rule above mentioned.—**STROUD v. LAWSON**, [1898] 2 Q. B. 44; 67 L. J. Q. B. 718; 78 L. T. 729; 14 T. L. R. 421; 46 W. R. 626, C. A.

Annotations:—*Re*fd. **Drincqbler v. Wood**, [1899] 1 Ch. 393; **Oxford & Cambridge Universities v. Gill**, [1899] 1 Ch. 55; **Walters v. Green**, [1899] 2 Ch. 696.

3366. ——— & cancellation of allotment.]—

A person who has taken shares in a co. on the faith of a prospectus which contains, as he alleges, in material matters misrepresentations & suppression of facts, can join in one action claims against the co. to have the allotment of shares made to him cancelled, & his money repaid, & also claims against the directors who had issued the prospectus & the exrs. of deceased director for damages, the cause of action being as regards all debts. the same thing—namely, the issue of the prospectus.—**FRANKENBURG v. GREAT HORSELESS CARRIAGE CO.**, [1900] 1 Q. B. 504; 69 L. J. Q. B. 147; 81 L. T. 684; 44 Sol. Jo. 156; 7 Mans. 347, C. A.

Annotations:—*Re*fd. **Bullock v. London General Omnibus Co.**, [1907] 1 K. B. 264; **Compania Sansinona De Carnes Congeladas v. Houlder**, [1910] 2 K. B. 354; **Oesterreichische Export A.-G. v. British Indemnity Insce.**, [1914] 2 K. B. 747; *Re* **Beck, Attia v. Soed** (1918), 87 L. J. Ch. 335. *Mentd.* **Geipel v. Peach**, [1917] 2 Ch. 108.

3367. ———.]—KENT COAL EXPLORATION CO., LTD. v. MARTIN (1900), 16 T. L. R. 486, C. A.

See, further, Sect. 8, sub-sect. 3, F. (c), *ante*, & generally, PRACTICE & PROCEDURE.

3368. Issue & service of third party notice—Claim for contribution by co-director.]—An application in the Ch. Div. for leave to issue & serve a third party notice under Ord. 16, r. 48, need not be served on pltf. in the first instance, but may be made *ex parte*.

It is always competent to the ct. or judge to require pltf. or any other person to be served with the application.

In this case pltf. claim against debts., who are two directors of a co., that they should make good certain sums which they say have been misappropriated by them, moneys of the co., inasmuch as they have been applied to an item of expenditure which it is said was illegal, & ought never to have been made. With reference to that debts. say that they are not the only directors, & there is another director. They say there is another director who is equally responsible to them for these

payments, & if pltf. succeed in this action against the present debts. they are entitled to contribution from this third person. Without prejudice to what I may have to decide if an application be made by this third person to discharge the order on notice or anything of that kind, I am, as at present advised, of opinion, having regard to what I have heard from counsel for the appcts., that there is or will be a *prima facie* case for contribution against this third party. In that state of things I must make the order (**JOYCE, J.**).—**FURNESS, WITHEY & CO., LTD. v. PICKERING**, [1908] 2 Ch. 224; 77 L. J. Ch. 615; 99 L. T. 142; 52 Sol. Jo. 551.

Compare No. 8355, *post*.

3369. Stay of proceedings—Action brought by shareholder by direction of rival company—Action nominally on behalf of shareholders.]—The ct. will not entertain a suit by a shareholder of a public co. on behalf of himself & other shareholders to restrain the directors from doing acts which are alleged to be *ultra vires* when pltf. is really suing by the direction of a rival co., & in order to protect their interests.—**FORREST v. MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. CO.** (1861), 4 De G. F. & J. 126; 4 L. T. 666; 25 J. P. 709; 7 Jur. N. S. 887; 9 W. R. 818; 45 E. R. 1131, L. C.

Annotations:—*Re*fd. **Filder v. L. B. & S. C. Ry.**, **Barchard v. Brighton, Uckfield & Tunbridge Wells Ry.** (1863), 1 Hem. & M. 489; **Fraser v. Whalley, Garside v. Whalley** (1864), 11 L. T. 175; **Seaton v. Grant** (1867), 2 Ch. App. 459; **Bloxam v. Met. Ry.** (1868), 3 Ch. App. 337; **Gray v. Lewis** (1869), L. R. 8 Eq. 526; **Robson v. Dodds** (1869), L. R. 8 Eq. 301; **A.-G. v. G. E. Ry.** (1879), 27 W. R. 759; **Mutter v. Eastern & Midlands Ry.** (1888), 38 Ch. D. 92. *Mentd.* **Cooke v. Cooke** (1865), 4 De G. J. & Sm. 704; **A.-G. v. Mersey Ry.**, [1907] 1 Ch. 81; **Davies v. Gas Light & Coke Co.** (1909), 100 L. T. 553; **Dundee Harbour Trustees v. Nicol**, [1915] A. C. 550; **County Hotel & Wine Co. v. L. & N. W. Ry.**, [1918] 2 K. B. 251.

3370. ——— Several actions based on similar circumstances—Test action.]—Thirty-eight actions having been brought by different persons against debts. as directors of an incorporated co., charging misappropriation of moneys advanced by pltf. in different amounts & at different times, but all under similar circumstances:—*Held*: it was competent to a Judge at Chambers upon the application of pltf. to stay the proceedings in thirty-seven of the actions until after the trial of the thirty-eighth as a test action, proper provision being made in case that action did not satisfactorily dispose of the question in all.—**BENNETT v. BURY (LORD)** (1880), 5 C. P. D. 339; 49 L. J. Q. B. 411; 42 L. T. 480.

3371. Evidence—Effect of admission of directorship.]—In an action against the directors of a co.,

of special circumstances.—**NANKIVILL v. BENJAMIN** (1892), 18 V. L. R. 543.—**AUS.**

s. ——— Whether company or individual shareholder.]—Where a suit is necessary to obtain from the directors or officers of a co. an account of their dealings with the co., or to recover from them, or any other person, property or money of the co., the only proper pltf. is the co. itself.—**McMURRAY v. NORTHERN RY. CO.** (1875), 22 Gr. 476.—**CAN.**

t. ———.]—A shareholder in a co. can maintain an action against the directors to compel them to restore funds of the co. that have by them been employed in transactions that the directors have no authority to enter into, without making the co. a party to the suit.—**JEHANGIR RASTAMJI MODI v. SHAMJI LADHA** (1867), 4 Bom. O. C. 185.—**IND.**

a. ——— For refund of profits.]—An action against a director of a co.

for the refund of profits made by him in dealings with the co. must be brought at the suit of the co., & not at that of a single shareholder; particularly so when the shareholder is an officer of the co. taking part in the transactions sought to be impeached.—**MACDOUGALL v. DUTHIE** (1885), 3 N. Z. L. R. 334.—**N.Z.**

b. Ceasing to be director before suit brought.]—A decree was obtained in a suit by a shareholder on behalf of himself & all other shareholders, for the administration of the assets of the society, & charging the directors with losses sustained:—*Held*: persons who had ceased to be directors before the suit could not be made parties in the master's office.—**ROLPH v. UPPER CANADA BUILDING SOCIETY** (1865), 11 Gr. 275.—**CAN.**

c. Evidence—To explain ambiguity in extraordinary resolution.]—Where at an extraordinary meeting of shareholders in a mining co. a resolution

to wind up the co. voluntarily was passed, & at the same meeting a subsequent resolution was passed authorising the directors to dispose of certain surplus moneys of the co. in a special but ambiguous manner.

In an action by the co. against the directors for recovery of these moneys:—*Held*: oral evidence was admissible to show in what circumstances the latter resolution was passed, in order to explain the latent ambiguity, although the articles of assocn. provided that the minutes of the meeting should be conclusive evidence of the proceedings at such meeting.—**WESTRALIA PROPRIETARY GOLD MINING CO. v. LONG** (1897), 23 V. L. R. 86.—**AUS.**

d. Claim for contribution by co-director—Pleading.]—A subscriber for certain shares in a co., for which he had made certain payments, brought action & obtained judgment against the company & certain of the directors for a refund of the moneys he had paid.

defts. made an admission that they were directors:—*Held*: (1) this was *prima facie* evidence, that they were so at the time pltf. was employed by the co.; (2) a book, containing the names of members present at the meetings, which showed that defts. were present at some of the meetings, at one of which a particular thing was done, was also *prima facie* evidence that they were present at that, particular meeting.—*BEETHAM v. COOKE* (1841), 5 J. P. 464.

3372. — Of attendance of meetings—Attendance book.]—*BEETHAM v. COOKE*, No. 3371, *ante*.

3373. — In criminal proceedings—Proof of appointment.]—To convict a person of offences as a director of a public company within Larceny Act, 1861 (c. 96), ss. 81, 83, it is not enough to prove that such person acted as a director of the co.; it must be proved that he was properly appointed such director.—*R. v. ATKINS* (1900), 64 J. P. 361.

Compare No. 7733, *post*.

3374. Dismissal of action—Representative action—Settlement with representative plaintiff.]—Bill filed by pltf. on behalf of himself & all other the shareholders in a co., praying that defts., the directors of the co., might be ordered to repay the shareholders all sums which might appear to have been improperly paid by them out of the funds of the co. Defts. moved to dismiss upon payment to pltf. of the sum claimed by him, together with his costs:—*Held*: pltf. having complete dominion over the suit, & being the only person with whom defts. could deal, they were entitled to dismiss upon the proposed terms.—*SCARTH v. CHADWICK* (1850), 19 L. J. Ch. 327; 14 Jur. 300.

On proceedings for misrepresentation in prospectus.]—*See* Sect. 8, sub-sect. 3, F., *ante*.

H. Termination of Liability.

By transfer of shares — Transfer to avoid liability.]—*See* Nos. 1380, 2037, *ante*.

— By way of compromise.]—*See* No. 2195, *ante*.

3375. By rectification of register—Application on ground of misrepresentation in prospectus—Exercise of discretion by court.]—A mis-statement of the names of the directors of a co. in the prospectus is an important misrepresentation.

A shareholder complaining of misrepresentation in the prospectus of a co. must do so within a reasonable time after becoming aware of the misrepresentation.

Where a person who is himself a director of a co. is placed on the list of contributories to it, & afterwards seeks to have his name removed from the list, & so to get rid of his liabilities to the co. of which he is such director, the ct. will narrowly watch his conduct in the matter, & will hold him strictly to his engagement.

In pursuance of the above principles, the ct. refused the application of a director to have his name taken off the list of contributories to a co. although he alleged that he had taken shares in, & become a director of, it on the faith of a statement in the prospectus which was not true.—*Re LAND CREDIT CO. OF IRELAND, Ex p. MUNSTER* (1866), 14 L. T. 723; 14 W. R. 957.

3376. Under Statute of Limitations—Claim for receiving bribe.]—An action was brought by a co. in 1879 against a former director to recover £250 on the ground that deft. had received it from a debtor to the co. as a bribe, to induce him to use his influence to obtain favourable terms of compromise for the debtor. The allegations that this bribe had been given had in 1872 been brought before the directors at a board meeting, they had investigated it, & as it seemed came to the conclusion that the charge was unfounded, as no proceedings were taken, & it was not alleged that the other directors had been acting otherwise than *bona fide* in the matter:—*Held*: the claim of the co. was barred by the Stat. Limitations.—*METROPOLITAN BANK v. HEIRON* (1880), 5 Ex. D. 319; 43 L. T. 676; 29 W. R. 370, C. A.

Annotations:—*Distd. Re Fitzroy Bessemer Steel, etc., Co.* (1884), 50 L. T. 144. *Reid. Re Sharpe, Re Bennett, Masonic & General Life Assce. v. Sharpe*, [1892] 1 Ch. 154; *Re Sale Hotel & Botanical Gardens Co., Hesketh's Case* (1897), 77 L. T. 681; *Clarkson v. Davies*, [1923] A. C. 100. *Mentd. Lister v. Stubbs* (1890), 45 Ch. D. 1; *The Pongola* (1895), 73 L. T. 512.

3377. — Breach of trust—Payment of dividends ultra vires.]—The directors of a co. which was established in 1868 made half-yearly payments of interest or dividends at the rate of 5 per cent. *per annum* on the amounts paid up on the shares, although the co. never earned any profit, nor was any profit & loss account ever made out. The half-yearly payments were begun in June, 1869, & were continued until July, 1878, when they were discontinued on the representation of the Board of Trade that they were being made out of capital. The co. was ordered to be wound up in March, 1886. In June, 1889, the liquidator brought an action against the respective representatives of two of the directors who had made the payments, & who had since died, to recover the amounts improperly paid by them. The claim against the representatives of one director was compromised with the sanction of the ct., & the action proceeded against the other:—*Held*: (1) whether the payments were authorised by the arts. or not, they were *ultra vires*, & such payments being regarded as a breach of trust, Stat. Limitations did not apply, nor the analogy to the statute; (2) the estate of the deceased director was liable for the payments made during the whole time that he acted as director, whether he was present at the meetings or not, as he must be taken to have confirmed what his co-directors did in his absence; (3) interest at 4 per cent. *per annum* ought to run from the date of the mis-

on the ground of misstatements in the prospectus. The directors paid the amount of the judgment & brought action against their co-directors for contribution. In their pleadings they confined themselves to a claim for contribution on account of the judgment the subscriber for shares had obtained against them, & which they had paid:—*Held*: under Companies Act, sub-s. 93, pltf. in order to succeed, must make out the case that the subscriber for shares would have had to make out if he had sued the directors who were defts. in this action, & upon the evidence, pltf. had not made out such a case, & pltf., instead of confining

themselves in their pleadings to a claim for contribution on account of the judgment, which the subscriber for shares had obtained against them, should have alleged defts. responsibility for the issue of the prospectus, that the subscriber took shares on the faith of it, & suffered loss by reason of the untrue statements therein.—*JOHNSON v. JOHNSON* (1913), 18 B. C. R. 563.—CAN.

PART III. SECT. 28, SUB-SECT. 6.—H.

a. By dissolution of company — Purchase of assets from liquidator.]—Deft., who was a director of a co. in

liquidation under the Winding-up Act, bought the land & property of the co. from the liquidator, & agreed to give three other persons, each of whom was also a director of the co., a share in the profits which should arise upon the resale of the property, in consideration of their assisting him to raise the purchase-money. Pltf., the assignee of one of the three, sued for his shares of the profits:—*Held*: no evidence having been given that the powers of the directors had been continued (Winding-up Act, s. 7 (6)), there was no fiduciary relationship between them & the co., & nothing to prevent them from purchasing the assets of the co.

Sect. 28.—Directors: Sub-sect. 6, H.; sub-sect. 7, A., B. & C. (a).]

application.—*Re* SHARPE, *Re* BENNETT, MASONIC & GENERAL LIFE ASSURANCE CO. v. SHARPE, [1892] 1 Ch. 154; 61 L. J. Ch. 193; 65 L. T. 806; 40 W. R. 241; 8 T. L. R. 194; 36 Sol. Jo. 151, C. A.

Annotations:—*As to* (1) *Re* National Bank of Wales, [1899] 2 Ch. 629. *Generally, Re* Claridge's Patent Asphalt Co., [1921] 1 Ch. 543. *Mentd.* Soar v. Ashwell, [1893] 2 Q. B. 390; Lock v. Queensland Investment & Land Mortgage Co., [1896] 1 Ch. 397; Brooks v. Muckleston, [1909] 2 Ch. 519; Taylor v. Davies, [1920] A. C. 636.

3378. ———.]—MUNICIPAL FREEHOLD LAND CO., LTD. v. POLLINGTON, No. 3061, *ante*.

3379. Trustee Act, 1888 (c. 59), s. 8—Claim by liquidator.]—SOVEREIGN LIFE ASSURANCE CO. v. WILMOT (1893), 9 T. L. R. 525; 37 Sol. Jo. 581.

Annotation:—*Re* Lands Allotment Co., [1894] 1 Ch. 616.

3380. ———.]—*Re* LANDS ALLOTMENT CO., No. 3444, *post*.

3381. By discharge in bankruptcy—Improper advances.]—RAMSKILL v. EDWARDS, No. 3314, *ante*.

3382. By dissolution of company—Claims barred in absence of fraud.]—After an order has been made under 1862 Act, s. 111, dissolving a co., an action by a creditor claiming that the directors should be held liable for a misfeasance, but not alleging fraud, nor impeaching the order of dissolution, is barred by the order.—COXON v. GORST, [1891] 2 Ch. 73; 60 L. J. Ch. 502; 64 L. T. 444; 39 W. R. 600; 7 T. L. R. 460.

Annotation:—*Mentd.* Whiteley Exercisor v. Gamage (1898), 79 L. T. 20.

3383. By company being struck off register as being defunct.]—*Re* BROWN BAYLEY'S STEEL WORKS, LTD., No. 3543, *post*.

See, now, 1908 Act, s. 242.

SUB-SECT. 7.—MEETINGS OF DIRECTORS.

A. In General.

3384. Necessity for.]—*Re* BONELLI'S TELEGRAPH CO., COLLIE'S CLAIM, No. 3125, *ante*.

3385. Effect of informality—Casual meeting of directors.]—BARRON v. POTTER, POTTER v. BERRY, No. 2840, *ante*.

——— **Appointment of director.]—***See* Sub-sect. 1, D., *ante*.

B. Notice of Meetings.

3386. Necessity for—Regular weekly meeting—Construction of constitution of company.]—By the deed of settlement of a joint-stock co., it was provided that the directors of the co. should, without notice or summons, meet together at their office once in every week, on & at such day & hour as they should from time to time agree upon, & at such other times as they should from time

from the liquidator; & the agreement which the pltf. sought to enforce was not illegal, & he was entitled to recover.—HOLMESTED v. ANNABLE (1914), 28 W. L. R. 819; 18 D. L. R. 3; 6 W. W. R. 1497.—CAN.

PART III. SECT. 28, SUB-SECT. 7.—A.

3385 i. Effect of informality—Casual meeting of directors.]—In an action upon a mtge. against a co., the validity of the mtge. depended upon the regularity of two meetings & whether they were really board meetings. The proceedings took place in a solr.'s room without the co.'s secretary being present, & they had been repudiated by those

whom the resolutions were intended to affect from first to last:—*Held*: no meeting of the directors took place; before directors can meet as such to transact the business of their co. they must meet in person, & there must be an agreement express or implied to meet in that capacity, & not otherwise; certain of the directors could not form a quorum by coming upon another in a room or in the street, & despite the protest of that other give the proceedings the complexion of a board meeting; on the facts, what was done at these meetings was not the act of the directors & did not bind the co.—HARRIS v. ENGLISH CANADIAN CO. (1906), 3 W. L. R. 5.—CAN.

to time be convened in manner thereafter mentioned, or adjourned to, & that three directors should be a board. By another clause, any three directors were empowered at any time to call a special board or meeting, by giving, under their hands in writing, three days' notice to the other directors of the co., which notices were to be countersigned by the secretary, & to be sent by him two days prior to the time appointed for such meeting:—*Held*: in order to constitute a good weekly meeting without notice or summons, the day & hour of meeting must have been previously agreed upon by the directors, & a meeting of three directors, without previous agreement on their part to meet on any fixed day or hour, was not a meeting duly convened within the meaning of the deed of settlement.—MOORE v. HAMMOND (1827), 6 B. & C. 456; 9 Dow. & Ry. K. B. 482; 5 L. J. O. S. K. B. 267; 108 E. R. 519.

Annotation:—*Re* Leeds & West Riding Banking Co. (1846), 8 L. T. O. S. 236.

3387. Sufficiency — Contents — Business — Provisions of deed for extraordinary meetings.]—The deed of settlement of a joint-stock co. provided that the directors should meet weekly, on a day to be named by them, & on such other days as they should think fit; but that the secretary or any director, might call an extraordinary board, by sending a notice at least one clear day before the time of meeting, & specifying the day & hour fixed for the meeting, & the purpose thereof; & that the business transacted by the directors being at least five in number, should bind the co. The directors appointed Wednesday as their ordinary day of meeting; & a board having been held on Wednesday Mar. 7, was adjourned. A letter was afterwards sent to the directors by the secretary, stating that he was directed to inform them that a special board was summoned for Tuesday the 11th, on special business. At this meeting the call in question was made:—*Held*: the call was duly made, for this was not an extraordinary board, & therefore did not require notice of its special purposes.—WILLS v. MURRAY (1850), 4 Exch. 843; 19 L. J. Ex. 209; 154 E. R. 1458; *affd. sub nom.* SUTHERLAND v. WILLS, 5 Exch. 715, Ex. Ch.

Annotations:—*Mentd.* Cobham v. Holcombe (1860), 8 C. B. N. S. 815; James v. Buena Ventura Nitrato Grounds Syndicate (1896), 65 L. J. Ch. 284.

3388. ———.]—COMPAGNIE DE MAYVILLE v. WHITLEY, No. 2837, *ante*.

3389. ——— Time—Meeting same day.]—Application was invited by a co. for 106,000 preference shares. At a meeting of all the directors, five in number, it was resolved not to allot till 14,000 shares were applied for. At a meeting of two directors, a quorum held shortly afterwards, it was resolved that the previous resolution was cancelled, & that the shares then applied for, about 3,000, should be allotted. The meeting was held at two o'clock, on a few hours' notice

3385 ii. ———.]—Where a bare majority of the directors of a co. call a meeting of directors at a time that does not reasonably permit of the attendance of a full board & not acting in a *bona fide* manner, or in the interests of the co., but for the purpose of defeating shareholders in respect to resolutions to be considered at a co. meeting, & for the purpose of retaining themselves in office & altogether apart from any business investigation, parties to whom shares are issued will be restrained from making use of them in voting at such meeting.—GLACE BAY PRINTING CO. v. HARRINGTON (1910), 45 N. S. R. 268; 9 E. L. R. 265.—CAN.

to two of the directors who did not attend, of whom one did not receive his notice till the next day, & the other gave notice he could not attend till three; the fifth director was abroad & no notice was sent to him:—*Held*: the allotments made under the later resolution were void against the allottees.—*Re HOMER DISTRICT CONSOLIDATED GOLD MINES, Ex p. SMITH* (1888), 39 Ch. D. 546; 58 L. J. Ch. 134; 60 L. T. 97; 4 T. L. R. 466; *on appeal*, 4 T. L. R. 712, C. A.

Annotation:—*Consd. Compagnie de Mayville v. Whitley*, [1896] 1 Ch. 788.

3390. Service of notice—Necessity for—Directors abroad.—By the arts. of assocn. of pltf. co. it was provided that the directors should not be less than three, & that the office of a director should be vacated if he absented himself from the meetings of the directors for three calendar months without special leave, & by a resolution of the board it was determined that two directors should constitute a quorum. There being four directors, a meeting of two of the directors was held, the other two being absent in America:—*Held*: it was not necessary to give notice of the meeting to the absent directors.—*HALIFAX SUGAR REFINING CO., LTD. v. FRANKLYN* (1890), 59 L. J. Ch. 591; 62 L. T. 563; 2 Meg. 129.

3391. ——— Validity of resolutions at subsequent meeting.—The arts. of assocn. of a co., which was incorporated on Oct. 20, 1888, provided that there should be not more than ten nor less than three directors; that the first directors should be appointed by the subscribers of the memorandum of assocn.; that the directors should hold meetings for the despatch of business at such times & places, & might adjourn & otherwise regulate such meetings as they thought fit, & might determine the quorum necessary for the transaction of business; & that a resolution in writing, signed by all the directors, should be as valid as if passed at a meeting duly called & constituted. They also provided that the shares should be allotted by the directors to such persons at such times & on such terms as they should think fit. On Oct. 22, 1888, the subscribers of the memorandum of assocn. duly appointed five directors, one of whom was not to take his seat at the board until after allotment. On Oct. 24, a meeting was held at which only two directors were present. These two passed a resolution that two directors should be a quorum, & proceeded to allot a number of shares. Among others they allotted to S. 100 £5 shares for which he had applied. On Oct. 25, S. withdrew his application. On the same day a third director signed a resolution appointing two directors a quorum; & on Oct. 26, a fourth director handed in his written assent to the same resolution. At the meeting on Oct. 26, the previous allotments were confirmed. S. applied to have his name struck off the register:—*Held*: (1) (NORTH, J.) there was no properly appointed quorum of directors present at the meeting of Oct. 24, when the allotments were made; the allotment to S. was therefore invalid, & the confirmation on Oct. 26, could only

take effect as a fresh allotment on that date, which, being after withdrawal, was ineffectual. S.'s name was therefore removed from the register; (2) (by C. A.) there was no evidence that I. a director who was not present at the meeting of Oct. 24, but who signed the document on Oct. 26, received proper notice of the meeting; he had not waived his right to the notice which he ought to have received, & the meeting was a bad one.—*Re PORTUGUESE CONSOLIDATED COPPER MINES, LTD.* (1889), 42 Ch. D. 160; *sub nom. Re PORTUGUESE CONSOLIDATED MINES, LTD., STEELE'S CASE*, 58 L. J. Ch. 813; 62 L. T. 88; 5 T. L. R. 522; 1 Meg. 246, C. A.

Annotation:—*As to* (1) & (2) *Reid. Re Portuguese Consolidated Copper Mines, Ex p. Badman, Ex p. Bosanquet* (1890), 45 Ch. D. 16.

C. Procedure at Meetings.

(a) In General.

3392. Order of business—Whether order appearing on agenda-paper.—The agenda-paper of a directors' board meeting contained, as the first business, the consideration of a transfer of shares sent to the secretary for registration; & then, as the next business, the consideration of whether a call should be made to meet the co.'s liabilities:—*Held*: the directors were entitled to take their business at the meeting in any order they thought proper, & to pass a resolution for a call as their first business.—*Re CAWLEY & CO.* (1889), 42 Ch. D. 209; 61 L. T. 601; *sub nom. Re CAWLEY & CO., LTD., Ex p. HALLETT*, 58 L. J. Ch. 633; 37 W. R. 692; 5 T. L. R. 549; 1 Meg. 251, C. A.

Annotation:—*Mentd. Re Ottos Kopje Diamond Mines*, [1893] 1 Ch. 618.

3393. Power of majority—To bind minority—Dissent of minority.—The majority binds the minority in co. committees, unless evidence of dissent is given.—*BARKER v. GRIFFITHS* (1847), 9 L. T. O. S. 75.

3394. Resolutions — Whether agreement or minute or memorandum of agreement—Within Stamp Act, 1815 (c. 184).—A resolution of a co. or assocn. for the appointment of a clerk or secretary, at a certain salary, is not an agreement or a minute or memorandum of an agreement that need be stamped, within the above Act.—*VAUGHTON v. BRINE* (1840), 1 Man. & G. 359; 9 Dowl. 179; 1 Scott, N. R. 258; Woll. 41; 9 L. J. C. P. 326; 4 Jur. 464; 133 E. R. 373.

Annotations:—*Consd. Chanter v. Dickinson* (1843), 5 Man. & G. 253. *Reid. Knight v. Barber* (1846), 16 M. & W. 66. *Mentd. Beeching v. Westbrook* (1841), 1 Dowl. N. S. 18; *Bethell v. Blencowe* (1841), 3 Man. & G. 119; *Marshal v. Powell* (1846), 1 New Pract. Cas. 590; *Clay v. Crofts* (1851), 17 L. T. O. S. 231; *Ward v. Lonsborough* (1852), 12 C. B. 252; *Powers v. Fowler* (1855), 25 L. T. O. S. 203.

See, now, Stamp Act, 1891 (c. 39), & generally, REVENUE.

3395. ——— Whether amounting to contract—Resolutions & letters.—Differences having arisen between B., a shareholder & the managing director of a joint-stock co., the other directors, at a duly constituted meeting came to the following resolution: "The board are willing to accept B.'s

PART III. SECT. 28, SUB-SECT. 7.—B.

3390 i. Service of notice—Necessity for—Directors abroad.—Deft. was one of six directors of pltf., an English co. with head offices in London, carrying on business in British Columbia. Deft. was appointed managing director, & went from London to British Columbia. Another director followed him shortly afterwards. The four directors left in England held a meeting in London, without notifying deft. or the other

absent director, & assumed to dismiss deft. from his position as managing director:—*Held*: the board was properly constituted, & notice to the absent director was unnecessary, but the board had no power to dismiss deft.—*WINDSOR (C. S.), LTD. v. WINDSOR* (1912), 21 W. L. R. 137; 2 W. W. R. 15; 3 D. L. R. 456.—CAN.

f. ——— Adjourned meeting.—Five of the nine of the provisional directors of a railway co. being a

quorum, four of them met at W., pursuant to a valid notice, & adjourned to a day named, when six met at T. in alleged pursuance of such adjournment without advertisement or notice under the statute:—*Held*: the meeting of the six directors did not constitute a duly organised meeting of directors, though had all the directors who were at the meeting at W. attended pursuant to the adjournment it might have cured the irregularity.—*McLAREN v. FISKEN* (1881), 28 Gr. 352.—CAN.

Sect. 28.—Directors: Sub-sect. 7, C. (a) & (b) i. & ii.]

resignation, & to pay him the proportion of salary due, £150, & at the same time the members of the board will jointly relieve him of his shares, & guarantee him against all calls thereon. The directors, being desirous that this matter should be definitely settled, request that B. will reply to the offer now made to him by the next board day, Sept. 4. Unless the terms of arrangement now proposed are accepted by that date, the directors are to be no longer bound by them. Signed, — chairman." B. replied within the time mentioned: "I accept your offer. It may be arranged as speedily as you can wish, & I accept the offer as one to be at once carried out, & on receiving the guaranty as to the shares, in which, I presume, your chairman concurs, & advice that the sum fixed is paid into my account, my resignation shall be at once forwarded." At a meeting of the directors, the board, by a minute, accepted B.'s resignation, & requested the secretary to get the guaranty prepared by the solr., & to take other steps to carry out the negotiation:—*Held*: the resolutions & letters constituted a complete agreement, & bound the directors, individually, who were present when the offer was made; & B. having resigned & been compelled to pay calls on his shares, might maintain an action against the directors for not indemnifying him, although no guaranty was tendered for execution.—*BARKER v. ALLAN* (1859), 5 H. & N. 61; 29 L. J. Ex. 100; 1 L. T. 167; 6 Jur. N. S. 23; 8 W. R. 127; 157 E. R. 1101.

3396. — Resolution not communicated.]

—In the voluntary winding up of a joint-stock banking co., the creditors on deposit claimed interest at 4½ per cent., being an increase on the previous rate, by virtue of a resolution passed by the directors shortly before the stoppage of the bank, but not communicated to the depositors, & of a subsequent letter from the liquidator to the effect that the increased rate would be allowed:—*Held*: the resolution of the directors, not having been communicated to the depositors, was inoperative; & the liquidators had no power to make the bank liable for an increased rate of interest.—*Re EAST OF ENGLAND BANKING CO.* (1868), 4 Ch. App. 14; 17 W. R. 18; *sub nom. Re EAST OF ENGLAND BANKING CO., Ex p. OFFICIAL LIQUIDATOR, Ex p. PROVINCIAL BANKING CORPN.*, 38 L. J. Ch. 121; 19 L. T. 299, L. C. & L. JJ.

Annotations:—*Consd.* *Powell v. Lee* (1908), 99 L. T. 284. *Mentd.* *Re International Contract Co., Hughes' Claim* (1872), L. R. 13 Eq. 623; *Re Bank of South Australia* (2), [1895] 1 Ch. 578.

3397. — Proof of—Where no entry on minutes

—Presumption that resolution duly passed.]—The arts. of assocn. of a joint-stock co. provided that if a shareholder should fail in paying any call, the co. might give him notice that in default of payment within a specified time, his shares would be forfeited; that if the requisitions of any such notice were not complied with, the shares might be forfeited by a resolution of the directors to that effect; that when any share had been so forfeited, notice of such forfeiture should be given to such shareholder, & an entry should be forthwith made in the register of shareholders, stating the date of such forfeiture; & that any share so forfeited should become the property of the co. K., a shareholder in the co., made default in payment of

his calls, & notice was sent to him in due form that, unless he paid the calls by Sept. 2, they would be forfeited. The time having elapsed without payment, the secretary made entries in the books on Sept. 3, that the shares were forfeited, & had been transferred to the co. There was no entry in the minutes of any resolution having been passed by the directors, nor any evidence of any notice of the forfeiture having been sent to K.:—*Held*: as the entry of forfeiture on the books could not have been properly made without a resolution of the directors, the ct. was bound to assume that such a resolution had been passed.—*Re NORTH HALLENBEAGLE MINING CO., KNIGHT'S CASE* (1867), 2 Ch. App. 321; 36 L. J. Ch. 317; 15 L. T. 546; 15 W. R. 294, L. JJ.

Annotations:—*Reid.* *North Stafford Steel, Iron, & Coal Co. (Burslem) v. Ward* (1868), L. R. 3 Exch. 172; *Re Great Northern Salt & Chemical Works, Ex p. Kennedy* (1890), 44 Ch. D. 472; *Re Fireproof Doors, Umney v. Fireproof Doors*, [1916] 2 Ch. 142. *Mentd.* *Re Tavistock Ironworks Co., Lyster's Case* (1867), L. R. 4 Eq. 233; *Re Phosphate of Lime Co., Austin's Case* (1871), 24 L. T. 932.

3398. — Proof aliunde.]—(1) The minutes of a meeting are not exclusive evidence of what takes place there. An unrecorded resolution may be proved *aliunde*.

(2) Where a co. is regulated by 1862 Act, Table A. (revised 1906), or 1908 Act, Table A., a board of directors may appoint a quorum of one under art. 88 or delegate their powers to a committee of one under art. 91.—*Re FIREPROOF DOORS, LTD., UMNEY v. FIREPROOF DOORS, LTD.*, [1916] 2 Ch. 142; 85 L. J. Ch. 444; 114 L. T. 994; 60 Sol. Jo. 513.

— Liability of absent directors for ultra vires resolutions.]—See Sub-sect. 7, E., *post*.

(b) Quorum.

i. In General.

3399. Where number to be fixed by directors—No number formally fixed—Understanding sufficient.]—*Re REGENT'S CANAL IRON CO.*, [1867] W. N. 79.

3400. — Cannot be fixed by subscribers to memorandum.]—*YORK TRAMWAYS CO. v. WILLOWS*, No. 2831, *ante*.

3401. — Table A.—Quorum of one may be appointed.]—*Re FIREPROOF DOORS, LTD., UMNEY v. FIREPROOF DOORS, LTD.*, No. 3398, *ante*.

3402. Where no provision in articles—Numbers who usually act.]—Where the acts. of assocn. of a co. do not prescribe the number of directors required to constitute a quorum, the number who usually act in conducting the business of the co. will constitute a quorum.—*Re TAVISTOCK IRONWORKS CO., LYSER'S CASE* (1867), L. R. 4 Eq. 233; 36 L. J. Ch. 616; 16 L. T. 824; 31 J. P. 726; 15 W. R. 1007.

3403. Alteration of quorum—Number fixed by constitution of company—By resolution at special general meeting.]—By the deed of settlement of a co., it was provided, "That the direction & management of the affairs of the co. should be confided to sixteen directors, to be chosen from among the proprietors, in the manner thereafter mentioned, & that no business should be transacted at any meeting of directors, unless seven directors be present at the commencement of the business, & when a division takes place upon the whole or any part of the business." By a subsequent clause it was provided, "that for the better conduct & management of the affairs of the co.,

PART III. SECT. 28, SUB-SECT. 7.—C. (b) i.

g. What constitutes — Two out of four directors disqualified.]—Two out

of four provisional directors of a co. constitute a quorum where one forfeits his shares & the other declines to attend, having acquired interests

adverse to the co. which he was promoting.—*INTERNATIONAL MINING SYNDICATE v. STEWART* (1914), 48 N. S. R. 172.—CAN.

it should be lawful for a special general meeting called for the purpose, from time to time, to amend, alter, or annul, either wholly or in part, all or any of the clauses of the deed, or of the existing regulations & provisions of the co., & to make any new or other regulations or provisions in lieu thereof, or in addition thereto; & such new regulations & provisions, & such amendment, alterations, or annulment; if confirmed by a subsequent special general meeting, called for the purpose, at a distance of not less than two weeks, nor more than four weeks from such preceding general meeting, shall in such case, but not till then, be binding & conclusive upon the proprietors; provided always, that such amended or altered regulations & provisions do not extend to amend, alter, or annul all or any part of the regulations & provisions established & settled by those presents, for confirming the individual responsibilities of each proprietor, as between himself or herself & his or her co-proprietors, to the amount of his or her shares in the capital of the co. for the time being." A subsequent clause also provided, "that the directors of the co. should never consist of more or less than sixteen":—*Held*: upon the construction of these clauses taken together, it was competent to two special general meetings, duly convened & held, to alter the number of the directors & of the quorum.—*SMITH v. GOLDSWORTHY* (1843), 4 Q. B. 430; 3 Gal. & Dav. 448; 12 L. J. Q. B. 192; 7 Jur. 389; 114 E. R. 960.

Annotation:—*Reid. Kirk v. Bell* (1851), 16 Q. B. 290.

3404. — In accordance with articles—Not in interest of company.]—(1) A director need not be directly interested in the subject-matter of a resolution in respect of which he votes in order to make that resolution invalid. The substance of the resolution must be looked at.

(2) A resolution passed in accordance with the arts. of assocn. of the co. solely with a view of altering the quorum in order to enable a resolution to be passed in favour of an interested director is of no effect.

Four directors were desirous of issuing debentures to two of their number in consideration of sums lent to the co. The quorum of directors was three. In order to obtain a disinterested quorum, one debenture was issued on the vote of three directors, & then the other debenture was issued on the vote of three directors, the director to whom the debenture was issued not voting in each case:—*Held*: (3) the issue of the debentures was one transaction & splitting the resolutions did not make them valid; (4) a resolution to reduce the quorum for the purpose of issuing a debenture to a director was invalid.—*Re NORTH EASTERN INSURANCE CO.*, [1919] 1 Ch. 198; 88 L. J. Ch. 121; 120 L. T. 223; 63 Sol. Jo. 117.

3405. Presumption as to—Mortgage deed sealed by company.]—Where the seal of a co. has been duly affixed to a mtge. deed by the secretary of the co., it is not the duty of the mtgees. to go behind the arts. of assocn. & to ascertain whether the secretary was duly authorised by the private regulations of the directors to affix it, or whether

the meeting at which the deed was sanctioned was or was not attended by a quorum of directors; & it must therefore be taken that the deed was well executed.—*COUNTY OF GLOUCESTER BANK v. RUDRY MERTHYR STEAM & HOUSE COAL COLLIERY CO.*, [1895] 1 Ch. 629; 64 L. J. Ch. 451; 72 L. T. 375; 43 W. R. 486; 39 Sol. Jo. 331; 2 Mans. 223; 12 R. 183, C. A.

Annotations:—*Consd. Ruben v. Great Fingall Consolidated*, [1904] 1 K. B. 650; *Premier Industrial Bank v. Carlton Manufacturing Co. & Crabtree*, [1909] 1 K. B. 106. *Reid. Re Bank of Syria, Owen & Ashworth's Claim* (1900), 83 L. T. 547; *Re Fireproof Doors, Umney v. Fireproof Doors*, [1916] 2 Ch. 142; *Dey v. Pullinger Engineering Co.*, [1921] 1 K. B. 77. *Mentd. Poole v. Downes* (1897), 76 L. T. 110; *Duck v. Tower Galvanizing Co.*, [1901] 2 K. B. 314; *Stamford, Spalding, & Boston Banking Co. v. Keeble* (1913), 82 L. J. Ch. 388.

ii. How Calculated.

3406. Directors properly appointed.]—There must be properly appointed directors to make a call or to declare a forfeiture of shares.

A declaration of forfeiture for non-payment of a call of shares in a co. registered in Victoria under 27 Vict. No. 228, was made on June 18, 1869, by a resolution of the board of directors, consisting of a quorum of three, H., B., & A., who had been elected with two others at a quarterly general meeting of the co. held on Apr. 14, 1869; which meeting had been convened by advertisement, published on Apr. 8, 10, & 13, for the election of a full board of directors. It appeared that H. & A. had been previously elected directors on Jan. 14, 1867, had not retired from office as provided by the rules of the co., but had continued to act as directors up to Apr. 14, 1869:—*Held*: the meeting of Apr. 14, 1869, having been held without due notice thereof, according to the rules of the co. passed under the provisions of 27 Vict. No. 228, & of the business to be transacted thereat, the election of a full board of directors thereby was invalid, & consequently the subsequent declaration of forfeiture of June 18, 1869, was also invalid. Even if H. & A. had before that election legally held office, they could not thereafter act under their former title, for the election of a full board, though invalid, necessarily involved the retirement of those, if any, who up to that time had legally held the office of director.—*GARDEN GULLY UNITED QUARTZ MINING CO. v. McLISTER* (1875), 1 App. Cas. 39; 33 L. T. 408; 24 W. R. 744, P. C.

Annotation:—*Consd. Re Alma Spinning Co., Bottomley's Case* (1880), 16 Ch. D. 681.

3407. Directors competent to transact business & vote—Interested directors prohibited from voting.]

—The arts. of a co. provided that any director might enter into a contract or be interested in any business with the co.; that no director should vote on any matter relating to the contract or business with the co. in which he was interested; & that two directors should be a quorum for the transaction of business:—*Held*: a quorum of directors meant a quorum competent to transact & vote on the business before the board; & therefore, a resolution passed at a meeting of three directors, two of whom were interested in the subject-matter of the resolution, was invalid.

PART III. SECT. 28, SUB-SECT 7.— C. (b) ii.

34071. Directors competent to transact business & vote—Interested directors prohibited from voting.]—By a deed executed in 1895 property of a co. was conveyed to trustees for the holders of second debentures to be issued. The arts. of assocn. of the co. provided that no director should vote in respect

of any matter in which he was individually interested. They fixed the quorum of directors at two. At a meeting of directors held on May 12, 1903, at which three directors, two of them being D. & K., were present, it was resolved that certain second debentures should be issued in trust for D. & K. as security for advances made by them to the co., which debentures were subsequently issued:—

Held: as D. & K. were interested parties, there was no quorum competent to vote on the resolution, & the resolution was invalid.—*COX v. DUBLIN CITY DISTILLERY* (No. 2), [1915] 1 I. R. 345.—IR.

3407 ii. — — —.]—A quorum of directors fixed in the arts. of a co. must be constituted by directors competent to act & vote, & directors who are

Sect. 28.—Directors: Sub-sect. 7, C. (b) ii., iii., iv. & v., & (c).]

—*Re GREYMOUTH-POINT ELIZABETH RAILWAY & COAL CO., LTD., YUILL v. GREYMOUTH-POINT ELIZABETH RAILWAY & COAL CO., LTD., [1904] 1 Ch. 32; 73 L. J. Ch. 92; 11 Mans. 85.*

Annotation:—Folld. Re North Eastern Insco., [1919] 1 Ch. 198.

3408. ——— **Resolution split to obtain disinterested quorum.**—*Re NORTH EASTERN INSURANCE CO., No. 3404, ante.*

See, further, Sub-sect. 7, C. (c), post.

iii. *Where Total Number of Directors less than Prescribed Minimum.*

3409. Whether minimum imperative or directory.—Where arts. of assocn. provide that the business of a co. is to be carried on by not less than a minimum or more than a maximum number of directors, the words are imperative, not merely directory. Consequently, a forfeiture of shares for non-payment of a call made when there are less than the specified number of directors is invalid.—*Re ALMA SPINNING CO., BOTTOMLEY'S CASE (1880), 16 Ch. D. 681; 50 L. J. Ch. 167; 43 L. T. 620; 29 W. R. 133.*

Annotations:—Consd. York Tram. Co. v. Willows (1882), 8 Q. B. D. 685. Refd. Faure Electric Accumulator Co. v. Phillipart (1888), 58 L. T. 525.

3410. ———.]—The arts. of assocn. of a co. provided that the number of directors should not be less than four; that two named persons should be the first directors; that these two named directors should have power to appoint further directors; & that "continuing" directors should be empowered to act, notwithstanding any vacancy in their body, provided that they constituted a certain fixed quorum:—*Held*: all these provisions must be read together; but the provision that the directors should not be less than four was imperative. The two named first directors were accordingly not capable of acting by themselves except to appoint the necessary two additional directors; & a third whom they had appointed, were not "continuing" directors within the arts., so as to be capable, in the absence of the appointment of a fourth director, of acting on behalf of the co.—*Re SLY, SPINK & Co., [1911] 2 Ch. 430; 105 L. T. 364; sub nom. Re SLY, SPINK & Co., HERTSLET'S CASE, MACDONALD'S CASE, 81 L. J. Ch. 55; 19 Mans. 65.*

3411. Existing directors sufficient to form prescribed quorum—Effect as regards members.—*FAURE ELECTRIC ACCUMULATOR CO., LTD. v. PHILLIPART, No. 2835, ante.*

3412. ———.]—R. applied for & was allotted shares in a co., the prospectus of which stated that there were three directors, of whom F. was one. The arts. of assocn. of the co. provided that the number of directors should not be less than three nor more than seven; & three names including that of F. were given as the first directors. It was also provided that two directors should form a quorum. The co. having been subsequently

ordered to be wound up, R.'s name was placed on the list of contributories. It came to R.'s knowledge that F. never authorised his name to be used as a director of the co., nor ever acted in that capacity. Accordingly R. objected that there had been no duly constituted board of directors; that two directors could not consider themselves a quorum; & that no acts by them were valid. He therefore claimed that the allotment to him of shares was void; & that he was entitled to have his name removed from the list of contributories, & the money paid by him refunded:—*Held*: the want of a properly constituted board of directors when the shares were allotted to R. rendered the allotment invalid; & the defect was not cured by the provision of the co.'s arts. of assocn. that two directors might form a quorum; therefore, R.'s name should be struck off the list of contributories.—*Re BRITISH EMPIRE MATCH CO., LTD., Ex p. Ross (1888), 59 L. T. 291. Annotation:—Consd. Re Sly, Spink, [1911] 2 Ch. 430.*

3413. ——— **Transferee from stranger without knowledge of irregularity.**—A co.'s arts. of assocn. provided that its affairs should be conducted by a council of administration; that the number of members of the council should not be less than three; that the continuing council might act notwithstanding any vacancy; & that the council might determine the quorum necessary for the transaction of business. The members of the council became reduced to two, & those two members acting in the name of the co. gave securities for debts of the co. to persons who had no knowledge of the irregularity. It was not proved that any resolution fixing a quorum had been passed by the council:—*Held*: the securities so given were binding on the co.

One of the securities was transferred by the creditor to whom it was given to one of the two members of the council, who had himself paid off the secured debt:—*Held*: the security was valid in the hands of the transferee.—*Re BANK OF SYRIA, OWEN & ASHWORTH'S CLAIM, WHITWORTH'S CLAIM, [1901] 1 Ch. 115; 70 L. J. Ch. 82; 83 L. T. 547; 49 W. R. 100; 17 T. L. R. 84; 45 Sol. Jo. 77; 8 Mans. 105, C. A.*

3414. ——— **Effect as regards strangers.**—The deed of a joint-stock banking co. contained provisions that the directors should be not fewer than five nor more than seven; that three or more should constitute a board, & be competent to transact all ordinary business; & that the directors should have power to compromise debts, etc. Agents might be appointed by the directors to draw & accept bills, etc., without reference to the directors. The number of directors became less than five; four directors being the whole number then existing, executed a deed compromising a large debt, due to the bank, taking from the debtor, a mining concern, & covenanting with him on behalf of the co. to indemnify him against certain bills of exchange. In an action of covenant by the debtor for not indemnifying him:—

interested in the subject matter of the resolution before the directors meeting, cannot constitute the requisite quorum.—*BLYTHE v. PHOENIX FOUNDRY, LTD., [1922] W. L. D. 87.—S. AF.*

PART III. SECT. 28, SUB-SECT. 7.—C. (b) iii.

3409 i. Whether minimum imperative or directory.—*R. S. O. 1877, c. 150, requires that cos. incorporated thereunder shall have not less than three directors, who shall not be appointed directors unless they are shareholders, & it was provided by the bye-laws of*

pltf. co. that a director should not only be qualified when elected, but that he should continue to be so. Pltf. co. was managed by three directors, & one of them disposed of his stock:—Held: he thereupon ceased to be a director, & the directorate then became incomplete & incompetent to manage the affairs of the co. *Semble*: even assuming that two were a quorum of the directors & could manage the business, yet, where neither the statute nor the bye-laws gave the president, also, a casting vote, resolutions passed by such vote, at a meeting attended only by the

president & one other director, were invalid.—*TORONTO BREWING & MALT-ING CO. v. BLAKE (1882), 2 O. R. 175.—CAN.*

3409 ii. ———.]—Where the arts. of a co. provided that the number of directors should not be less than two nor more than five & that three directors should constitute a quorum & there were only two directors left to act:—*Held*: two directors constituted a quorum under the arts.—*BLYTHE v. PHOENIX FOUNDRY, LTD., [1922] W. L. D. 87.—S. AF.*

Held: such covenant did not bind the co. for this was not ordinary business, & no smaller number than five directors were competent under the deed to transact it.

Qu.: whether a board of three directors could transact even ordinary business, unless it was a board of three out of five directors.—*KIRK v. BELL* (1851), 16 Q. B. 290; 117 E. R. 890.

Annotations:—*Consd.* New Sombbrero Phosphate Co. v. Erlanger (1877), 5 Ch. D. 73; *York Tram. Co. v. Willows* (1882), 8 Q. B. D. 685. *Refd.* *Forbes v. Marshall* (1855), 25 L. T. O. S. 147; *Re Alma Spinning Co., Bottomley's Case* (1880), 16 Ch. D. 681; *Halifax Sugar Refining Co. v. Francklyn* (1890), 59 L. J. Ch. 591; *Re Bank of Syria, Owen & Ashworth's Claim, Whitworth's Claim*, [1900] 2 Ch. 272.

3415. — Without knowledge of irregularity.]—*Re BANK OF SYRIA, OWEN & ASHWORTH'S CLAIM, WHITWORTH'S CLAIM*, No. 3413, *ante*.

iv. Where No Quorum Present.

3416. Resolution invalid.]—*LUBIN v. DRAEGER* (1918), 144 L. T. Jo. 274.

3417. Subsequent confirmation at valid meeting.]—A resolution was passed by the directors of a joint-stock co. that at any meeting of directors three should form a quorum. At a meeting at which two directors only were present, a resolution was passed authorising a call. This resolution was subsequently confirmed at a meeting at which the necessary quorum was present. Less than 21 days' notice, required by the co.'s arts. of assocn., was given of the call. At another meeting of the directors a resolution was passed that, if any shareholder did not pay his call by a certain day, his shares should be forfeited. A shareholder not having so paid his call, his shares were forfeited:—*Held*: (1) the call was validly made; (2) the forfeiture was valid, & the shareholder could only be required to pay the amount of the call.—*Re PHOSPHATE OF LIME CO., LTD., AUSTIN'S CASE* (1871), 24 L. T. 932.

Annotation:—*As to* (1) *Refd.* *York Tram. Co. v. Willows* (1882), 8 Q. B. D. 685.

3418. — Allotment of shares.]—The arts. of assocn. of a co. provided that the shares should be allotted by the directors, & that the first directors should be appointed by the subscribers to the memorandum of assocn. On Oct. 22, 1888, the subscribers appointed four directors. On Oct. 24, a meeting of directors was held, at which two only attended, & they allotted shares to A. & B., who had sent in applications. The ct. held that this meeting was irregular, & the allotments were invalid. The evidence failed to prove that either of them revoked his application or repudiated his shares on the ground of the allotment being invalid. On Mar. 7, a resolution was passed at a duly constituted meeting of directors, formally confirming the allotment of shares made on Oct. 24. Afterwards A. & B. moved for a rectification of

the register by striking out their names:—*Held*: though the original allotment of shares was invalid, it had been ratified by the co., & was binding on the allottees.—*Re PORTUGUESE CONSOLIDATED COPPER MINES, LTD., Ex p. BADMAN, Ex p. BOSANQUET* (1890), 45 Ch. D. 16; 63 L. T. 423; 39 W. R. 25; 2 Meg. 249, C. A.

Annotations:—*Refd.* *Molineux v. London, Birmingham & Manchester Insee.*, [1902] 2 K. B. 589. *Mentd.* *Dibbins v. Dibbins*, [1896] 2 Ch. 348.

Compare Part IX., Sect. 9, sub-sect. 6, *post*.

v. At Committees.

See Sub-sect. 5, D., *ante*.

(c) Limitation of Voting Rights.

3419. Where director interested—What constitutes interest—Membership of other contracting firm or company—Construction of articles.]—*Re BRITISH AMERICA CORPN., LTD.* (1903), 19 T. L. R. 662.

3420. — Extent of prohibition—Derivative title.]—*Re BRITISH AMERICA CORPN., LTD.* (1903), 19 T. L. R. 662.

3421. — Allotment of shares.]—*QUINN v. ROBB* (1916), 141 L. T. Jo. 6.

Annotation:—*Refd.* *Neal v. Quinn*, [1916] W. N. 223.

3422. — — — — —.]—*NEAL v. QUINN*, [1916] W. N. 223.

3423. — Directors sole members of company.]—A syndicate of five persons formed a private co., in which they were the sole shareholders, & sold to it for £15,000 in debentures of the co., property which they had, a few days before, acquired for £7,000. The contract for the sale & the issue of the debentures was carried out at a meeting of the five who there & then appointed themselves directors. This meeting was described in the minutes as a board meeting. At a subsequent meeting the seal of the co. was affixed to the debentures. The arts. of the co. provided that no director should vote in respect of any contract or arrangement in which he might be interested. In the winding up of the co. the liquidator claimed a declaration that the issue of the debentures was invalid & should be set aside:—*Held*: there being no suggestion of fraud, the co. was bound in a matter *intra vires* by the unanimous agreement of its members. Although the meeting was styled a directors' meeting, all the five shareholders were present, & they might well have turned it into a general meeting, & transacted the same business. In these circumstances the issue of the debentures was not invalid.—*Re EXPRESS ENGINEERING WORKS, LTD.*, [1920] 1 Ch. 466; 89 L. J. Ch. 379; 122 L. T. 790; 36 T. L. R. 275, C. A.

Annotation:—*Refd.* *Re Oxted Motor Co.*, [1921] 3 K. B. 32.

3424. — Irregular vote by director—Whether company can waive.]—*FOSTER v. FOSTER*, No. 2856, *ante*.

PART III. SECT. 28, SUB-SECT. 7.—
C. (b) iv.

3416 i. Resolution invalid.]—At the meetings of directors at which calls were made, there was not a sufficient quorum of fully qualified directors, but 400 shares held by a shareholder were forfeited for non-payment of the calls, & sold. On action by the shareholder to recover the shares, or in the alternative for damages:—*Held*: the calls were badly made & pltf.'s shares could not, in the absence of any provision in the arts. validating the acts of *de facto*, as distinguished from *de jure*, directors, be legally forfeited.—*HADDOW v. DUKE CO., NO LIABILITY* (1892), 18 V. L. R. 155.—AUS.

b. Subsequent confirmation at valid meeting—Acknowledgment of loan with-

out consideration.]—A bank advanced money to a co. on the drafts of the manager authorised in that behalf by a meeting of the board at which less than a quorum of the directors attended as the bank knew. A meeting of a quorum, subsequent to the loan, acknowledged it without consideration:—*Held*: the ct. were not bound by the loan either as originally authorised by a board less than a quorum nor as subsequently acknowledged by a quorum without consideration.—*COLONIAL BANK OF AUSTRALASIA v. LOCH FYNE GOLD MINING CO.* (1866), 3 W. W. & A'B. 168.—AUS.

PART III. SECT. 28, SUB-SECT. 7.—
C. (c).

k. Where director interested — Appointment to additional office — Per-

mitted by articles.]—A director who has an interest in the subject of discussion of a meeting of the directors in which his interests conflict with his duty to the shareholders is incompetent to vote. Hence even when the arts. of assocn. of a co. may permit a director to hold any other office under the co. in conjunction with his directorship & on such remuneration as the directors may fix, yet the appointment of a director to any other office at a meeting of the directors at which the quorum was made up only by counting him also as one present is not a valid appointment as the co. did not have the unbiased & independent advice of at least such a number of the directors as would without him have made a quorum.—*RAMASWAMI IYER v. MADRAS TIMES PRINTING & PUBLISHING*

Sect. 28.—Directors: Sub-sect. 7, C. (c), D. & E.]

3425. — Power of voting subject to disclosure of interest—Sufficiency of disclosure.]—IMPERIAL MERCANTILE CREDIT ASSOCN. (LIQUIDATORS) v. COLEMAN, No. 3225, ante.

Compare No. 3482, post.

3426. — Disclosure to be entered on minutes—Time for entry—Where no time limit prescribed.]—TOMS v. CINEMA TRUST CO., LTD., [1915] W. N. 29.

D. Minutes.

3427. Effect of—Unsigned.]—Deft. was a member of the provisional committee of a projected railway scheme, & took part in a meeting on Sept. 9, at which A. & B. were appointed engineers, & R. M. secretary to the co. B. never acted as engineer, but there was no proof that his appointment had ever been revoked. The whole engineering work was done by A. & C. At a meeting of the board, but whether at the above-mentioned meeting, or at some later period, it was left uncertain, deft. said that he thought that the solrs. should pay the engineers & be repaid their advances out of the money that should come in from the shareholders. The names of any individuals as the engineers were not mentioned during the meeting. Deft. attended several meetings subsequent to the first-mentioned meeting. On the trial of an action by A. & C. against deft. for payment for their work as engineers of the co., in order to show that C. had been appointed one of the joint engineers, plffs. tendered in evidence the following letter, written & sent by the secretary to C. "Minute of the Board, Sept. 13, 1845. Resolved that C. be requested to accept the office of joint engineer to this line. R. M., secretary. O. was requested to communicate this resolution to C. with as little delay as possible. R. M." Plffs. also proposed to read in evidence the following entry in the minute book in the handwriting of the secretary, whose duty it was to enter in the book minutes of the proceedings of the board. "Minute of the Board, Sept. 13, 1845. Resolved that C. be requested to accept the office of joint engineer to this line." There was no signature to the resolution, though the word "chairman" followed, & a space was left for the chairman's signature. There was no heading stating the names of any persons present at the meeting; nor was there any independent proof that any meeting of the board took place on Sept. 13. The Judge rejected both documents, & directed a verdict for deft. :—*Held* : (1) as against deft., the letter of the secretary was not evidence, as there was no proof that he had a general or special authority from deft. to write it; (2) the entry in the minute book was properly rejected, as it did not sufficiently appear to have

been a resolution adopted by the board; & without the documents, there was no evidence at all to go to the jury.—*RENNIE v. WYNN* (1849), 4 Exch. 691; 19 L. J. Ex. 2; 14 L. T. O. S. 225; 154 E. R. 1392, Ex. Ch.

Annotation:—Generally, Reft. Rennie & Remington v. Clark (1850), 15 L. T. L. S. 186.

3428. — Minute signed by chairman—As acknowledgment within Statute of Limitations.]—One of the directors of a co., established under 1844 Act, & having definite borrowing powers, made advances not in accordance with the borrowing powers to meet the necessary expenses of carrying on the concern. Subsequently the co., after being registered as a limited co. under 1856 Act, was voluntarily wound up :—*Held* : the director was entitled to rank as a creditor of the co., & to receive payment next after the general creditors, in the event of there being then any assets.

Assuming that a resolution of a board of directors, signed by the chairman, would be sufficient to revive against a co. a debt barred by Stat. Limitations :—*Semble* : the acknowledgment will be vitiated if the resolution was come to by a board meeting, at which the creditor was himself present in his character of director.—*LOWNDES v. GARNETT & MOSELEY GOLD MINING CO. OF AMERICA, LTD.* (1864), 3 New Rep. 601; 33 L. J. Ch. 418; 10 L. T. 229; 12 W. R. 573.

See, generally, LIMITATION OF ACTIONS.

3429. — As memorandum within Statute of Frauds.]—If minutes of a co. containing the terms of an agreement be signed by the chairman of the co. they constitute a sufficient memorandum to satisfy Stat. Frauds, s. 4.—*JONES v. VICTORIA GRAVING DOCK CO.* (1877), 2 Q. B. D. 314; 36 L. T. 347; 25 W. R. 501, C. A.

Annotations:—Reft. Re Great Northern Salt & Chemical Works, Ex p. Fenwick (1891), 36 Sol. Jo. 42; *Re Queensland Land & Coal Co., Davis v. Martin* (1894), 63 L. J. Ch. 810. *Mentd. Evans v. Hoare*, [1892] 1 Q. B. 593; *Griffiths Cycle Corp. v. Humber*, [1899] 2 Q. B. 414; *Daniels v. Trefusis*, [1914] 1 Ch. 788.

See, generally, CONTRACT, Vol. XII., pp. 129 et seq.

3430. — As contract within 1867 Act, s. 37 (2).]—*Re GREAT NORTHERN SALT & CHEMICAL WORKS, LTD., Ex p. FENWICK* (1891), 36 Sol. Jo. 42.

See, now, 1908 Act, s. 76 (1), ii.

3431. — As evidence of resolutions—Whether exclusive.]—*Re FIREPROOF DOORS, LTD., UMNEY v. FIREPROOF DOORS, LTD.*, No. 3398, ante.

3432. As evidence—Confirmatory minute.]—*BURCHALL v. SPOTTISWOODE*, No. 3084, ante.

Signature by chairman—Necessity for.]—*See No. 3427, ante.*

Time for.]—Compare No. 7926, post.

Time for entry in—Where no time prescribed.]—*See No. 3426, ante.*

Co., LTD. (1915), 1 L. R. 38 Mad. 991.—**IND.**

l. — Increase of salary.]—By a co.'s arts. it was provided that no director should, as a director, vote in respect of any contract or arrangement in which he was interested. A resolution was passed by two directors increasing their salaries :—*Held* : the directors were not competent to vote & the resolution was invalid.—*BLTYHE v. PHOENIX FOUNDRY, LTD.*, [1922] W. L. D. 87.—**S. AF.**

PART III. SECT. 28, SUB-SECT. 7.—D.

m. As evidence—Entries in rough scrap-book—Signed by chairman.]—Minutes of resolutions of the directors for the making of calls, & for the winding up of a joint-stock co., entered in a rough scrap-book, used for

roughly drafting the minutes before entering them in the formal minute-book, & signed by the chairman, are evidence under Companies Statute, 1864 (No. 190), s. 64, of all the conditions precedent to the validity of such resolutions.—*LEGAL & GENERAL LIFE ASSURANCE CO. v. GILL* (1878), 4 V. R. (Law) 204.—**AUS.**

n. — Admission of oral evidence.]—At an extraordinary meeting of shareholders in a co. a resolution to wind up the co. voluntarily was passed, & at the same meeting a subsequent resolution was passed authorising the directors to dispose of certain surplus money of the co. in a specified but ambiguous manner. An action was brought by the co. against the directors for recovery of the money :—*Held* : oral evidence was admissible to

show in what circumstances the latter resolution was passed, in order to explain the latent ambiguity, although the arts. of assocn. provided that the minutes of the meeting should be conclusive evidence of the proceedings at such meeting.—*WESTRALIA PROPRIETARY GOLD MINING CO. v. LONG* (1897), 23 V. L. R. 36.—**AUS.**

o. — Not confirmed at subsequent meeting.]—Minutes of a directors' meeting taken down in shorthand by the solr. of the co., transcribed by him & retranscribed into the minute book by the secretary, & not confirmed at any subsequent meeting, are not admissible in evidence *per se*, though the solr. has died before the trial of the action.—*CLAUDET v. GOLDEN GIANT MINES, LTD.* (1909), 15 B. C. R. 13.—**CAN.**

Confirmation—Effect on liability of director absent from previous meeting.]—*See* Sub-sect. 7, E., *post*.

E. Presence at Meetings.

3433. Attendance at meeting—Resolution on guarantee for retiring director.]—*BARKER v. ALLAN* No. 3395, *ante*.

3434. — Ultra vires resolution—Effect of subsequent protest.]—The directors of a co. established for carrying on the business of a bill-broker & scrivener, & for “making advances & procuring loans on, & the investing in, securities,” were empowered by the arts. to carry on the business of the co., & to exercise all such powers as were not, by 1862 Act, or by the arts., required to be exercised in general meeting.

Two years after the incorporation of the co. the directors assisted in the construction of another co. out of an existing banking business, on the terms of an agreement whereby they were to apply for 10,000 £50 shares in the new co., but with an understanding that of these 10,000 shares they should not be bound to take more than two-sevenths of what might not be allotted to the public. In pursuance of this arrangement the directors took, amongst some of themselves, & in the names of their secretary & assistant manager, on behalf of the co., 3,000 shares in the new co., for which was drawn by three cheques & paid out of the co.’s funds the sum of £30,000. They also took, in the names of their secretary & assistant manager, 500 paid-up shares in the new co. as the consideration for an agreement not to sell any of the new co.’s shares under a £2 per share premium before July 1, 1866; or, if they saw no objection, for a further period of six months:—*Held*: (1) the directors had no power to take or accept the 3,000 shares, or the 500 shares, & the payment of the £30,000 was a breach of trust, which the directors were jointly & severally liable to make good to the co.

One of the directors, A., was present at a meeting held on June 19, 1865, at which it was resolved that application should be made for 10,000 shares in the new co.; & he was also present at another meeting where the minutes of this resolution were confirmed, but was absent from London when the first cheque in part payment of the £30,000 was drawn. Upon his return, on July 7, he wrote two letters, one to his co-directors, & another to a solr. director, protesting against the scheme. No protest was entered on the minutes, but at a subsequent board meeting his letter to the directors was read. He attended several subsequent meetings, & took no further step. He was not one of the allottees of the 3,000 shares, & he did not sign either of the cheques. Another director, B., did not take his seat until after the minutes of the first resolution had been confirmed, & the first cheque drawn. He signed the second, but not the third cheque. He was not one of the allottees of the 3,000 shares:—*Held*: (2) neither A. nor B. was in a position of less liability than any of the other directors.

(3) Another director, C., was not present at any of the meetings at which the matter was discussed, & the bill was dismissed against him without costs.

(4) A director of a co. who knows that his co-directors are misappropriating the moneys of the co., or are otherwise guilty of a breach of trust, is bound to take active & immediate steps to prevent the same, by notification to the shareholders or otherwise; or, if he cannot prevent the same without filing a bill in Chancery for the purpose, it then becomes his duty to file a bill. If he fails

to do this he will be held to have concurred in the breach of trust, & be liable accordingly, notwithstanding that he may have “protested” against the proceedings of his co-directors.

(5) A director of a co. who signs cheques to the prejudice of the co. cannot be heard to say that he did so “as a mere matter of routine,” or “as a ministerial act.”—*JOINT STOCK DISCOUNT CO. v. BROWN* (1869), L. R. 8 Eq. 381; 17 W. R. 1037; *sub nom.* *LONDON JOINT-STOCK DISCOUNT CO., LTD. v. BROWN*, 20 L. T. 844.

Annotations:—*As to* (1) *Appld.* *Re Ry. & General Light Improvement Co., Marzetti's Case* (1880), 28 W. R. 541. *Refd.* *Cullerne v. London & Suburban General Permanent Bldg. Soc.* (1890), 25 Q. B. D. 485; *Re Liverpool Household Stores Assocn.* (1890), 59 L. J. Ch. 616. *As to* (2) *Refd.* *Grimwade v. Mutual Soc.* (1884), 52 L. T. 409; *London Financial Assocn. v. Kelk* (1884), 26 Ch. D. 107. *Generally, Refd.* *Parker v. Lewis* (1873), 28 L. T. 91; *Re Lands Allotment Co.* (1894), 63 L. J. Ch. 291. *Mentd.* *Hampson v. Price's Patent Candle Co.* (1876), 45 L. J. Ch. 437; *Phosphate Sewage Co. v. Hartmont* (1877), 5 Ch. D. 394; *Re Financial Corpn., Goodson's Claim* (1880), 28 W. R. 760; *Studdert v. Grosvenor* (1886), 33 Ch. D. 528; *Re Faure Electric Accumulator Co.* (1888), 40 Ch. D. 141.

3435. — After ultra vires resolution passed—Resolution acted on.]—*JOINT STOCK DISCOUNT CO. v. BROWN*, No. 3434, *ante*.

3436. Liability of director not attending in person—Present by proxy.]—By the deed of assocn. of a mining co., it was provided, that the affairs of the co. should be managed by a committee of seven shareholders called managing directors; & they were empowered, at their meetings, to vote by proxy. B. was appointed the resident director or manager, to superintend the mine & local concerns thereof, hire workmen, provide machinery, etc., but subject to the instructions he might from time to time receive from the managing directors, to whom he was to transmit monthly accounts of the ore raised, wages paid, etc., & a full statement of all debts & liabilities due from the co.; with a proviso that he should not expend or engage the credit of the co. for any sum exceeding £50 in any one month, without the express authority in writing of three of the managing directors:—*Held*: (1) this deed did not authorise B. to draw or accept bills of exchange in the name of the co., even for the necessary purposes of the mine, without the express authority of the managing directors; (2) a managing director who was represented at a meeting of directors by proxy, was not bound by a resolution of the directors present at such meeting, authorising the resident director to accept bills for the co.—*BROWN v. BYERS* (1847), 16 M. & W. 252; 16 L. J. Ex. 112; 153 E. R. 1182.

3437. — Ultra vires act by co-directors—No steps taken for rescission.]—*Re REESE RIVER SILVER MINING CO.*, [1867] W. N. 139.

Annotation:—*Refd.* *Parker v. Lewis* (1873), 28 L. T. 91.

3438. —.]—*JOINT STOCK DISCOUNT CO. v. BROWN*, No. 3434, *ante*.

3439. — Misfeasance of co-directors.]—A director is not liable for misfeasance committed by his co-directors without his knowledge at board meetings at which he is not present; nor is he liable to make good the amount of a cheque, drawn with his sanction for a lawful purpose, which gets into the hands of the wrong person, & the proceeds of which misappropriated.—*Re MONTROTIER ASPHALTE CO., PERRY'S CASE* (1876), 34 L. T. 716.

3440. — — Fraudulent reports & balance-sheets adopted.]—*Re DENHAM & Co.*, No. 3285, *ante*.

3441. — Present at next meeting—No proof that minutes read & confirmed.]—(1) A director of a co. signed the arts. of assocn. as a holder of 25 shares, but applied for fifty shares, which was

Sect. 28.—Directors: Sub-sect. 7, E.; sub-sect. 8, A. & B.]

the qualification of a director under the arts. No allotment of shares was made:—*Held*: he was a contributory for 25 shares only.

(2) A resolution was passed at a meeting of directors, reciting a list of shareholders, in which applt., who was a director, was put down for fifty shares. Applt. was not present at the meeting, & denied all knowledge of the resolution, although he was present at the next subsequent meeting:—*Held*: in the absence of proof that the minutes of the previous meeting were duly read & confirmed at the subsequent meeting, which it appeared was not always done, applt. was not bound by the insertion of his name for fifty shares.—*Re LLANHARRY HEMATITE IRON CO., TOTHILL'S CASE* (1865), 1 Ch. App. 85; 35 L. J. Ch. 120; 13 L. T. 485; 11 Jur. N. S. 1009; 14 W. R. 153, L. J.J.

Annotation:—As to (1) *Distd. Re British & American Telegraph Co., Fowler's Case* (1872), L. R. 14 Eq. 316.

3442. — Minutes confirmed.]—ASHHURST *v.* MASON, ASHHURST *v.* FOWLER, No. 3091, *ante*.

3443. —]—RAMSKILL *v.* EDWARDS, No. 3314, *ante*.

3444. —]—(1) Directors of a co. are trustees as to moneys of the co. which have come to their hands or are under their control within Trustee Act, 1888 (c. 59), s. 1 (3), & therefore can, in the absence of fraud, take advantage of the Stat. Limitations in proceedings against them for misapplication of the funds of the co. The directors of the L. co., which had no power to invest its capital in the shares of other cos., in Mar. 1885, accepted fully paid-up shares in the B. co. to the amount of £35,000 in discharge of a debt. This was referred to in the balance-sheet of the L. co. as "Assets by B. co.," & the entry was explained by the chairman at the general meeting in Apr. 1885, to mean that it represented the amount due from the B. co. for an estate purchased from the L. co. The same item was repeated in successive balance-sheets till 1889. The investment was made without any fraudulent intent. The L. co. was wound up in 1893:—*Held*: assuming that the directors had been guilty of a breach of trust in investing the money in shares of the B. co., they were protected by Stat. Limitations; & there had been no such fraudulent concealment on their part, notwithstanding the false statement by the chairman at the meeting to prevent time from running under the statute.

Qu.: whether the directors had not power to accept the shares of the B. co., if they took them as a compromise for the debt, & not with the intention of retaining them as a permanent investment.

(2) In July, 1889, the directors of the same co. passed a resolution to invest a further sum of £5,200 in more paid-up shares of the B. co. Two directors, B. & T., were not present at the meeting, but they were present at the next meeting, at which the minutes of the previous meeting were read & confirmed. B. was in the chair & signed the minutes. B. was also in the chair at the next general meeting of the co., & he then referred to the new investment, & speaking on behalf of

the directors, said: "We carefully considered the matter, & deemed it advisable to exercise our right of subscription, & have no reason to regret our decision":—*Held*: although the presence of B. & T. at the meeting at which the minutes of the previous meeting were confirmed was not sufficient in itself to make either of them liable for the *ultra vires* investment, yet B. had by his action as chairman at that meeting, & by his statement at the general meeting, shown that he took an active part in the part in the investment & must be held responsible for it.—*Re LANDS ALLOTMENT CO.*, [1894] 1 Ch. 616; 63 L. J. Ch. 291; 70 L. T. 286; 42 W. R. 404; 10 T. L. R. 234; 38 Sol. Jo. 235; 1 Mans. 107; 7 R. 115, C. A.

Annotations:—As to (1) *Consd. Whitwam v. Watkin* (1898), 78 L. T. 188. *Reid. Re Severn & Wye & Severn Bridge Ry.*, [1896] 1 Ch. 559. As to (2) *Appld. Lucas v. Fitzgerald* (1903), 20 T. L. R. 16. *Generally. Reid. Re National Bank of Wales*, [1899] 2 Ch. 629. *Mentd. Mara v. Browne*, [1895] 2 Ch. 69; *Percival v. Wright*, [1902] 2 Ch. 421; *Young v. Naval, Military, & Civil Service Co-op. Soc. of South Africa*, [1905] 1 K. B. 687; *Re Macfadyen, Ex p. Vizianagaram Mining Co.*, [1908] 2 K. B. 817.

3445. — Resolution complete without confirmation.]—BURTON *v.* BEVAN, No. 3270, *ante*.

3446. — Present at subsequent meeting—Formal minute of approval confirmed.]—ASHHURST *v.* MASON, ASHHURST *v.* FOWLER, No. 3091, *ante*.

3447. — Confirmation presumed—Ultra vires acts extending over series of years.]—*Re SHARPE, Re BENNETT, MASONIC & GENERAL LIFE ASSURANCE CO. v. SHARPE*, No. 3377, *ante*.

Compare BANKERS & BANKING, Vol. III., p. 136, Nos. 103, 104.

SUB-SECT. 8.—RETIREMENT, REMOVAL, AND VACATION OF OFFICE.

A. Retirement.

3448. Right to retire—On giving notice.]—In the absence of any provision making acceptance of resignation necessary, a managing director vacates his office on giving notice to the co. of his resignation; & he cannot withdraw his resignation without the consent of the co., even if, under the arts. of assocn., the vacation of office is not to take effect unless the directors pass a resolution to the effect that the director has vacated his office.—*GLOSSOP v. GLOSSOP*, [1907] 2 Ch. 370; 76 L. J. Ch. 610; 97 L. T. 372; 51 Sol. Jo. 606; 14 Mans. 246.

3449. Acceptance of resignation—On giving notice—Construction of articles.]—TRANSPORT, LTD. *v.* SCHONBERG (1905), 21 T. L. R. 305.

Compare No. 3039, *ante*.

3450. — By company or directors.]—MUNICIPAL FREEHOLD LAND CO., LTD. *v.* POLLINGTON, No. 3081, *ante*.

3451. — What constitutes—To form contract—Resolution of directors.]—BARKER *v.* ALLAN, No. 3395, *ante*.

3452. Withdrawal of resignation—Necessity for consent of company.]—*GLOSSOP v. GLOSSOP*, No. 3448, *ante*.

3453. Retirement in rotation—Resolution

PART III. SECT. 28, SUB-SECT. 8.—A.

p. Acceptance of resignation—No power to refuse in articles.]—Where no provision was made in the arts. of assocn. of a co. that directors should have power to refuse the resignation of a co-director, & a director, through his solr., tendered his resignation, which

the other directors refused to accept:—*Held*: the resignation was valid, & the office of director had become vacated.—*Re NEOKRATINE SAFETY EXPLOSIVE CO. OF NEW SOUTH WALES, LTD.* (1891), 12 N. S. W. Eq. 269.—AUS.

q. Statutory provision for retire-

ment.]—Where in a prior statute the two directors having the smallest number of votes of the five chosen in a former election were declared to be ineligible at any subsequent election, & by a subsequent statute the number of directors was fixed at seven, & the persons named who were to constitute the board until the next election:—

authorising continuance in office—Whether valid.]—*Re* GREAT NORTHERN SALT & CHEMICAL WORKS, *Ex p.* KENNEDY, No. 2832, *ante*.

3454. — Effect of resolution for non-re-election reducing members below minimum.]—BENNETT BROTHERS (BIRMINGHAM), LTD. *v.* LEWIS, No. 2836, *ante*.

3455. — Where no annual general meeting—When retirement takes effect.]—*Re* CONSOLIDATED NICKEL MINES, LTD., No. 2968, *ante*.

Effect of resignation—On liability for qualification shares.]—*See* Sub-sect. 2, C. (d), *ante*.

Transfer of shares—To avoid liability.]—*See* Nos. 2037, 3392, *ante*.

— By way of compromise.]—*See* No. 2195, *ante*.

B. Removal.

3456. Power of company to remove—Where power of appointment vested in directors—Disagreement among directors—Two directors only.]—BARRON *v.* POTTER, POTTER *v.* BERRY, No. 2840, *ante*.

3457. — Under constitution of company—For reasonable cause—What constitutes reasonable cause.]—At a meeting of a co. regularly convened, resolutions were passed removing certain directors for misconduct, the deed of settlement of the co. providing that such a meeting might remove any director "for negligence, misconduct in office, or any other reasonable cause." Other directors were subsequently elected in their place. A bill was then filed by the removed directors to set aside the proceedings of the meeting & the election of the new directors. On a motion for an injunction to restrain the new directors from acting:—*Held*: the expression "reasonable cause" in the co.'s deed did not refer to such a cause as in a ct. would be held reasonable, but only to such a cause as should be deemed reasonable by the shareholders assembled at a meeting duly convened, & therefore the ct. had no jurisdiction to interfere; nor, where no case of direct fraud was proved, to determine whether the decision of the meeting had or had not been unduly influenced by unfounded statements made by persons taking an active part in the proceedings.—*INDERWICK v. SNELL* (1850), 2 Mac. & G. 216; 2 H. & Tw. 412; 19 L. J. Ch. 542; 14 Jur. 727; 42 E. R. 83.

Annotations:—*Re* Gresham Life Assce. Soc., Penney's Case (1872), 42 L. J. Ch. 183; Cannon *v.* Trask (1875), L. R. 20 Eq. 669; Dawkins *v.* Antrobus (1881), 17 Ch. D. 615; Kelly *v.* National Soc. of Operative Printers (1915), 113 L. T. 1055. *Mentd.* *Re* Langham Skating Rink Co. (1877), 5 Ch. D. 669.

3458. — Meeting of shareholders summoned on resolution of directors—Resolution passed at irregular meeting of directors.]—(1) A meeting of directors passed a resolution to summon an extraordinary general meeting at which were to be proposed special resolutions for removing B. from the office of director, & for increasing the capital. The arts. gave power to remove directors by special resolution. The only notice B. had of the board meeting was a notice given less than ten minutes before the time of holding it, &

not stating the nature of the business. The notices for the general meeting were issued, & four days before the time for the meeting B., who up to that time had made no complaint of the short notice, brought his action to restrain the co. from holding the meeting, on the ground that the board which summoned it was not duly constituted, as B. had not received proper notice & could not attend. The general meeting was held & passed the resolutions. The judge after this granted an injunction restraining the co. from confirming the resolution to remove B. On appeal:—*Held*: assuming the board meeting to be so far irregular that pltf. might have objected & required another to be summoned, the general meeting, having been summoned, in all other respects regularly, by directors acting as a board, was competent to act. *Qu.*: whether, if pltf. had at once complained of the short notice & required a fresh board meeting to be called, the ct. would not have prevented the holding the general meeting till this had been done.

(2) Before the formation of the co. an agreement was entered into between B. & a person as trustee for the intended co., by which it was stipulated that B. should be a director & should not be removable till after 1888. Art. 6 provided that the directors should adopt & carry into effect the agreement with or without modification, & that subject to such modification, if any, the provisions of the agreement should be construed as part of the arts. The agreement was acted upon, but no contract adopting it was entered into between pltf. & the co.:—*Held*: treating the agreement as embodied in the arts., still there was no contract between B. & the co. that he should not be removed from being a director, the arts. being only a contract between the members *inter se*, & not between the co. & B. & therefore, the order for an injunction must be discharged. *Qu.*: whether a stipulation that a director shall not be removable will be enforced by the ct.—*BROWNE v. LA TRINIDAD* (1887), 37 Ch. D. 1; 57 L. J. Ch. 292; 58 L. T. 137; 36 W. R. 289; 4 T. L. R. 14 C. A.

Annotations:—*As to* (1) *Re* Southern Counties Deposit Bank *v.* Rider & Kirkwood (1895), 73 L. T. 374; *Re* State of Wyoming Syndicate, [1901] 2 Ch. 431; *Boschoek Proprietary Co. v. Fuke*, [1906] 1 Ch. 148. *As to* (2) *Re* Boston Deep Sea Fishing & Ice Co. *v.* Ansell (1888), 59 L. T. 345; *Bainbridge v. Smith* (1889), 60 L. T. 879; *Re* Dale & Plant (1889), 61 L. T. 206; *Baring-Gould v. Sharpington Pick & Shovel Syndicate* (1898), 67 L. J. Ch. 622; *Re Olympia*, [1898] 2 Ch. 153; *Automatic Self-Cleansing Filter Syndicate Co. v. Cuninghame*, [1906] 2 Ch. 34; *Re* Farnatona Development Corp., [1914] 2 Ch. 271; *Hickman v. Kent or Romney Marsh Sheep-Breeders' Asscn.*, [1915] 1 Ch. 881; *Plantations Trust v. Billa (Sumatra) Rubber Lands* (1916), 114 L. T. 676. *Generally, Mentd.* *Re* Anglo-Austrian Printing & Publishing Union, *Isaacs' Case*, [1892] 2 Ch. 158.

3459. — Director appointed for fixed period—Agreement between director & trustee for company before incorporation—Agreement not formally adopted though embodied in articles.]—*BROWNE v. LA TRINIDAD*, No. 3458, *ante*.

3460. — When court will interfere—In

Held: two of the board having vacated their seats by non-residence, rendered it unnecessary for two of the remaining five to vacate their seats, as having the smallest number of votes at the subsequent election.—*R. v. WELLAND CANAL Co.* (1826), Tay. 300.—*CAN.*

PART III. SECT. 28, SUB-SECT. 8.—B.

r. Power of company to remove—Action must be brought by company.]—Proceedings to remove directors of co. must be brought by the co., & an action for that purpose by one shareholder

does not lie, & the fact that pltf. framed his action on behalf of himself & all shareholders of the co., other than those attacked, was immaterial.—*FRASER RIVER Co. v. GALLAGHER* (1896), 5 B. C. R. 82.—*CAN.*

s. — By extraordinary resolution.]—By a co.'s arts. of assocn. deft. W. was appointed chairman & managing director for life, & was to receive all the net profits earned by the co. Pltf. was appointed one of the joint assistant directors by art. 90, which provided that he should not be removed

from office against his will provided he was not disqualified. In May, 1916, resolutions were passed removing pltf. from being a director of the co. But it was admitted that these resolutions were not sufficient to remove pltf. from the board of directors. Afterwards at an extraordinary general meeting held in June, 1916, the following resolution was passed:—"Any director, other than deft., with whom the co. may have an agreement as to his tenure of office, may, notwithstanding such agreement, be removed from the office of director

Sect. 28.—Directors: Sub-sect. 8, B. & C. (a), (b), (c), (d), (e) & (f).]

absence of fraud.]—INDERWICK v. SNELL, No. 3457, ante.

3461. ——— Impropropriety almost amounting to fraud.]—STUART v. MANSION-HOUSE CHAMBERS CO., LTD. (1866), 2 T. L. R. 761.

3462. ——— No power in articles—Alteration of articles.]—A joint-stock co. whose directors are appointed for a definite period has no inherent power to remove them before the expiration of that period. If the arts. of assocn. of a co. contain no power to remove directors before the expiration of their period of office, but authorise the shareholders by special resolution to alter any of the arts., there must be a separate special resolution altering the arts. so as to give power to remove directors before a resolution can be passed to remove any of them.—IMPERIAL HYDROPATHIC HOTEL CO., BLACKPOOL v. HAMPSON (1882), 23 Ch. D. 1; 49 L. T. 150; 31 W. R. 330, C. A.

Annotations:—Consd. Taylor v. Pilsen Joel & General Electric Light Co. (1884), 27 Ch. D. 268. Refd. Harben v. Phillips (1883), 23 Ch. D. 14; Boston Deep Sea Fishing & Ice Co. v. Ansell (1888), 39 Ch. D. 339; Foster v. Greenwich Ferry Co. (1888), 5 T. L. R. 16; Howden v. Yorkshire Miners' Assocn., [1903] 1 K. B. 308; Boschoek Proprietary Co. v. Fuke, [1906] 1 Ch. 148. Mentd. Hickman v. Kent or Romney Marsh Sheep-Breeders' Assocn., [1915] 1 Ch. 881.

3463. ———.]—GOODE v. LADIES' DRESS ASSOCN., LTD. (1893), 37 Sol. Jo. 340.

3464. ——— Director appointed for fixed period—No provision for removal in articles.]—IMPERIAL HYDROPATHIC HOTEL CO., BLACKPOOL v. HAMPSON, No. 3462, ante.

See, also, No. 3458, ante.

Compare Part IX., Sect. 9, sub-sect. 7, post.

C. Vacation of Office.

(a) In General.

3465. Under provision in articles—On happening of particular event—Vacation automatic.]—(1) Where the arts. of a co. provide that a director shall vacate his office on the happening of some event or the doing of some act, a director automatically vacates his office on the happening of the event or the act being done; & the board have no power to waive the event, or to condone the offence or the act, which causes the vacation of the office.

Art. 21 of a co. provided that the co. should have first & paramount lien upon the shares of any shareholder for any money due from him to the co.; art. 70 that the office of any director should be vacated if he should be concerned in or participate in any contract with the co. not disclosed to & authorised by the board; & art. 75 that the remuneration of the directors should be £1,400 a year, to be divided among them in such manner as the majority of them should direct. W. was a director of the co., & on Dec. 24, 1900, he became secretly concerned in a contract with the co., & did not disclose his interest to the board; the transaction came to an end in June, 1901. At general meetings of the co. held on July 8,

1901 & 1902, W. in the usual way retired from office & was re-elected a director. In Feb. 1903, the board first discovered W.'s secret interest in the contract of Dec. 1900. He then ceased to act as a director & sold his shares in the co., but the board refused to register the transfer of the shares, & claimed that the co., under art. 21, had a lien on the shares for the repayment by W. of the money paid to him, under a resolution of the board, between Dec. 1900, & Feb. 1903, as his proportion of the directors' fees under art. 75:—**Held:** (2) under art. 70, W. automatically vacated his office of a director on Dec. 21, 1900; (3) W.'s disqualification for office only continued so long as the contract continued, & ceased when the transaction came to an end in June, 1901; consequently his re-elections to office in July 1901 & 1902, were valid; (4) W. was not entitled to a *quantum meruit* for his services as a director rendered to the co. between Dec. 24, 1900, & July 8, 1901, but the co. were entitled to recover from him the fees paid him during that period as being money paid him under the mistake of fact that he was a director, & the co. had a lien on his shares for the money.—**Re BODEGA CO., LTD., [1904] 1 Ch. 276; 73 L. J. Ch. 198; 89 L. T. 694; 52 W. R. 249; 48 Sol. Jo. 84; 11 Mans. 95.**

Annotation:—Generally, Mentd. Admiralty Comrs. v. National Provincial & Union Bank of England (1922), 38 T. L. R. 492.

3466. ——— Whether directors can waive or condone.]—Re BODEGA CO., LTD., No. 3465, ante. See, also, No. 2823, ante.

(b) By Failure to hold Qualification Shares.

See Sub-sect. 2, D., ante.

(c) By Absence.

3467. Provision for vacation on director absenting himself—Being absent distinguished from absenting himself.]—Re LONDON & NORTHERN BANK, MACK'S CLAIM, [1900] W. N. 114.

Annotation:—Mentd. Moriarty v. Regent's Garage Co., [1921] 1 K. B. 423.

3468. ———.]—Re LONDON & NORTHERN BANK, MCCONNELL'S CLAIM, No. 3001, ante.

3469. ——— Absence arising from illness—Physical incapacity to travel.]—Re LONDON & NORTHERN BANK, MACK'S CLAIM, No. 3467, ante.

3470. ——— No physical prevention—Whether voluntary.]—Re LONDON & NORTHERN BANK, MCCONNELL'S CLAIM, No. 3001, ante.

3471. ——— When absence commences—Whether from last meeting attended—Or first meeting not attended.]—Re LONDON & NORTHERN BANK, MCCONNELL'S CLAIM, No. 3001, ante.

(d) By Insolvency.

3472. Director undischarged bankrupt at time of appointment.]—DAWSON v. AFRICAN CONSOLIDATED LAND & TRADING CO., No. 2823, ante.

3473. What constitutes insolvency—Composition with creditors—Liabilities exceeding assets.]—A provision in the arts. of assocn. of a co. that the

by an extraordinary resolution of the co." The resolution was duly passed & subsequently a resolution removing pltf. from being a member of the board of directors was passed by an extraordinary resolution:—**Held:** the word "agreement" in the resolution of June 9 must be construed sufficiently widely as to embrace art. 90; by the resolution the directors assumed the power to dismiss pltf. & the resolution of dismissal was properly passed.—**GRANT v. GRANT (WILLIAM) & SONS (NEWTOWNARDS), LTD. (1916), 50 I. L. T. 189.—IR.**

PART III. SECT. 28, SUB-SECT. 8.—C. (a).

3466 i. Under provision in articles—Whether directors can waive or condone.]—By one of the arts. of assocn. of the co., "The office of director shall be vacated, if, being liable for any call, he does not, on or before the day appointed for payment thereof, pay the same." A director gave his promissory note in payment of a call, & this was accepted by the directors as unconditional payment:—Held:** they had no power to accept it as unconditional**

payment & the office of the director had become vacated.—**Re NEOKRATINE SAFETY EXPLOSIVE CO. OF NEW SOUTH WALES, LTD. (1891), 12 N. S. W. Eq. 269.—AUS.**

t. ———.]—Held: the individuals who were partners of Babbie & Co. at the time when the co. was incorporated, remained managers till death, resignation, disqualification, or removal, quite irrespective of any changes in the constitution of Babbie & Co.—**DUFF v. S.S. OVERDALE CO., LTD. (1915), 52 Sc. L. R. 849.—SCOT.**

office of a director shall be vacated if he becomes "insolvent" is applicable when a director calls a meeting of his creditors & submits to them a statement of affairs showing an excess of liabilities over assets, & the meeting passes a resolution in favour of a composition.—*SISSONS (HAROLD) & Co., LTD. v. SISSONS* (1910), 54 Sol. Jo. 802.

3474. — Attempted composition.—One of the arts. of assocn. of a co. provided that "the office of a director shall *ipso facto* be vacated if he become bankrupt, lunatic or insolvent. Pltf., who was a director of the co., became financially involved & wrote to his principal creditors asking them to accept a composition in respect of the debts owing to them & holding out as an inducement to each to do so the fact that other creditors were willing to accept the proposition made:—*Held*: pltf. was insolvent within the arts. of assocn. of the co.—*JAMES v. ROCKWOOD COLLIERY Co.* (1912), 106 L. T. 128; 28 T. L. R. 215; 56 Sol. Jo. 292, D. C.

Annotation:—*Reid*. London & Counties Assets Co. v. Brighton Grand Concert Hall & Picture Palace, [1915] 2 K. B. 493.

3475. — Whether definite act of insolvency necessary—Evidence.—An art. of assocn. of deft. co. provided that "the office of a director shall be vacated if he become bkpt. or insolvent or compound with his creditors." C., a director of deft. co., assigned his salary as director to pltf. In an action by them to recover the salary for the quarter from Nov. 2, 1912, to Feb. 1, 1913, deft. co. contended that C. was "insolvent" within the above art. on & before Nov. 2, 1912, & that therefore his office of director had become vacated & no salary was due. At the trial it was proved that from 1908 to the end of 1912 a number of bkpcy. petitions had been presented against him, all of which, however, were dismissed by consent though C. did not pay petitioning creditors' debts. In his evidence C. admitted that throughout the summer of 1912 he did not pay his debts as they fell due, but he said that, if given time, he would be able to liquidate all his liabilities, & that he had never had any meeting of his creditors nor offered any settlement. He was cross-examined upon a letter written by his solr. to a creditor & upon an affidavit by him upon an application for the adjournment of a bkpcy. petition with the view of showing an admission of insolvency:—*Held*: (1) in order that a director should be "insolvent" within the meaning of the art., it was not necessary that there should be a definite act of insolvency done on a definite day from which it could be said that the insolvency dated; (2) there was evidence upon which the judge could find that C. was "insolvent" on Nov. 2, 1912, & therefore his office of director had become vacated, & no salary was due to him for the quarter.—*LONDON & COUNTIES ASSETS Co., LTD. v. BRIGHTON GRAND CONCERT HALL & PICTURE PALACE, LTD.*, [1915] 2 K. B. 493; 84 L. J. K. B. 991; 112 L. T. 380; [1915] H. B. R. 83, C. A.

(e) *By Holding other Office under Company.*

3476. Application of article—Any other office—Director acting as secretary without remuneration.—*IRON SHIP COATING Co. v. BLUNT*, No. 3550, *post*.

3477. — Solicitor.—The arts. of assocn. of a co. provided that the directors were to be not more than five or less than three in number & that a director should *ipso facto* vacate his office if he accepted or held any other office of the co. except that of managing director or manager. A resolution having been passed that a firm of solrs., two of whom were directors of the co., should be

solrs. to the co.:—*Held*: the resolution to appoint two of the directors to act as solrs. to the co. did not disqualify those directors & a debenture issued to pltf. by the directors was not void as being issued without authority.—*Re HARPER'S TICKET ISSUING & RECORDING MACHINE, LTD.* (1912), 29 T. L. R. 63; *sub nom. Re HARPER'S TICKET ISSUING & RECORDING MACHINE, LTD., HAMLEN v. THE Co.*, 57 Sol. Jo. 78.

3478. — Place of profit—Trustee for debenture-holders paid by company.—The trusteeship of a deed covering or securing debentures, the trustees of which deed are appointed & paid, though not removable, by the co., is a place of profit under the co., within an art. vacating a director's office "if he accepts or holds any other office or place of profit under the co."—*ASTLEY v. NEW TIVOLI, LTD.*, [1899] 1 Ch. 151; 68 L. J. Ch. 90; 79 L. T. 541; 47 W. R. 326; 6 Mans. 64.

(f) *By Interest in Contract with Company.*

3479. Participation in profits—Loan to company—Construction of articles.—A co. was established for borrowing & lending money. By the arts. of assocn. the office of directors was vacated if he participated in the profits of any contract with the co., but the co. was empowered to borrow money on the directors' own individual responsibility, or on other securities:—*Held*: (1) a director lending his own money to the co. at a large interest was not thereby disqualified from being a director; (2) discounting the bill of a director was a loan within the meaning of the arts., which prohibited loans being made to directors beyond a certain amount.—*BLUCK v. MALLALUE* (1859), 27 Beav. 398; 33 L. T. O. S. 267; 5 Jur. N. S. 1018; 54 E. R. 156; *sub nom. BLACK v. MALLALUE*, 7 W. R. 303.

Annotation:—*As to* (1) *Reid*. Stears v. South Essex Gas-light & Coke Co. (1880), 7 Jur. N. S. 447.

3480. Being concerned or participating in profits of contracts with company—Director concerned in contract.—Where a director was under the arts. of assocn. of a co. to be disqualified from acting as such if he was concerned in or participated in the profits of any contract with the co.:—*Held*: the director was disqualified where he had been proved to have been concerned in the contract with the co., & accordingly it was not necessary to determine whether he had participated in the profits of such contract or not.—*STAR STEAM LAUNDRY Co. v. DUKAS* (1913), 108 L. T. 367; 29 T. L. R. 269; 57 Sol. Jo. 390.

3481. Being interested in contract—When interest not declared—Sufficiency of disclosure.—*IMPERIAL MERCANTILE CREDIT ASSOCN. (LIQUIDATORS) v. COLEMAN*, No. 3225, *ante*.

3482. — — — — ——Art. 70 provided that the office of any director should be vacated, if he contracted with the co., or was concerned in or participated in the profits of any contract with, or work done for the co., without declaring his interest at a meeting of the directors & that no director so interested should vote on any question relating to such contract or work. Pltf. was a director, & at a meeting of the board on Apr. 14, 1893, he informed the chairman, prior to the commencement of the business, that he was "jointly interested" with M. in a contract, concerning which some question was on the agenda paper for discussion, but he did not specify the precise nature or extent of his interest. Pltf. took no part in the business, & was recorded on the minutes as "neutral." At a meeting of the board on Aug. 11, 1893, no notice of which was given to pltf., a resolution was passed declaring that his

Sect. 28.—Directors: Sub-sect. 8, C. (f) & (g); sub-sect. 9, A., B. & C.]

seat as a director had been vacated under art. 70 :—*Held* : “ declare his interest ” meant declare the nature of his interest, & the words were not satisfied by a mere declaration that pltf. had an interest in the matter.—*TURNBULL v. WEST RIDING ATHLETIC CLUB, LEEDS, LTD. (1894), 70 L. T. 92 ; 10 T. L. R. 191.*

Annotation :—*Distd. Re Bodega Co., [1904] 1 Ch. 276.*

Compare Nos. 3258, 3259, ante,

Duration of disqualification.]—See No. 3465, ante.

(g) By Liquidation of Company.

3483. Whether directors cease to be officers of a body corporate—Under Common Law Procedure Act, 1854 (c. 125), s. 51.]—Under 1862 Act, a co. was in process of being wound up compulsorily, & an official liquidator was appointed under the supervision of Ct. of Ch. The liquidator having brought an action in the name of the co., in which deft. obtained leave to deliver interrogatories to the directors, under above sect. :—*Held* : those who were directors when the order for winding up was made, continued to be “ officers of a body corporate ” within that sect., & might be required to answer, & were liable to an attachment for not answering them.—*MADRID BANK v. BAYLEY (1866), L. R. 2 Q. B. 37 ; 8 B. & S. 29 ; 36 L. J. Q. B. 15 ; 15 L. T. 292 ; 15 W. R. 159.*

SUB-SECT. 9.—MANAGING DIRECTORS.

A. Appointment.

3484. Power of appointment—Vested in directors by articles—Exercise by company.]—Art. 99 gave the directors power to appoint one of their body to be managing director of the co. By art. 113 the business of the co. was to be managed by the directors, who might exercise all such powers & do all such things as might be exercised or done by the co. & were not by the statutes or those arts. directed or required to be exercised or done by the co. in general meeting, subject to the provisions of the statutes, & of those arts., & to such regulations as might be from time to time prescribed by the co. in general meeting. At an extraordinary general meeting of the co. a resolution was passed that L. who was then the managing director, should be reappointed sole managing director. The directors nevertheless appointed S. another member of their body, sole managing director :—*Held* : art. 113 making the powers of the directors subject to the regulations of the co. related to the general management of the affairs of the co., & not to the appointment of a managing director, or other matters specially placed under the control of the directors by the arts., & therefore the appointment by the board of directors of S. as sole managing director was valid.—*LOGAN (THOMAS), LTD. v. DAVIS (1911), 104 L. T. 914 ; 55 Sol. Jo. 498 ; affd., 105 L. T. 419, C. A.*

Annotations :—*Refd. Nelson v. Nelson, [1914] 2 K. B. 770 ; Foster v. Foster, [1916] 1 Ch. 532.*

3485. ———.]—FOSTER v. FOSTER, No. 2856, ante.

Compare Nos. 2839, 2840, ante.

3486. Whether appointment complete—Appointment subject to confirmation—On obtaining qualification shares—Qualification not acquired.]—The directors of pltf. co. passed a resolution that deft. “ be appointed managing director of the co. up to July 1 next & upon the completion of the purchase of B.’s shares this appointment be confirmed, the salary to be paid him to be left to a later date.” Deft. never acquired the shares which were a necessary qualification for being a director, & his appointment was never confirmed, but he acted as director for two & a half months & was paid salary :—*Held* : deft. had no right to the office, & pltf. were entitled to recover back from him the money paid as salary with interest from the date when they had demanded it back.—*BROWN & GREEN, LTD. v. HAYS (1920), 36 T. L. R. 330.*

3487. Effect of appointment—Whether within article prohibiting contract with company—Appointment without remuneration.]—FOSTER v. FOSTER, No. 2856, ante.

3488. ——— Appointment with remuneration.]—FOSTER v. FOSTER, No. 2856, ante.

Compare No. 3496, post.

3489. Duration of appointment—Whether entitled to hold while director.]—FOSTER v. FOSTER, No. 2856, ante.

— Dependent on compliance with conditions.]—See No. 3492, post.

3490. Termination of appointment—Dismissal—Alleged grounds unsubstantiated—Good grounds discovered after dismissal.]—The promoter of pltf. co. agreed with deft. that he should be employed as managing director of the intended co. for five years at a yearly salary. By the arts. of assocn. it was provided that deft. should be managing director for five years at the yearly salary mentioned in the agreement, payable quarterly. Afterwards the co. by a written instrument adopted the agreement between the promoter & deft. Deft., on behalf of the co., contracted for the construction of certain fishing-smacks, & unknown to the co., took a commission from the shipbuilders on the contract. Several months afterwards the pltf. co. at an extraordinary meeting passed a resolution dismissing deft. from his office on the ground of other alleged acts of misconduct, which they were not able to substantiate in the action : being at that time ignorant of his receipt of the commission from the shipbuilders. Deft. was a shareholder in an ice co. & a fish-carrying co., which paid, in addition to the ordinary dividends, bonuses to shareholders who were owners of fishing-smacks & who employed the cos. in supplying ice & carrying for them. Deft. employed these cos. in respect of the pltf.’s smacks, & received bonuses as if the smacks were his own. Pltf. co. brought an action against deft. for an account of commissions & bonuses received by him, & for damages for alleged breaches of duty ; & deft. counter-claimed for wrongful dismissal & for the salary for the quarter which had expired before his dismissal :—*Held* :

PART III. SECT. 28, SUB-SECT. 8.—C. (g).

a. Whether directors cease to be officers of company—Purchase of assets.]—When a co. is placed in liquidation, under the directions of the ct., the powers & duties of the directors are at an end, & the reasons which stand in the way of directors purchasing the co.’s assets while actively concerned in the management of its concerns no

longer exist.—*Re MABOU COAL & GYPSUM CO. (1894), 27 N. S. R. 305.—CAN.*

b. ———.]—Upon the appointment of a liquidator for a co. being wound up under R. S. C., c. 129, if the powers of the directors are not continued as provided by s. 34 of the Act, their fiduciary relations to the co. or its shareholders are at an end & a sale to them by the liquidator of the co. is valid.—*CHATHAM NATIONAL*

BANK v. MCKEEN (1895), 24 S. C. R. 348.—CAN.

PART III. SECT. 28, SUB-SECT. 9.—A.

c. Power of appointment—No express powers in articles.]—In the absence of express powers in the arts., directors have no power to appoint one of their number managing director at a salary.—*CLAUDET v. GOLDEN GIANT MINES, LTD. (1909), 15 B. C. R. 13.—CAN.*

(1) the receipt of a commission from the ship-building co. was good ground for dismissal, although it was not discovered till after the dismissal had taken place; & although it happened several months previously, & might have been an isolated act; (2) deft. must account to pltf. for the bonuses received from the ice & carrying cos., as they had been paid in respect of pltf.'s smacks; although pltf. could not themselves have received the bonuses, not being shareholders of the cos.; (3) the contract between pltf. & deft. was contained in the agreement between the promoter & deft. as adopted by the co., & was not modified by the arts. of assocn.; (4) the salary was consequently payable yearly & not quarterly; & therefore, deft. having been dismissed for misconduct was not entitled to any part of the unpaid salary for the current year of his service.—**BOSTON DEEP SEA FISHING & ICE CO. v. ANSELL** (1888), 39 Ch. D. 339; 59 L. T. 345, C. A.

Annotations:—As to (1) Reft. Swale v. Ipswich Tannery (1906), 11 Com. Cas. 88; *Healey v. Soc. Anon. Française Rubastie*, [1917] 1 K. B. 946; *Taylor v. Oakes, Roncoroni* (1922), 127 L. T. 267; *Rhodes v. Macalister* (1923), 29 Com. Cas. 19. *As to (2) Reft. Costa Rica Ry. v. Forwood*, [1901] 1 Ch. 746; *Erskine, Oxenford v. Sachs*, [1901] 2 K. B. 504; *Adams v. Morgan*, [1923] 2 K. B. 234. *As to (3) Reft. Re Famatina Development Corpn.*, [1914] 2 Ch. 271. *Generally, Mentd. General Billposting Co. v. Atkinson*, [1908] 1 Ch. 537; *Federal Supply & Cold Storage Co. of South Africa v. Angehrn & Piel* (1910), 80 L. J. P. C. 1.

3491. — Appointment for term of years—Failure to secure re-election as director.]—By art. 80 the directors were empowered to appoint a director at any time, but any director so appointed was to hold office only until the next ordinary general meeting of the co., & he should then be eligible for re-election. By art. 86b, the directors had power to appoint "any one of their number" to be a managing director for such period as they deemed fit, & to revoke such appointment. Pltf. was appointed a director of the co., & by an agreement of the same date made between him & the co., he was appointed managing director for four years, one of the terms of the agreement being that if he became incapacitated from attending to his duties as managing director the co. might by notice forthwith determine the appointment. Pltf. failed to secure re-election as a director at the next ordinary general meeting, & the co. gave him notice to determine the appointment. Pltf. brought an action against the co. for damages for breach of the agreement:—*Held*: as pltf. had not been re-elected a director of the co., he could not be a managing director, & therefore the agreement came to an end, & the directors had no power to appoint pltf. a managing director to hold office for four years whether the co. re-elected him a director or not.—**BLUETT v. STUTCHBURY'S, LTD.** (1908), 24 T. L. R. 469, C. A.

Annotation:—Reft. Nelson v. Nelson, [1913] 2 K. B. 471.

3492. — Directors authorised to revoke—Duration of appointment dependent on compliance with conditions.]—The arts. of assocn. of deft. co. provided that the board of directors might appoint one of their number to be managing director for such period as they deemed fit, & might revoke the appointment. The board appointed pltf. to be managing director upon the terms of an agreement which provided that he should hold the office so long as he should remain a director of the co. & retain his due qualification & efficiently perform the duties of the office. Subsequently, while pltf. was still fulfilling the conditions of the

agreement, the board revoked the appointment. Pltf. sued the co. for damages for breach of agreement:—*Held*: the arts. of assocn. did not empower the board to revoke the appointment at will, or otherwise than in accordance with the terms of the agreement under which pltf. was appointed managing director, & pltf. was entitled to recover damages against the co.—**NELSON v. NELSON (JAMES) & SONS, LTD.**, [1914] 2 K. B. 770; 83 L. J. K. B. 823; 110 L. T. 888; 30 T. L. R. 368, C. A.

3493. Appointment under service agreement for fixed period—Compliance with Statute of Frauds.]—

(1) A memorandum in writing of an agreement by a co. to employ a managing director for a term of five years is not sufficient within Stat. Frauds unless it shows the date at which the service is to begin.

(2) Where arts. of assocn. purport to give directors very wide powers to enter into contracts with themselves on behalf of the co., "having regard to the interests of the co.," directors who seek to maintain a contract with themselves made under such a power must bring evidence that in making it they had regard to the interests of the co.—*Re ALEXANDER'S TIMBER CO.* (1901), 70 L. J. Ch. 767; 8 Mans. 392.

Annotations:—As to (1) Distd. Curtis v. B. U. R. T. Co. (1912), 28 T. L. R. 353. *Appld. Elliott v. Roberts* (1912), 107 L. T. 18.

3494. — Covenant not to compete after termination—Effect of liquidation before agreement expired.]—Deft., in July, 1903, entered into an agreement with pltf. co. of which he was a director by clause 1 to hold office for seven years at a fixed salary, & by clause 5 covenanted that so long as he should continue to hold office, & for seven years after ceasing to hold such office, he would not, either solely or jointly with, or as manager or agent for, any other person or persons or co. directly or indirectly carry on or be engaged or interested in any business that would compete with that carried on by the co. In Apr. 1909, a receiver & manager was appointed in a debentureholder's action, & a compulsory winding-up order was made against the co. The receiver & manager having given notice to deft. that his services would no longer be required, & having ceased to pay his salary, deft. commenced to carry on business on his own account. In an action to restrain deft. from carrying on business in competition with the co. in breach of his covenant:—*Held*: pltf. co. could not have specific performance of clause 5 without performing, & they could not now perform, clause 1 in favour of deft. Consequently he was no longer bound by his restrictive covenant & the co. were not entitled to an injunction.—**MEASURES BROTHERS, LTD. v. MEASURES**, [1910] 2 Ch. 248; 79 L. J. Ch. 707; 102 L. T. 794; 26 T. L. R. 488; 54 Sol. Jo. 521; 18 Mans. 40, C. A.

Annotations:—Mentd. Alperston Rubber Co. v. Manning (1917), 86 L. J. Ch. 377; *Reigate v. Union Manufacturing Co. (Ramsbottom)*, [1918] 1 K. B. 592.

B. Qualification.

3495. Whether provisions affecting ordinary directors applicable—Construction of articles.]
BAINBRIDGE v. SMITH, No. 2888, *ante*

C. Remuneration.

3496. Agreement for remuneration—Before company incorporated—Whether "services necessary

PART III. SECT. 28, SUB-SECT. 9.—C.

d. Agreement for remuneration—May be gathered from articles & conduct of parties.]—**GLASS v. PIONEER RUBBER**

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e. Remuneration fixed by resolution for fixed period—Whether remunera-

tion recoverable for subsequent services.]—Bye-law 17 of the B. & I. Co. provided that the managing director should be paid for his services such sums as the

Sect. 28.—Directors: Sub-sect. 9, C. & D.]

for establishing the company"—1844 Act, s. 23.]—

(1) The provisional directors of a co. provisionally registered under 1844 Act, appointed one of their number managing director, & agreed to allow him, as a remuneration for his services as manager, a commission on shares paid upon, amounting to, first, one-twentieth, & afterwards, one-tenth of the capital of the co.:—*Held*: this was not a contract for "services necessary for the establishing of the co." within above sect.

(2) A similar arrangement, as to the remuneration of the managing director, made after the complete registration of the co., comes within sect. 29 of the above Act, & must be submitted to a general meeting of the shareholders, "as a contract or dealing in which a director is interested," notwithstanding a provision in the deed of settlement that the directors may allow the manager "such salary or remuneration as they shall think fit."—*Re STATE FIRE INSURANCE CO., Ex p. MORRISON'S ASSIGNEES* (1867), 36 L. J. Ch. 634; 15 W. R. 781.

3497. — Whether contract in which director interested—1844 Act, s. 29.]—*Re STATE FIRE INSURANCE CO., Ex p. MORRISON'S ASSIGNEES*, No. 3496, *ante*.

3498. Remuneration by commission on net profits—Calculation of net profits—Deduction of excess profits duty.]—By a pre-war agreement of service between a co. & its managing director a fixed annual salary was to be paid to him & also a commission of 25 per cent on the net profits of the co., & in order to arrive at the net profits for the purposes of the agreement certain charges & items were to be deducted & others were not to be deducted from the gross profits of the co. in each year. The co. earned large profits for the years 1915 & 1916 in respect of which excess profits duty became payable:—*Held*: the excess profits duty was not to be deducted from the profits of the co. before calculating the managing

director's commission.—*FELLOWS (S. J. & E.), LTD. v. CORKER*, [1918] 1 Ch. 9; 87 L. J. Ch. 11; 117 L. T. 693; 62 Sol. Jo. 54.

Annotation:—*Overd. Patent Castings Syndicate v. Etherington*, [1919] 2 Ch. 254.

See, also, Nos. 3594, 3595, 3598–3600, 4008, 4011, *post*.

3499. Where no remuneration fixed—Reasonable salary drawn—Item appearing in accounts.]—*HADLEY (FELIX) & CO., LTD. v. HADLEY*, No. 3254, *ante*.

3500. Additional remuneration—Power to grant vested in company—Remuneration fixed by articles—Retiring pension granted by directors.]—*NORMANDY v. IND, COOPE & CO., LTD.*, No. 3536, *post*.

Proof in liquidation of company—What may be proved for.]—*See* No. 6361, *post*.

— In competition with creditors.]—*See* No. 3546, *post*.

— Whether claim preferential.]—*See* No. 3517, *post*.

D. Powers and Liabilities.

3501. Position as agent of company—In contract—Presumption of authority.]—A co. was incorporated under 1862 Act, the memorandum of assocn. being signed by seven shareholders; no deed of assocn. was filed & no other shares allotted. A. entered into an agreement to act as foreman of the "co.'s" works, which was signed by B. & C., two of the persons signing the memorandum of assocn. as "chairman" & "managing director," respectively. In an action by A. against the co. for work done under the agreement:—*Held*: in the absence of evidence to the contrary, the jury were justified in presuming that B. & C. had authority to bind the co.—*TOTTERDELL v. FAREHAM BLUE BRICK & TILE CO., LTD.* (1866), L. R. 1 O. P. 674; 35 L. J. C. P. 278; 12 Jur. N. S. 901; 14 W. R. 919.

Annotations:—*Reid. Riche v. Ashbury Ry. Carriage & Iron Co.* (1874), L. R. 9 Exch. 224. *Mentd. Re Taurino Co.* (1883), 25 Ch. D. 118.

3502. — — — Presumption as to powers.]—

co. "may from time to time determine at a general meeting." The only provision made at a general meeting was on Jan. 27, 1883, as follows: "The salary of the managing director was fixed until Oct. 31 next, as at the rate of \$4,000 per annum." L., the managing director, sought to recover for services rendered as such subsequent to Oct. 31, 1883:—*Held*: he could not do so.

The position of L. as managing director rendering services for which remuneration was given, was not that of a servant hired by the co., but of a working member of the co., whose rights as to payments were to be measured by the provisions of the charter & bye-laws of the co.—*Re BOLT & IRON CO., LIVINGSTONE'S CASE* (1889), 16 A. R. 397.—*CAN.*

PART III. SECT. 28, SUB-SECT. 9.—D.

3501 i. Position as agent of company—In contract—Presumption of authority.]—By letter, signed by their managing director, the defts., a joint-stock trading co., agreed to furnish plths. malleable iron coupler parts of their manufacture as might be ordered, the letter being scribed "accepted," by plths. No bye-law had been passed defining the general powers of the board of directors or the managing director of deft. co., except as to borrowing for the purpose of the business. The managing director did not consult the board before signing the letter, & there was no formal subsequent approval or disapproval by the board of what had been done. The managing director knew that to carry out the contract a sub-

stantial extension of deft.'s plant & premises would be necessary, & plth. also knew this. But there was no evidence that they knew anything about defts.' capital or commercial circumstances, or their ability to furnish the additional plant:—*Held*: in the absence of bad faith or notice, plths. were entitled to assume that the managing director was authorised to enter into the agreement, which, when orders were actually given by plths., became a binding contract & one to which the board of directors would have had power to bind the co.—*NATIONAL MALLEABLE CASTINGS CO. v. SMITH'S FALLS MALLEABLE CASTINGS CO.* (1906), 14 O. L. R. 22; 9 O. W. R. 165.—*CAN.*

3501 ii. — — —.]—A managing director of a fire insurance co. has power to bind it by an agreement to pay an agent remuneration for services rendered it in its business of insurance, including a reinsurance contract, where the co. is authorised by its charter to reinsure. The authority of a managing director of a co. to bind it by a contract must be presumed in favour of the other party to the contract, unless it be shown that the director had not power to make the contract on behalf of the co., & that the other party was aware of such power.—*FOSTER v. BRITISH COLONIAL FIRE INSURANCE CO.*, [1917] 3 W. W. R. 598; 37 D. L. R. 404.—*CAN.*

3501 iii. — — —.]—Unless the arts. of assocn. of a co. restrict the powers which the directors may delegate to a managing director, any one dealing *bonâ fide* with the managing

director is entitled to assume that he has all the powers which his position as such ostensibly would give him.—*SOUTH AFRICAN SECURITIES v. NICHOLAS*, [1911] T. P. D. 450.—*S. AF.*

3501 iv. — — —.]—A general manager of a co. is, generally speaking, entitled to transact the ordinary business of the co., & persons dealing with him on that footing are entitled to assume he has such authority.

The general manager & secretary of a co. wrote to a solr. to register the arts. of assocn. of another co. The letter was written on the co.'s paper & signed by the general manager & secretary, but not in his capacity as such. The registration of arts. of assocn. of other cos. was within the competency of the co., & the solr. had previously been authorised to do such work by the co. The co. was, however, ignorant of, & had not authorised the registration of the arts. of assocn. in question, which was a private enterprise of the secretary. The solr. acted on the letter on the assumption that it came from the co.:—*Held*: the co. was liable for the solr.'s costs in procuring the registration.—*SOUTH AFRICAN INDUSTRIAL FRIENDLY CO-OPERATIVE SOCIETY v. WEBBER*, [1922] T. P. D. 49.—*S. AF.*

i. — — — Provision for commission.]—By the arts. of assocn. of a co. the directors were authorised to sell the reserve shares & to pay for any services rendered to the co., & they had the right to delegate to the managing director any of those powers. The managing director undertook on behalf of the co. to pay applt. commission for

Persons dealing *bona fide* with a managing director are entitled to assume that he has all such powers as he purports to exercise, if they are powers which according to the constitution of the co. a managing director can have.—**BIGGERSTAFF v. ROWATT'S WHARF, LTD., HOWARD v. ROWATT'S WHARF, LTD.,** [1896] 2 Ch. 93; 65 L. J. Ch. 536; 74 L. T. 473; 44 W. R. 536, C. A.

Annotations:—**Consd. Premier Industrial Bank v. Carlton Manufacturing Co. & Crabtree**, [1909] 1 K. B. 106. **Folld. Dey v. Pullinger Engineering Co.**, [1921] 1 K. B. 77. **Reid. Re Bank of Syria, Owen & Ashworth's Claim.** [1900] 2 Ch. 272. **Mentd. Re Roundwood Colliery Co., Lee v. Roundwood Colliery Co.**, [1897] 1 Ch. 373; **Nelson v. Faber**, [1903] 2 K. B. 367; **Re Fireproof Doors, Umney v. Fireproof Doors**, [1916] 2 Ch. 142.

3503. ——— **Promise of payment for extra work by servant.**—**TAYLOR v. VANSITTART** (1854), 24 L. T. O. S. 94; *subsequent proceedings, sub nom. VANSITTART v. TAYLOR* (1855), 4 E. & B. 910, Ex. Ch.

3504. ——— **Contract based on misrepresentation by chairman—Liability of chairman.**—A contract with A. as managing director of W. Co. will not justify an action against B. the chairman of W. Co. for misrepresentation made by B. in reference to that contract.—**COWAN v. LASCELLES** (1863), 3 F. & F. 631.

3505. ——— **Contract in own name—Whether company bound.**—The managing director of a co., who had power to enter into contracts on behalf of the co., & was bound to give the co. the benefit of all such contracts, entered into an agreement with P., by which, in consideration of certain assignments, he bound himself to pay P. a sum of money. No mention was made of the co. in the deed, but the directors took part in the negotiation, & P. was aware that the agreement was made on behalf, & for the benefit, of the co. The co. paid money to P. on account of the contract, & was afterwards ordered to be wound up:—**Held:** P. could not claim against the co. under the contract.—**Re INTERNATIONAL CONTRACT CO., PICKERING'S CLAIM** (1871), 6 Ch. App. 525; 24 L. T. 178, L. JJ.

3506. ——— **Bill of exchange—Presumption of authority.**—The arts. of assocn. of a co. empowered the directors to authorise one of their body as managing director to draw bills of exchange on behalf of the co. The managing director drew a bill on behalf of the co. without having in fact received any authority from the directors to draw bills. In an action on the bill against the co. as

drawers:—**Held:** (1) the managing director, in drawing the bill on behalf of the co., was a "person acting under authority" within 1908 Act, s. 77, & the co. was liable; (2) as by the constitution of the co. the managing director might have been authorised to draw the bill, a person taking the bill in due course was entitled to assume that he had authority in fact.—**DEY v. PULLINGER ENGINEERING CO.**, [1921] 1 K. B. 77; 89 L. J. K. B. 1229; 124 L. T. 534; 37 T. L. R. 10, D. C.

——— **Promissory note with qualified signature.**—**See AGENCY**, Vol. I., p. 646, No. 2666, & generally, **AGENCY**, Vol. I., pp. 309–316, 643–648; **BILLS OF EXCHANGE, PROMISSORY NOTES & NEGOTIABLE INSTRUMENTS**, Vol. VI., pp. 112–114.

3507. ——— **In tort—False imprisonment of employee.**—Pltf., a workman employed in defts.'s factory, was discharged with others in consequence of slackness of work. He carried away, with his own tools, one belonging to defts., which when he found inquiry was made for it, he returned to the foreman of the factory. When he afterwards called about it at the factory, a detective was present, who asked the foreman if he gave pltf. in charge for stealing the tool, to which the foreman replied he must see defts.' managing director first. Pltf. & the detective went together to the police station, & the foreman afterwards appeared, charged pltf. & signed the charge-sheet. The next morning, pltf. having been locked up all night, defts.' managing director gave evidence against pltf., but the charge was dismissed. Pltf. brought an action for false imprisonment:—**Held:** under the circumstances, the managing director had no power to render defts. liable in the action.—**ROWE v. LONDON PIANOFORTE CO., LTD.** (1876), 34 L. T. 450; 13 Cox, C. C. 211, D. C.

See, generally, AGENCY, Vol. I., pp. 594 *et seq.*

3508. ——— **Appointment of company's solicitor—Solicitor already appointed.**—**DE REUTER v. MORRIS PROCESS CO., LTD.** (1895), 39 Sol. Jo. 399.

3509. ——— **Distress on company's tenant—No certificate to act as bailiff.**—Law of Distress Amendment Act, 1888 (c. 21), s. 7, provides that no person shall act as bailiff to levy any distress for rent, unless he shall be authorised to act as a bailiff by a certificate in writing under the hand of a county ct. judge:—**Held:** the managing director of a co., who distrained in person for rent due to the co., acted as a bailiff within the above sect.—**HOGARTH v. JENNINGS**, [1892] 1 Q. B. 907;

the introduction of a purchaser for the reserve shares & thereafter he did introduce a purchaser:—**Held:** the undertaking by the managing director fell within the ostensible scope of his authority & applt. had been justified in assuming such authority & the co. was bound to him.—**ACUTT v. SETA PROSPECTING & DEVELOPING CO., LTD.**, [1907] T. S. 799.—S. AF.

g. ——— **To bring action in name of company.**—The arts. of assocn. of a co. provided that the officers should be a president & a general manager, a vice-president, & a secretary-treasurer; that the affairs of the co. should be conducted by a board of directors, a majority of directors to constitute a *quorum*. At a shareholders' meeting, a managing-director was appointed:—**Held:** the appointment did not confer upon the managing director any implied authority to bring an action in the name of the co., the office of managing director not being recognised by the arts. of assocn., & he could not bring an action in the name of the co., since there was neither special power conferred upon him by the arts. of assocn., nor delegation by the board of directors, nor acquiescence by the

board or shareholders in the exercise by him of authority to initiate actions in the co.'s name.—**STANDARD CONSTRUCTION CO. v. CRABB** (1914), 30 W. L. R. 151; 7 W. W. R. 719.—CAN.

h. ——— **Promissory note with qualified signature.**—Def't. co. was incorporated by Letters Patent under The Manitoba Joint Stock Companies Act, R. S. M., c. 25, for the purpose of carrying on a trading business, & pltf. sued as indorsee of three promissory notes given by the managing director of co. in its name to C., for tea ordered from him but never delivered. There was no bye-law, resolution or other act expressly defining the powers or duties of the managing director, but the evidence showed that the course of business of the co. was such that he had frequently given similar promissory notes which had been paid by the co.'s cheques without objection on the part of the other directors or the auditors:—**Held:** the notes sued on had been made in general accordance with the powers of the managing director within the meaning of sect. 62 of the above Act & were binding on the co.—**IMPERIAL BANK v. FARMERS' TRADING CO.** (1901), 13 Man. L. R. 412.—CAN.

k. ——— **Contracts as to real property.**—Pltf., by what purported to be a deed under the Leases Facilitation Act, let certain premises to defts., a trading corporation on whose behalf a lease was signed by their managing director, but without affixing to it the seal of the co. Def'ts. entered under the lease & paid rent for part of the term, but ceased to occupy before it expired; & in answer to an action for the rent due for the remainder of the term, set up that the lease was not sealed with the co.'s seal, or signed by two directors as required by the arts. of assocn.:—**Held:** since under the arts. of assocn. the directors had power to take a lease & to delegate their powers to a managing director who, in fact, signed it, pltf. was entitled to assume that the managing director had the authority of the co. to sign & the lease was binding on the co.—**PLOMLEY v. STEANES, LTD.** (1898), 19 N. S. W. L. R. 215.—AUS.

l. ——— **—**—A co. was formed in England with limited liability to carry on business at O. The majority of the directors were resident in England. The managing director at O., without authority

Sect. 28.—Directors: Sub-sect. 9, D.; sub-sect. 10. Sect. 29: Sub-sect. 1, A.]

61 L. J. Q. B. 601; 66 L. T. 821; 56 J. P. 485; 40 W. R. 517; 8 T. L. R. 551; 36 Sol. Jo. 485, C. A.

3510. — Appearance as advocate for company.]—The managing director of a co. cannot appear as advocate to represent the co.—*SCRIVEN v. JES-COTT (LEEDS), LTD. (1908), 53 Sol. Jo. 101.*

3511. Liability for acts of subordinates—Offence under Coal Mines Regulation Act, 1887 (c. 58).]—A limited co. were the owners of a coal mine of which resp. was the managing director; but resp. did not interfere with the actual management of the mine underground, which was left in the hands of a duly certificated manager, under the above Act, who was the manager of the colliery, & was in charge thereof. Resp., as managing director, occasionally visited the mine, but he had in no way interfered with the manager in his duties, though he had authorised all necessary expenditure for the safety & conduct of the mine, & had duly published at the mine the rules under the Act & the abstract of the Act itself. An offence having been committed by the use of naked lights in the mine on a day when resp. was not at the mine:—*Held*: (1) resp., as managing director, was "agent" of the mine within the Act, & was legally responsible as such; (2) he had, by publishing & to the best of his power enforcing the rules as regulations for the working of the mine, taken all reasonable means within sect. 50 of the Act to prevent such contravention of the rules, & was therefore not liable to be convicted for the offence.—*STOKES v. CHECKLAND (1893), 68 L. T. 457; 57 J. P. 232; 9 T. L. R. 235; 37 Sol. Jo. 251; 17 Cox, C. C. 631; 5 R. 240, D. C.*

Annotation:—As to (1) Refd. Stokes v. Mitcheson, [1902] 1 K. B. 857.

3512. Fraud of managing director—Fund set aside for indemnity for guarantee of company—Applied to own use.]—Pltfs., a limited co. of which A. was managing director, had begun printing a periodical for B. & co. a firm consisting of deft.'s son & two others, & the periodical was being sold on commission by C. Pltfs., represented by A. refused to go on printing without a guarantee, & deft. consented to become security by drawing a bill on B. & co. & indorsing it to pltfs., upon the understanding that he was to have funds to meet it out of the debt accruing from C. to B. & co.

contracted for the purchase of real estate for the use of the co. at O., & signed the contract as "managing director." For convenience the conveyance was made to the director personally, & he executed a mtge. for the unpaid purchase money, & went into possession & used the property for the purposes of the co. The purchase was immediately communicated by him to the English directors, & they disapproved thereof, but did no act repudiating the purchase; on the contrary, they directed the buildings to be insured:—*Held*: this conduct was an adoption of the contract by the directors: they had power to adopt it, & had the power of binding the co.; & the co. were liable to the vendor for the purchase money.—*CONANT v. MIALL (1870), 17 Gr. 574.—CAN.*

m. — — — .]—Although one who is president & managing director of a co., with the powers of a general manager, has no implied power to dispose of the co.'s real estate, yet where he has bid in certain real estate at a sale for the purpose of protecting a claim of the co. & to secure its payment & with no intention of acquiring the property for the use of the co., & in pursuance of a previous under-

standing with another person & to implement his intention with respect to the property when he bid it in, he agrees to transfer the property, such agreement may be held to be within his implied powers & be given effect to by the ct.—*ARMSTRONG v. GRENON, [1919] 3 W. W. R. 290.—CAN.*

n. Liability for mismanagement — Proof.]—In an action by a co. against its managing directors for damages alleged to have been caused by reason of their negligence & mismanagement, it was proved that the managing directors had kept the directors & shareholders in ignorance of the true position of the co., & that the business had been continued for a considerable period at a heavy loss:—*Held*: in the absence of proof that the losses had been directly incurred through the acts or omissions of the managing directors, the co. could not recover damages against them.—*NOURSE v. FARMERS' CO-OPERATIVE Co., LTD. (1906), 19 E. D. C. 291.—S. AF.*

o. — Statute of Limitations.]—In an action by an incorporated co. against its managing director for the return of money retained by him on various pretexts:—*Held*: Stat. Lim. was no defence on account of

A. was told of this arrangement. Before deft. drew this bill, A. had lent money to B. & co. on his own account, & held their acceptance to his draft. When this latter bill became due, A. obtained an order on C. from the other two partners of B. & co., without the knowledge or consent of deft. or his son, & under this order A. obtained the amount due from C. to B. & co. & appropriated it to the payment of this bill, the amount being more than sufficient to cover deft.'s bill. Pltfs. having sued deft. on his bill:—*Held*: deft. had no defence as against pltfs.; for pltfs. were not responsible for what A. did in getting his private debt paid, as though he was their managing director, he was not then acting for them or in pursuance of any authority from them.—*Mc-GOWAN & Co., LTD. v. DYER (1873), L. R. 8 Q. B. 141; 21 W. R. 560.*

Annotations:—Refd. Lloyd v. Grace, Smith, [1912] A. C. 716; Percy v. Glasgow Corpn. (1922), 91 L. J. P. C. 187.

3513. — Money transferred from company's account—To provide overdrawn account—At same bank.]—In an action by a co. to recover from its bankers moneys which, standing to the credit of its account, had been transferred by cheques of its managing director to the credit of his own overdrawn private account with the same bankers:—*Held*: the bank, acting in good faith & without notice of any irregularity was not bound before honouring the cheques to inquire into the state of the account between the co., & its managing director.—*BANK OF NEW SOUTH WALES v. GOULBURN VALLEY BUTTER Co., PROPRIETARY, [1902] A. C. 543; 71 L. J. P. C. 112; 87 L. T. 88; 51 W. R. 367; 18 T. L. R. 735, P. C.*

Signature by chairman—"On behalf of" company.]—*See No. 3516, post.*

SUB-SECT. 10.—CHAIRMAN AND VICE-CHAIRMAN.

3514. Authority to bind company—Purchase of goods for purposes of trade—Though in fact unauthorised.]—A co. established for the manufacture of glass, completely registered under 1844 Act, had power under a clause in their deed of settlement to appoint a manager of their works & factories, to "superintend & transact, under the control of the board of directors, the manufacturing

the fiduciary relationship existing between the parties.—*SASKATCHEWAN LAND & HOMESTEAD Co. v. MOORE (1914), 26 O. W. R. 160; 6 O. W. N. 100; 16 D. L. R. 871.—CAN.*

p. Liability for acts after notice given to terminate appointment.]—Where the managing director of a co., who also holds a special power of attorney from the co., has agreed with the co. as to the conditions upon which he would sever his connection with the co., but before the conditions are fulfilled by the co., deals with the property of the co., in a manner within the scope of his powers, & without fraud on his part, & to the advantage of the co., his acts will not be interfered with.—*SCOTTISH CANADIAN CANNING Co. v. DICKIE (1915), 31 W. L. R. 273.—CAN.*

PART III. SECT. 28, SUB-SECT. 10.

q. Authority to bind company — Whether proof necessary.]—The president of an incorporated co. has no more power than any other director to make promises binding on the co. In an action of replevin for goods distrained for rent after their removal from the premises, defts. relied upon an undertaking alleged to have been made by

business of the co.," & to whom the board of directors were by another clause authorised to delegate "such & so many of the powers thereby given to them, as would enable him to carry on the works & manufacturing business in an efficient manner":—*Held*: (1) the co. were liable for goods supplied to them for the purposes of their manufactures, upon orders given by such manager, although there was no express delegation of authority; (2) the co. were liable for goods supplied upon the orders of unauthorised persons, such as the chairman, deputy-chairman, & secretary, where the goods were with their knowledge received upon their premises, & used by them for the purposes of their trade.—*SMITH v. HULL GLASS Co.* (1852), 11 C. B. 897; 7 Ry. & Can. Cas. 287; 21 L. J. C. P. 106; 16 Jur. 595; 138 E. R. 729.

Annotations:—As to (1) *Reid*. *Re County Palatine Loan & Discount Co.*, *Cartmell's Case* (1874), 9 Ch. App. 691. *Generally*, *Reid*. *Hallett v. Dowdall* (1852), 18 Q. B. 2; *Re Sea Fire & Life Assce.*, *Greenwood's Case* (1854), 3 De G. M. & G. 459; *Ernest v. Nicholls* (1857), 6 H. L. Cas. 401; *Re Athenæum Soc.*, *Ex p. Eagle Co.* (1858), 4 K. & J. 549; *Allard v. Bourne* (1863), 15 C. B. N. S. 468; *Biggerstaff v. Rowatt's Wharf*, *Howard v. Rowatt's Wharf*, [1896] 2 Ch. 93. *Mentd.* *British Empire Assce. v. Browne* (1852), 12 C. B. 723; *Forbes v. Marshall* (1855), 11 Exch. 166; *Royal British Bank v. Turquand* (1855), 5 E. & B. 248; *Foddell v. Gwynn* (1856), 27 L. T. O. S. 72; *Peddyl v. Gwynn*, *Gordon v. Sea Fire & Life Assce. Soc.* (1856), 3 Jur. N. S. 188; *Reuter v. Electric Telegraph Co.* (1856), 6 E. & B. 341; *Charles v. National Guardian Assce.* (1857), 29 L. T. O. S. 211; *Prince of Wales Assce. v. Harding* (1858), E. B. & E. 183; *Metropolitan Saloon Omnibus Co. v. Hawkins* (1859), 4 H. & N. 87; *South of Ireland Colliery Co. v. Waddle* (1868), 37 L. J. C. P. 211.

3515. — Employment of servant.—*TOTTERDELL v. FAREHAM BLUE BRICK & TILE CO., LTD.*, No. 3501, *ante*.

the president of pltf. co. that the rent would be paid, in consideration of which defts. refrained from distraining before the removal of the goods:—*Held*: authority on the part of the president to bind the co. must be shown, or, the co. so acted as to lead the party to whom the promise was made to believe that there was authority.—*ALMON v. LAW* (1894), 26 N. S. R. 340.—CAN.

r. — Notice of cancellation of contract.—The president of a co. may give notice of cancellation of a contract to purchase real property on behalf of that co., but authority on the part of a subordinate officer to give notice cannot be implied; &, in the absence of evidence of authority, notice by such a subordinate officer will not be given effect to.—*PITT RIVER CO. v. SHAAKE* (1914), 28 W. L. R. 299.—CAN.

s. Power to make affidavits on mortgage in name of company.—The president or other principal officer of a corporation taking a mtge. for & in the name of the corporation does not act as its agent, but as principal in the exercise of its corporate powers: & may therefore make the affidavits of *bona fides* under C. S. U. C., c. 45, without authority in writing.—*BANK OF TORONTO v. McDOUGALL* (1865), 15 C. P. 475.—CAN.

t. Remuneration — Whether directors may grant.—The directors of a co. passed a resolution allowing their president a salary of \$1,200 for the year then current, & ordered that a certificate of indebtedness under the corporate seal should be issued to him in that sum, upon which the president caused the corporate seal to be attached to the certificate. There was no resolution of the stockholders voting the president remuneration for his services; nor was there any provision either in the Acts of Incorporation or the bye-laws of the co. for such remuneration:—*Held*: the president was not by law entitled to receive pay for his services. The board of directors had no right to pass the resolution

referred to; & the act of affixing the corporate seal to the certificate was of no legal force, & it was open to the co. to resist payment in a ct. of law.—*FELLOWS v. ALBERT MINING CO.* (1875), 3 Pug. 203.—CAN.

a. — Compliance with statutory requirements.—A bye-law was passed by the co.'s board of directors providing that the president, among other officers, should receive such remuneration as might be determined by resolution of the board be determined & that bye-law had been confirmed by a general meeting of the shareholders, & also a resolution to fix the president's salary at \$100 per month:—*Held*: there was a literal as well as a substantial compliance with Ontario Cos. Act, 7 Ed. VII. c. 34, s. 88, & with the terms of the bye-law also. There was no necessity that each contract for such payment should be confirmed by the shareholders.—*MACKENZIE v. MAPLE MOUNTAIN MINING CO.* (1910), 15 O. W. R. 728; 20 O. L. R. 615.—CAN.

b. Personal liability — Question of fact.—Pltfs. were merchants & manufacturers of a town with poor railway facilities. They entered into an agreement with deft. co. & deft. P., its president, to subscribe for \$10,000 worth of the co.'s bonds on condition that the co. should extend its line into the town. A memorandum embodying the agreement was drawn up & signed, pltfs. subscribed & paid for the bonds which were delivered to them, but the proposed extension of the railway was never built. Deft. P. disclaimed personal liability on the agreement, claiming he merely acted in his capacity as president of deft. co.:—*Held*: the facts showed that the agreement was intended by all the parties to bind deft. P. personally, & the fact that the memorandum of agreement was not executed by him in his personal capacity was of no defence.—*WOOD v. GRAND VALLEY RY. CO. & PATTISON* (1912), 22 O. W. R. 269; 3 O. W. N. 1356; 26 O. L. R.

3516. Personal liability—Signature "on behalf of" company.—Pltfs. recovered judgment against a co., & the chairman of the co. signed a document stating that in consideration of pltfs. suspending proceedings against the co. he agreed "on behalf of" the co. to pay £75 in three days & the balance, including costs, in three months:—*Held*: this agreement was made by the chairman as agent for the co., & he was not personally liable upon it.—*AVERY (W. & T.), LTD., v. CHARLESWORTH* (1914), 31 T. L. R. 52, C. A.

See, generally, AGENCY, Vol. I., pp. 628 *et seq.*

SECT. 29.—THE SECRETARY AND OTHER OFFICERS AND SERVANTS.

SUB-SECT. 1.—OFFICERS AND SERVANTS GENERALLY.

A. Meaning of Terms.

3517. Clerk or servant—Preferential payments in Bankruptcy Act, 1888 (c. 62), s. 1 (1) (b).—A managing director of a co. is not a clerk or servant within the meaning of the above sub-sect.—*Re NEWSPAPER PROPRIETARY SYNDICATE, LTD., HOPKINSON v. NEWSPAPER PROPRIETARY SYNDICATE, LTD.*, [1900] 2 Ch. 349; 69 L. J. Ch. 578; 83 L. T. 341; 16 T. L. R. 452; 8 Mans. 65.

Annotations:—*Consd.* *Moriarty v. Regent's Garage & Engineering Co.*, [1921] 1 K. B. 423. *Reid*. *Woods v. Winskill*, [1913] 2 Ch. 303.

Sec, now, Bankruptcy Act, 1914 (c. 59), s. 33 (1) (b), & compare 1908 Act, s. 209.

— *Secretary.*—*See* No. 3557, *post*.

441; 5 D. L. R. 428; *reversd.* 51 S. C. R. 283.—CAN.

c. — Bill of exchange.—The charter of the Midland Ry. Co., 16 Vict. c. 241, s. 5, gives them power to become parties to bills & notes, & enacts that any bill accepted by the president, with the counter-signature of the secretary, or any two of the directors, & under the authority of a majority of a *quorum* of the directors, shall be binding on the co., & every bill accepted by the president as such, with such counter-signature, shall be presumed to have been properly accepted for the co., until the contrary be shown: that the seal shall be unnecessary nor shall the president, etc., so accepting any bill, be individually liable. A bill of exchange addressed, "To the president, Midland Ry.," was accepted in these words, "For the Midland Ry. of Canada, accepted, H. Read, secretary; Geo. A. Cox, president":—*Held*: deft. C., who was admitted to be the president, was personally liable, the bill not being drawn upon the co.—*MADDEN v. COX* (1879), 44 U. C. R. 542; 5 A. R. 473.—CAN.

d. — In tort.—The president of a co. whose activities are such that he is regarded as the owner of the business, & who has full authority to direct changes in the factory or machinery necessary to safeguard the employees is personally liable in damages for the death of a young boy who he has personally hired & put to work in a dangerous place, thereby causing his death.—*LEWIS v. BOUTILLIER* (1920), 52 D. L. R. 383.—CAN.

PART III. SECT. 29, SUB-SECT. 1.—A.

3517 i. Clerk or servant — Insolvency Statute, 1871, s. 113 (11).—The words "clerk or servant" in Insolvency Statute, 1871, s. 113 (11), include a manager of a co. under "The Cos. Statute, 1864," but the same words in "The Cos. Wages Act, 1885," are by sect. 2 limited so as not to include such manager.—*Re INTERCOLONIAL*

Sect. 29.—The secretary and other officers and servants: Sub-sect. 1, A.]

3518. — 1908 Act, s. 209 (1) (b)—Chemist specially employed.]—B. was a chemist, & in July, 1910, was engaged by M. & Co. for nine months at a weekly wage to produce a specified series of formulas for the manufacture of soaps & perfumes. The contract was to be considered as completed, the moment B. had produced all the formulas, & if completed before the end of nine months B. was still to be paid all his wages for the remainder of the nine months. B. had to attend on only three specified days of each week, but for regular hours. The remainder of the week being at his disposal, & he had in fact another regular engagement with another firm. There were other special terms in the contract. B.'s wages fell into arrear, & in Mar. 1911, a winding-up order was made against M. & Co., & at that date there was due to B. £93 for arrears of wages. B. claimed £50 from the liquidator as a preferential creditor under the above sub-sect. :—*Held*: under the terms of this contract B. was a clerk or servant within the above sub-sect. & was a preferential creditor for £50.—*Re MORISON (G. H.) & Co., LTD. (1912), 106 L. T. 731.*

3519. — — Editor of periodical—Contributors.]—The articles of a co. that published a weekly periodical provided that no director should be disqualified by his office from contracting with or being employed by the co. in the capacity of contributor, editor, or otherwise; & that a director might hold any other office or place under the co. in conjunction with his office of director. R. was a director of the co. & was also appointed dress editress of the periodical at a fixed salary *per annum*, & her duties occupied practically the whole of her time. H. was employed by the co. at a fixed salary *per annum* to supply fashion drawings for the periodical, & the co. had the first call on her services & her work occupied most of her time, but occasionally she did work for other publishers. P. was employed by the co. at a fixed salary *per annum* to supply weekly articles & other information for the periodical, but she also wrote for other publishers. R., H., & P. claimed to be preferential creditors of the co. for arrears of salary due to them respectively at the commencement of the winding up :—*Held*: (1) having regard to the articles of the co., R.'s office of director did not preclude her employment in any other capacity, & she was a "clerk or servant" of the co. within the meaning of the above sub-sect., & was therefore entitled to preferential payment; (2) H. & P. were merely contributors to the periodical & not

"clerks or servants" of the co. within the meaning of the sub-sect. & were therefore not entitled to preferential payment.—*Re BEETON & Co., LTD., [1913] 2 Ch. 279; 82 L. J. Ch. 464; 108 L. T. 918; 57 Sol. Jo. 626; 20 Mans. 222.*

Annotation:—As to (2) Reid. University of London Press, Ltd. v. University Tutorial Press, Ltd., [1916] 2 Ch. 601.

— — — **Secretary.]—**See No. 3558, *post*.

— — — **Compare No. 3516, ante; BANKRUPTCY & INSOLVENCY, Vol. IV., pp. 475–477, Nos. 4289–4314.**

3520. Officer—1862 Act, s. 165—Banker.]—Upon a motion that the National Bank, & three of its directors, might be ordered to pay to the liquidators of the co. a sum of £5,000, alleged to have been improperly paid out of the funds of the co. as an inducement to the bank to open an account with the co. :—*Held*: the payment for opening an account with the banker was a misappropriation of the funds of the co., but as there was no direct proof that this money was paid by the co. the ct. could make no order, upon a motion under the above sect. for its restoration; & the ct. being of opinion that a banker was not an officer of the co. within the sect. of the Act, no order could be made under that sect. against the directors.—*Re IMPERIAL LAND CO. OF MARSEILLES, Re NATIONAL BANK (1870), L. R. 10 Eq. 298; 39 L. J. Ch. 331.*

Annotations:—Consd. Re General Provident Assce., Ex p. National Bank (1872), L. R. 14 Eq. 507. Reid. Re Great Western Forest of Dean Coal Consumers Co., Carter's Case (1886), 31 Ch. D. 496; Re Western Counties Steam Bakeries & Milling Co., [1897] 1 Ch. 617; Re Carpenter & Bristol Corpn., [1907] 2 K. B. 617.

3521. — — — —.]—A co. deposited certain deeds with a bank as collateral security for bills under discount, but the deposit was not accompanied with the formalities required by the co.'s arts. of assocn. upon making a charge or mtge., nor was the security registered under 1862 Act, s. 43. At the time of the winding up of the co. they were indebted to the bank for a bill which had been discounted for the co., & also for certain other bills which had not been discounted for the co., but which had been deposited with the bank to secure advances made to various persons. The securities comprised in the deeds having been realised, there remained in the banker's hands a balance after satisfying the bill which had been discounted for the co. themselves :—*Held*: the deposit of the deeds constituted a valid mtge. & the bankers, not being officers of the co. within the meaning of the above sect., were not bound to see that the formalities required by the arts. of assocn. & by 1862 Act, were complied with.—*Re GENERAL PROVIDENT ASSURANCE CO., Ex p.*

SMELTING & REDUCING CO., LTD. (1887), 13 V. L. R. 896.—AUS.

e. Clerk — Bookkeeper — Auditor.]—In Cos. Ordinance, s. 154, the word "clerk" includes a bookkeeper who works under instructions given by the general manager, but not an auditor working under a contract under which much, if not all, of his work might be performed by his employees.—*Re YELLOWHEAD PASS COAL & COKE CO., LTD., [1917] 2 W. W. R. 985; 12 Alta. L. R. 144.—CAN.*

f. Clerk or other person — Commercial traveller.]—A commercial traveller is of the class of "clerks or other persons" mentioned in Dominion Winding-up Act, s. 70, & it makes no difference that the traveller is paid commission on his sales instead of a straight salary, he is still within the preferred class.—*Re HARTWICK FUR CO., MURPHY'S CLAIM (1914), 26 O. W. R. 359; 6 O. W. N. 363; 17 D. L. R. 853.—CAN.*

g. Servant — Sales agent.]—A Toronto selling agent of a Cobourg co. is paid a commission on sales while not an officer of the deft. co. is a "servant" thereof.—*CLARKE & MONDS v. PROVINCIAL STEEL CO. (1913), 24 O. W. R. 287; 4 O. W. N. 991; 9 D. L. R. 803.—CAN.*

h. — Mine superintendent—Mine physician.]—In Cos. Ordinance, s. 54, the word "servant" may include a mine superintendent whose authority is much restricted, & a mine physician, the word "clerk" includes a bookkeeper who works under instructions given by the general manager, but not an auditor working under a contract under which much, if not all, of his work might be performed by his employees.—*Re YELLOWHEAD PASS COAL & COKE CO., LTD., [1917] 2 W. W. R. 985.—CAN.*

k. Officer — Engine driver.]—Held: an engine driver & paymaster of a railway co. are not officers within

R. S. O., c. 50, s. 156.—*MCLEAN v. GREAT WESTERN RY. CO. (1878), 7 P. R. 358.—CAN.*

l. — — —.]—A rule of deft. co. provided that the driver of a "light engine" has all the responsibilities of a conductor in cases where a train of cars is attached to the engine :—*Held*: the driver of the light engine which knocked down & killed the man for whose death the action was brought, was an officer of the co.—*LEACH v. GRAND TRUNK RY. CO. (1890), 13 P. R. 467.—CAN.*

m. — Assistant editor.]—The assistant or sub-editor of defts. is an officer of the co.—*MATTLAND v. GLOBE PRINTING CO. (1883), 9 P. R. 370.—CAN.*

n. — Former director & vice-president.]—A person described in the summons as "formerly a director & vice-president of the co." is an "officer of the co." within Ord. 40, r. 44.—*HAMILTON v. STEWART VAL-*

NATIONAL BANK (1872), L. R. 14 Eq. 507; 41 L. J. Ch. 823; 27 L. T. 433; 20 W. R. 939.

Annotations:—*Reid*. *Re* General South American Co. (1876), 2 Ch. D. 337; *Re* Gregson, *Christison v. Bolam* (1887), 36 Ch. D. 223. *Mentd.* *Pile v. Pile* (1875), 23 W. R. 440.

— *Secretary*.]—*See* No. 3559, *post*.

— *Solicitor*.]—*See* Nos. 3618, 3619, *post*;

BUILDING SOCIETIES, Vol. VII., p. 460, No. 34.

See, now, 1908 Act, s. 215.

— 1908 Act, s. 215—*Auditor*.]—*See* Nos. 3656–3658, *post*.

3522. — 1867 Act, s. 38—*Trustee for company*.]—The directors of a co. received £1,000 each from the promoter for becoming directors, but no notice of such contract appeared in the prospectus. In an action by a bondholder against the directors for a fraudulent concealment of the contract:—*Held*: the above sect. did not apply to the case of a bondholder; & the action would not lie under the statute, against a trustee of the co. even if it had been brought by a shareholder as a trustee does not come under the word officer.—*CORNELL v. HAY*, *CORNELL v. MASSEY*, *CORNELL v. TORRENS* (1873), L. R. 8 C. P. 328; 42 L. J. C. P. 136; 28 L. T. 475; 21 W. R. 580.

Annotations:—*Mentd.* *Craig v. Phillips* (1877), 7 Ch. D. 249; *Twycross v. Grant* (1877), 2 C. P. D. 469; *Sullivan v. Mitcalfe* (1880), 5 C. P. D. 455.

3523. — Bankruptcy Act, 1883 (c. 52), s. 148—*Any person bonâ fide chosen & authorised*.]—

Any person *bonâ fide* chosen by a co., & duly authorised under seal to be their agent for the signing & presentation of a petition in bkpcy. thereby becomes an “officer” of the co., for that purpose within the above sect. which provides that for all or any of the purposes of the Act a corpn. may act by way of its officers authorised in that behalf under the seal of the corpn. Thus a clerk in the employ of the co. so authorised though not in the ordinary sense an “officer” may sign a bkpcy. petition.—*Re TOMKINS & Co.*, [1901] 1 K. B. 476; 70 L. J. Q. B. 223; 84 L. T. 341; 17 T. L. R. 198; 8 Mans. 132; *sub nom.* *Re TOMKINS & Co.*, *Ex p. THE DEBTOR*, 49 W. R. 294; 45 Sol. Jo. 218, C. A.

Annotation:—*Consd.* *Re A Debtor* (No. 28 of 1917), [1917] 2 K. B. 808.

See, now, Bankruptcy Act, 1914 (c. 59), s. 149.

See, also, No. 3477, *ante*, No. 3550, *post*.

3524. *Officer or servant—Expert employed for special investigation*.]—Pltf. was at one time the managing director of a cotton spinning co., but the co. terminated his agreement of service & appointed B., who was an expert in cotton spinning, together with one W. to investigate the management & to make a report. Pltf. having brought an action against F., the chairman, it

was compromised, & an order of ct. was made by which pltf. undertook not to commence any legal proceedings against any of the co.’s directors, officers, or servants in respect of any disputes between any of them & pltf. B. & W. made their report, & pltf. thereupon commenced against B. a libel action founded on statements in the report. On an application by F. the judge in chambers made an order for the discontinuance of the action against B. as being an action in respect of disputes between pltf. & the co.’s officers or servants:—*Held*: B. was not an officer or servant of the co. & therefore the order for the discontinuance of the action against him was wrong & must be reversed.—*OPENSHAW v. FLETCHER* (1916), 32 T. L. R. 372, C. A.

3525. *Servant—Manager & secretary of joint-stock bank*.]—(1) Where directors of a joint-stock co. issue false & fraudulent reports to the public & the manager, secretary & other officers of the bank supply the detailed statements for such report, knowing them to be false, & that they are to be used for purposes of deceit, & a third party, acting on such reports, purchases shares in the co. & suffers loss thereby, each of the officers of the co. who knowingly assisted in the fraud is personally liable to such third party for the loss caused by such misrepresentations in the report, though the report was signed only by the directors, & not by the subordinate officers.

(2) The manager & secretary of a joint-stock bank, as well as the directors, are servants of the shareholders, & the manager & officers are equally liable for fraudulent reports, though not signing their names thereto, for the public in such cases give credit to the officers of the bank as much as to the directors.—*CULLEN v. THOMSON* (1862), 6 L. T. 870; 26 J. P. 611; 9 Jur. N. S. 85; 4 Macq. 424, H. L.

Annotations:—*As to* (1) *Distd.* *Peek v. Gurney* (1873), L. R. 6 H. L. 377. *Reid.* *Swift v. Winterbotham* (1873), L. R. 8 Q. B. 244; *Weir v. Bell* (1878), 3 Ex. D. 238; *Burdett v. Horne* (1911), 27 T. L. R. 402. *As to* (2) *Reid.* *Peek v. Gurney* (1873), L. R. 6 H. L. 377.

— *Secretary*.]—*See* Nos. 3547–3549, *post*.

See, also, Nos. 3517–3519, 3524, *ante*.

3526. “*Staff*”—*Managing director & chairman—Vice-chairman & secretary*.]—(1) The directors of a co. passed a resolution “that an increase of salary be given to the staff”:—*Held*: the word “staff” could not be taken to include the managing director, who was also chairman of the board, but did include the vice-chairman, who discharged the duties of the secretary.

(2) Where a director purchased property without mandate from the co., & under such circumstances as did not make him a trustee thereof for

LEY, ETC., Ry. Co. & DICKIE (1897), 30 N. S. R. 166.—CAN.

o. — *Attorney*.]—An attorney appointed to represent a foreign co. in Ontario, in compliance with the Act respecting the licensing of extra-provincial corpns., 63 Vict. c. 24 (O), is an officer of the co. within the meaning of Con. Rule 439a, & may be examined under that rule.—*MCFEIL v. LEWIS BROTHERS* (1908), 16 O. L. R. 652; 12 O. W. R. 284.—CAN.

p. — *District sales agent*.]—A district sales agent of pltf. co., dealing in agricultural machinery, although his duties were limited to finding purchasers for the co.’s machinery, & that he had no authority to close any sale or express authority to bind the co. by contract:—*Held* he was an “officer” of the co. examinable for discovery, under rr. 201 *et seq.*—*NICHOLS & SHEPARD Co. v. SKEDANUK* (1912), 21 W. L. R. 401; 5 Alta. L. R. 110.—CAN.

q. — “*Servants*.”]—The word “officer” of a corpn. includes for purposes of examination for discovery employees who are usually termed “servants” as distinguished from officials.—*ELLIOTT v. HOLMWOOD & HOLMWOOD, LTD.* (1915), 33 W. L. R. 134; 9 W. W. R. 490; 22 B. C. R. 335.—CAN.

r. — 1862 Act, s. 100—*Holder of patents sold to company*.]—A., the holder of certain patents, had sold them to a co., & was under an obligation to assign them to it, became its managing director. In a liquidation at the instance of a creditor of the co. the liquidator presented a note under 1862 Act, s. 100, craving the ct. to ordain A. to assign the patents to him. A. maintained that the petition was incompetent, in that he was not an officer of the company:—*Held*: A. was an officer of the co. in the sense of the sect.—*DUNLOP v. DONALD* (1893),

21 R. (Ct. of Sess.) 125; 31 Sc. L. R. 101; 1 S. L. T. 303.—SCOT.

s. *Other officer or servant—Local agent*.]—A local agent of an insurance co. may be examined for discovery as an “other officer or servant” under Ord. 31 A, r. 370 C (2).—*YAMASHITA v. HUDSON BAY INSURANCE Co.*, [1918] 3 W. W. R. 671.—CAN.

t. *Member or officer—Editor—Chief reporter*.]—Where the proprietors of newspaper are a limited co., neither the editor nor the chief reporter is “a member or officer” of the co. within the meaning of Ord. XXXI, r. 5.—*MURRAY v. NORTHERN WHIG, LTD.* (1911), 46 I. L. T. 77.—IR.

u. *Agent for officer—1908 Act, s. 164—Accountant*.]—An accountant who has received certain books & papers of a co. for the purpose of preparing a balance sheet of the co.’s affairs is not “an agent or officer of the co.” within 1908 Act, s. 164.—

Sect. 29.—The secretary and other officers and servants: Sub-sect. 1, A., B., C. & D.]

the co., & thereafter resold the same to the co. at a profit:—*Held*: whether or not the co. was entitled to a rescission of the contract of resale, it was not entitled to affirm it & at the same time treat the director as trustee of the profit made.—**BURLAND v. EARLE**, [1902] A. C. 83; 71 L. J. P. C. 1; 85 L. T. 553; 50 W. R. 241; 18 T. L. R. 41; 9 Mans. 17, P. C.

Annotations:—*As to* (2) **Consd.** *Cook v. Deeks*, [1916] 1 A. C. 554. **Refd.** *Campbell v. Australian Mutual Provident Soc.* (1908), 77 L. J. P. C. 117; *Dominion Cotton Mills Co. v. Amyot*, [1912] A. C. 546; *Jacobus Marler Estates v. Marler* (1913), 85 L. J. P. C. 167, n.; *Foster v. Foster*, [1916] 1 Ch. 532. **Generally, Mentd.** *Normandy v. Ind. Coope*, [1908] 1 Ch. 84; *Kirsopp v. Highton* (1911), 28 T. L. R. 129; *I. R. Comrs. v. Blott*, *I. R. Comrs. v. Greenwood*, [1921] 2 A. C. 171.

B. Appointment and Dismissal.

3527. Appointment—Servant formerly in employment of members—Effect of conversion of business into company.]—Where pltf. was engaged by defts. who afterwards formed themselves into a co., & pltf. after the expiration of his first engagement continued in the service of the co., defts. could only be liable as a co., & not as individuals, though practically they were the co.—**SEQUELIN v. TERRELL** (1867), 16 L. T. 537, N. P.

3528. Dismissal—Effect of winding-up order—Notice of discharge.]—An order for the winding up of a co. is notice of discharge to the servants of the co.—**Re GENERAL ROLLING STOCK CO., CHAPMAN'S CASE** (1866), L. R. 1 Eq. 346; 35 Beav. 207; 12 Jur. N. S. 44; 55 E. R. 874.

Annotations:—**Distd.** *Re English Joint Stock Bank, Ex p. Harding* (1867), L. R. 3 Eq. 341. **Folld.** *Re Oriental Bank Corpn., MacDowall's Case* (1886), 32 Ch. D. 366. **Refd.** *Reid v. Explosives Co.* (1886), 56 L. J. Q. B. 68.

3529. ——— Where business continued & servants employed.]—Although where the business of a co. is wholly at an end, a winding-up order may be notice of discharge to the servants of the co. from the date of the order; yet where the business is continued after the winding up, & the former servants are actually employed, the old contract between the co. & its servants continues in force, & notice of discharge must be given pursuant thereto.—**Re ENGLISH JOINT STOCK**

BANK, Ex p. HARDING (1867), L. R. 3 Eq. 341; 15 L. T. 528.

Annotations:—**Distd.** *Re Oriental Bank Corpn., MacDowall's Case* (1886), 32 Ch. D. 366. **Consd.** *Reid v. Explosives Co.* (1886), 56 L. J. Q. B. 68.

3530. ——— Where business not continued but servants employed on analogous duties.]

—The rule that an order for winding up a co. operates as a notice of discharge to the servants when the business of the co. is not continued after the date of the order, applies though the liquidator without continuing the business employs the servants in analogous duties with a view to reconstruction.—**Re ORIENTAL BANK CORPN., MACDOWALL'S CASE** (1886), 32 Ch. D. 366; 55 L. J. Ch. 620; 54 L. T. 667; 34 W. R. 529.

Annotation:—**Folld.** *Reid v. Explosives Co.* (1886), 56 L. J. Q. B. 68.

3531. ——— Effect of voluntary winding up—Discharge.]—A resolution for the voluntary winding up of a limited co. does not operate as a notice of discharge to the servants of the co.—**MIDLAND COUNTIES DISTRICT BANK, LTD. v. ATTWOOD**, [1905] 1 Ch. 357; 74 L. J. Ch. 286; 92 L. T. 360; 21 T. L. R. 175; 12 Mans. 20.

Annotations:—**Consd.** *Reigate v. Union Manufacturing Co. (Ramsbottom)*, [1918] 1 K. B. 592. **Refd.** *Re Havana Exploration Co.* (1915), 85 L. J. Ch. 174. **Mentd.** *Robinson Printing Co. v. Chic*, [1905] 2 Ch. 123.

3532. ———.]—By an agreement dated Dec. 27, 1915, & made between pltf. & a limited co., which carried on business in L., in consideration of pltf. subscribing for £1,000 in shares of the co. & of introducing to the co. certain new classes of goods to be manufactured by them, the co. appointed him their sole agent in the United Kingdom, India, & the Colonies for the sale of those goods for the term of seven years, if the agent should so long live, & thereafter until the agreement should be determined by six months' notice on either side. The agent was to use his best endeavours to obtain orders for the co.'s goods at prices to be from time to time agreed upon, & all orders obtained by the agent were at once to be communicated to the co., who upon approving or rejecting the same were to inform the agent thereof & who were to carry out such orders as were accepted without undue delay; & the agent was not definitely to accept orders for the co., but only subject to confirmation & acceptance

FINDLAY (LIQUIDATOR OF SCOTTISH WORKMEN'S ASSURANCE CO., LTD.) v. WADDELL, [1910] S. C. 670.—**SCOT.**

b. Person employed—Bank president.]—A bank president is examinable for discovery as a person "employed" by the bank within r. 234.—**CARTER v. GREAT WEST LUMBER CO.**, [1919] 3 W. W. R. 901.—**CAN.**

c. Labourer, servant, or apprentice—Manager of mining company.]—A manager of a co. is not a labourer, servant or apprentice within Ontario Mining Companies Incorporation Act, R. S. O. c. 197, s. 8.—**HERMAN v. WILSON** (1900), 20 C. L. T. 382; 32 O. R. 60.—**CAN.**

PART III. SECT. 29, SUB-SECT. 1.—B.

d. Appointment—Election of officers—Purchase of shares for voting purposes.]—An election of officers obtained by a trick or artifice cannot be considered a *bona fide* election, but when shares have been actually purchased & paid for, the fact of their being purchased with a view to influence the election is no objection.—**TORONTO BREWING & MALTING CO. v. BLAKE** (1882), 2 O. R. 175.—**CAN.**

e. ——— By directors—Confirmation.]—Pltf. brought action to recover \$2,500 for a year's salary as mineralo-

gist for defts., a mining co. Pltf. was a director of the co. during the whole of the same year, & relied upon a resolution of the first board of directors of the co. appointing him mineralogist & fixing his salary. At a meeting of shareholders, held immediately after the meeting of the directors at which the resolution was passed, the minutes of the directors' meeting were approved, confirmed, & adopted. Several other meetings of both shareholders & directors were held, on the same day, & a new board of directors was elected. The new board met & the minutes of their meeting contained an entry that "the minutes of the meetings of the directors & shareholders held previous to this meeting were laid before the meeting & were gone over, considered, & approved." These minutes & the minutes of the last meeting of shareholders were signed by all the directors & shareholders, except one. Evidence was given by some of the persons present at the meetings, which went to show that the resolution was not read to the directors & shareholders who signed the minutes. Defts. denied any knowledge of any contract of hiring or of service rendered:—*Held*: in the absence of any statutory provision that the consent of the shareholders individually is equivalent to the confirmation of a bye-law at a

general meeting, the signing of the minutes by all the shareholders but one, assuming that they knew at the time that they were confirming the resolution, was not a compliance with either the letter or spirit of Ontario Companies Act, 7 Edw. VII. c. 34, s. 88.—**BARTLETT v. BARTLETT MINES** (1911), 19 O. W. R. 893; 24 O. L. R. 419; 2 O. W. N. 1509.—**CAN.**

3528 i. Dismissal—Effect of winding-up order—Notice of discharge.]—An order for the winding-up of a co. is notice of discharge to all the employees of a co., & such employees' salaries therefore cease on the date of the winding-up order.—**Re CITY COLD STORAGE CO., GOTH'S CASE** (1916), 35 W. L. R. 135; 11 W. W. R. 135.—**CAN.**

3528 ii. ———.]—The passing of a resolution to wind up a co. operates as notice of dismissal to the co.'s servants. Circumstances may exist which would amount to a waiver of such implied notice, or which would be evidence of a new agreement between the liquidator & the servant; but clear & satisfactory evidence is necessary to establish such a case.—**Re FORSTER & CO., Ex p. SCHUMANN** (1887), 19 L. R. Ir. 240.—**IR.**

f. ——— Effect of appointment of receiver & manager.]—The appointment of a receiver & manager of the

by the co. such confirmation or acceptance not to be unreasonably withheld. The co. were to pay the agent a commission upon the invoiced prices of all goods delivered by the co. & duly paid for by the respective purchasers. A few months afterwards the co. required fresh capital, & they applied to pltf. to assist them in finding it, telling him that otherwise they would have to close down. Pltf. tried to do so, but failed. The co. then asked pltf. to give up the agency for the M. district, telling him that he would have to "stand down" so far as that district was concerned, in which case they thought that they could find the necessary capital, but he refused. The co. thereupon, being insolvent, passed resolutions for voluntary winding up & ceased to do business through pltf., & eventually sold their business. In an action to recover damages for breach of the agreement to employ pltf. as their agent for the seven years:—*Held*: the agreement was to employ pltf. as agent for the seven years, & a term could not be implied to the effect that the co. could terminate the agency at any time by ceasing to carry on their business; & the circumstances, coupled with the voluntary winding up, showed a repudiation by the co. of the agreement, & they were therefore liable in damages for the breach.—*REIGATE v. UNION MANUFACTURING CO. (RAMSBOTTOM)*, [1918] 1 K. B. 592; 87 L. J. K. B. 724; 118 L. T. 479, C. A.

—— *Manager*.]—See No. 3588, *post*.

3533. — Effect of appointment of receiver & manager by the court in debenture-holders' action—Discharge.—The appointment of a receiver & manager of a co. by the ct. at the suit of debenture-holders has the effect of discharging the officers & servants of such co. so as to entitle them to bring an action against the co. for wrongful dismissal.—*REID v. EXPLOSIVES CO. (1887)*, 19 Q. B. D. 264; 56 L. J. Q. B. 388; 57 L. T. 439; 35 W. R. 509; 3 T. L. R. 588, C. A.

Annotations:—*Consd.* *Midland Counties District Bank v. Attwood*, [1905] 1 Ch. 357; *Measures v. Measures*, [1910] 2 Ch. 248; *Whinney v. Moss S.S. Co.*, [1910] 2 K. B. 813. *Distd.* *Parsons v. Sovereign Bank of Canada*, [1913] A. C. 160. *Consd.* *Re Vulcan Coal Co., Harrison v. Harbottle*, [1922] 2 Ch. 60. *Mentd.* *Turner v. Goldsmith (1891)*, 60 L. J. Q. B. 247; *De Grelle v. Bull & Ward (1894)*, 10 T. L. R. 198; *Robinson Printing Co. v. Chic*, [1905] 2 Ch. 123.

3534. — Effect of appointment of receiver—Power of dismissal.—A receiver & manager of a co. cannot annul the contracts of the co., & the servants of the co. do not *ipso facto* become his servants on his appointment.

It was said that this occupation of the co. was at an end because the receiver had power to discharge servants & annul contracts & to do various things that were mentioned. A receiver has no power at all to annul any contract, I mean a contract which has to be continued for any definite period. It was the co., & the co. only, that could discharge the servants who were in their service under such contracts (*LOPES, L.J.*).—*Re MARRIAGE, NEAVE & CO., NORTH OF ENGLAND TRUSTEE, DEBENTURE & ASSETS CORPN. v. MARRIAGE, NEAVE & CO.*, [1896] 2 Ch. 663; 65 L. J. Ch. 839; 75 L. T. 169; 60 J. P. 805; 45 W. R. 42; 12 T. L. R. 603; 40 Sol. Jo. 701, C. A.

Annotations:—*Apprvd.* *Whinney v. Moss S.S. Co.*, [1910] 2 K. B. 813. *Mentd.* *Re Crosbie, Johnson & Hughes v. Crosbie (1909)*, 74 J. P. 25; *National Provincial Bank v. United Electric Theatres (1915)*, 85 L. J. Ch. 106.

assets of a co. operates as a discharge of the co.'s servants.—*ROLFE v. CANADIAN TIMBER & SAW MILLS, LTD. (1906)*, 12 B. C. R. 363.—CAN.

C. Remuneration.

3535. What remuneration may be paid—Gratuity to widow & family.—A resolution by a meeting of proprietors of a bank authorising the directors to pay a half-yearly pension for five years for the benefit of the family of a deceased officer:—*Held*: *intra vires*.—*HENDERSON v. BANK OF AUSTRALASIA (1888)*, 40 Ch. D. 170; 58 L. J. Ch. 197; 59 L. T. 856; 37 W. R. 332; 4 T. L. R. 734.

Annotations:—*Mentd.* *Re Quebrada Ry. Land & Copper Co. (1889)*, 40 Ch. D. 363; *Evans v. Brunner, Mond*, [1921] 1 Ch. 359.

3536. — Pension.—(1) Where the arts. fix the remuneration of directors & provide that the co. may by resolution in general meeting grant to the directors any additional remuneration, it is *ultra vires* the directors to grant a retiring pension to a managing director.

(2) One or more shareholders of a co. cannot sue in respect of irregular or unauthorised acts of the directors which would be valid if done with the approval of the majority of the shareholders or are capable of being confirmed by the majority.

(3) The executive of a trading co. may, unless expressly prohibited, grant a pension to a retiring officer or servant.—*NORMANDY v. IND, COOPE & CO., LTD.*, [1908] 1 Ch. 84; 77 L. J. Ch. 82; 97 L. T. 872; 24 T. L. R. 57; 15 Mans. 65.

Annotation:—*As to (2)* *Reid. Foster v. Foster*, [1916] 1 Ch. 532.

Compare CLUBS, Vol. VIII., pp. 514, 515, Nos. 60, 61.

Remuneration based on commission—Calculation of profits.—See No. 3498, *ante*, Nos. 3594–3599, *post*, & *compare* Nos. 4008, 4011, *post*.

3537. Who liable for—Agreement excluding personal liability of members—Liability in winding up not diminished.—A., who had been appointed secretary to a joint-stock co. at a yearly salary to commence on Mar. 25, 1848, signed an agreement that no director or shareholder of the co. should be personally responsible for the salaries of any of the officers; & that no officer should be paid for his services until a sufficient sum should be obtained, by the funds of the co. for that purpose. An order for winding up the co. was made on Feb. 23, 1850:—*Held*: the agreement did not exonerate the shareholders from liability to contribute as members of the co. to the payment of arrears of salary due to the secretary; & though he was not in strictness entitled to more than a portion of his salary for the second year, yet, as he had served for nearly the whole of that year, it was but reasonable to allow him his salary for the whole of it.—*Re INDEPENDENT ASSURANCE CO., COPE'S CASE (1850)*, 1 Sim. N. S. 54; 20 L. J. Ch. 28; 16 L. T. O. S. 168; 61 E. R. 21.

Annotation:—*Reid. Re Anglo-Californian Gold Mining Co. (1867)*, 37 L. J. Ch. 78.

Proof in winding up—Whether claim to salary preferential.—See Sect. 36, sub-sect. 11, D. (d), *post*.

D. Rights, Powers and Liabilities.

3538. Rights—Servant formerly employed by members—Re-engaged on formation of company.—*SEQUELIN v. TERRELL*, No. 3527, *ante*.

3539. Powers—To bind company—Act beyond scope of employment—Statement as to effect of deed.—Cos. have been held bound, in some cases, by the acts of their directors acting in the due execution of their powers; but it has never yet

PART III. SECT. 29, SUB-SECT. 1.—D.
g. Powers — To bind company —
Agreement to avoid seizure of goods.]

A bank having executions against a ry. co. in the hands of the sheriff, the secretary of the co., in order to avert a seizure of a quantity of railway iron,

Sect. 29.—The secretary and other officers and servants: Sub-sect. 1, D.; sub-sect. 2, A.]

been held, that an officer of a co. misrepresenting the effect of a deed, which it was no part of his duty to expound, could release the party signing from his liability to contribute (WOOD, V.-C.).—*Re ATHENÆUM, ETC. SOCIETY, SHEFFIELD'S CASE* (1859), John. 451; 28 L. J. Ch. 325; 32 L. T. O. S. 310; 5 Jur. N. S. 216; 7 W. R. 214; 70 E. R. 499.

3540. — Refusal to act on authority.]—A clerk of an incorporated co. authorised to act in the matter of delivering up pltf.'s goods to him, refused to deliver them up, on being applied to by pltf. for them, without a written order for the delivery:—*Held*: he had no right to attach such a condition before delivering them up, & this was such a refusal to deliver as would bind the co.—*BARNETT v. CRYSTAL PALACE Co.* (1861), 2 F. & F. 443; 4 L. T. 403.

See, generally, AGENCY, Vol. I., pp. 592 et seq., Nos. 2269 et seq.

— To present bankruptcy petition.]—*See, BANKRUPTCY & INSOLVENCY, Vol. IV., pp. 110, 111, 126, Nos. 992, 997, 1149, 1150.*

3541. Liabilities—Broker—Application of funds on instructions from directors—Breach of trust.]—The directors of a banking co., whose arts. of assocn. provided that the directors might, without any authority from the shareholders, "sell or dispose of any of the property of the co." paid out of the funds of the co. £500 to H., a stockbroker, being the amount of the premium on 1,000 shares of the co. purchased by him in the market, at the request of the directors, for F., whom they had requested to join the board. The co. was wound up, & a suit was instituted on its behalf by the official liquidator against H., to which neither the directors nor F. were made parties, to recover from him the £500, on the ground that it was a breach of trust by the directors of which H. had notice:—*Held*: as the whole transaction could not now be annulled, nor the parties be replaced in their former position, such a suit could not be entertained.—*LONDON, HAMBURGH & CONTINENTAL EXCHANGE BANK v. HENRY* (1868), L. R. 7 Eq. 334.

Annotation:—Refd. Re London, Hamburg & Continental Exchange Bank, Zulueta's Claim (1870), 5 Ch. App. 444.

3542. — Breach of duty resulting in misapplication of assets—Summary proceedings under 1890 (Winding up) Act, s. 10.]—It is the duty of an auditor to bring to bear on the work he has to perform that skill, care, and caution which a reasonably competent, careful, and cautious auditor would use; but he is not bound to be suspicious nor is he to be held liable for not detecting fraud where is nothing to arouse his suspicions or for relying on the representations of trusted and competent servants of the company.

The object of above Act, like 1862 Act, s. 165, is to furnish a summary remedy for recovery of the company's assets. It covers any breach of duty by an officer of the co. in his capacity of officer resulting in any improper misapplication of the assets or property of the co., but not every actionable wrong by an officer as such.—*Re*

KINGSTON COTTON MILL Co. (No. 2), No. 3661, post.

See, now, 1908 Act, s. 215, & generally, Sect. 36, sub-sect. 10, C., post.

3543. — Where company struck off register—Neglect to send in annual return—Personal liabilities remain.]—Where a co. neglects to send to the Registrar of Joint-Stock Cos. the annual return required by 1862 Act, s. 26, as amended by Companies Act, 1900 (c. 48), s. 19, & the Registrar strikes the name of the co. off the register under Companies Act, 1880 (c. 19), s. 7 (4), as a defunct co., the ct., upon an application under 1880 Act, s. 7 (5), to restore the name to the register, has no power to impose a penalty as a condition of restoring the name. By 1880 Act, s. 7 (4), the effect of striking the name of a co. off the register is to dissolve the co., but the personal liability of its officers for the engagements made as its agents is preserved, & the mere restoring of the name to the register does not relieve them from that liability. To relieve them from liability the ct. must make an order under sect. 7 (5).—*Re BROWN BAYLEY'S STEEL WORKS, LTD.* (1905), 21 T. L. R. 374.

See, now, 1908 Act, s. 242 (5).

3544. — For criminal acts of subordinates—Sale of beer by carman—Licensing Act, 1872 (c. 94), s. 3.]—Resp., who was the secretary of a brewery co. & had been appointed receiver & manager of it, was granted a licence to sell beer by retail at the brewery premises. He gave the draymen, who were under his control, orders never to deliver beer unless an order for it had been received by the co. at their office, & he took every care to prevent a violation of this order. The beer was sold for cash on delivery, the draymen being authorised to receive payment. None of the crates of beer bore the name of the customer for whom the beer was loaded on the van, there being no appropriation to any particular customer. A drayman sold beer on a certain occasion to a person at his own house who had not previously ordered it, & who paid the drayman for it. Resp. was charged with selling beer at an unlicensed place contrary to the above sect.:—*Held*: as the sale by the drayman was made without authority, resp. was not liable.—*BOYLE v. SMITH*, [1906] 1 K. B. 432; 75 L. J. K. B. 282; 94 L. T. 30; 70 J. P. 115; 54 W. R. 519; 22 T. L. R. 200; 21 Cox, C. C. 84, D. C.

Annotation:—Mentd. Elder v. Bishop Auckland Co-op. Soc. (1917), 86 L. J. K. B. 1412.

3545. Notice to clerk—In charge of office in absence of secretary—Whether notice to company.]—In the absence of evidence to the contrary the ct. will infer that a clerk in the registered office of a co. is, during business hours, & whilst the secretary is absent, so far in charge of the office that he has authority to receive a notice so as to make it a communication to the co.—*Re BREWERY ASSETS CORPN., TRUMAN'S CASE*, [1894] 3 Ch. 272; 63 L. J. Ch. 635; 71 L. T. 328; 43 W. R. 73; 38 Sol. Jo. 602; 1 Mans. 359; 8 R. 508.

See, further, BUILDING SOCIETIES, Vol. VII., p. 465, No. 64.

signed a letter agreeing that the bank, out of moneys coming to their hands from certain garnishee proceedings taken by the bank against debtors of the co., might retain "a sufficient amount fully to cover all your solr.'s costs, charges, & expenses, against you or against you & us, as between attorney & client or otherwise; as well as the costs, charges, & expenses of

your bank, of what nature or kind soever, & after the payment of such, in the second place, to hold the surplus, if any, to apply on your executions against us." This letter was signed without any authority from the board of directors of the co., although two members of the board were aware of it, & one of them, the vice-president

of the co., authorised it:—*Held*: not such an act as the officers of the co. were authorised in the discharge of their duties to perform; & although the bank granted the time asked for, they could not enforce payment of the amounts stipulated for.—*HAMILTON & PORT DOVER RY. Co. v. GORE BANK* (1873), 20 Gr. 190.—*CAN.*

SUB-SECT. 2.—THE SECRETARY.

A. Appointment and Position.

3546. Appointment—Agreement with promoters before company incorporated—Confirmatory resolution by directors under powers in articles.]—The promoters of a co., before its registration, entered into an agreement with B. to appoint him secretary to the intended co. for a period of five years on condition of his taking a certain number of shares. B. did so. He, & all the promoters, signed the memorandum & arts. of assocn. by the latter of which five of the promoters were appointed directors, & power was given to the directors to enter into an agreement with B. in the terms of the previous agreement. At the first meeting of the directors, a resolution was passed confirming the previous agreement with B. Before the expiration of the period of five years the co. went into liquidation:—*Held*: the directors' resolution did not constitute a new contract, but was merely an attempt to ratify a contract made before the formation of the co., & this the co. could not do; the mere signature of the arts. by the parties to the previous agreement did not put B. in any better position, & as there was no binding contract with the co. for the appointment for five years, B. had no claim in the winding up for damages for the termination of his office as secretary, but had a claim by way of *quantum meruit* for such work as he had done.—*Re DALL & PLANT, LTD.* (1889), 61 L. T. 206; 5 T. L. R. 585; 1 Meg. 338.

3547. Position—Whether servant of directors or company.]—The secretary of a joint-stock co. is the servant of the directors of the co., who are presumed to have control over him as such, & this presumption is not rebutted by the circumstance that the co. has ceased working.—*ELMES v. OGLE* (1851), 15 Jur. 180.

3548. ——— Liability for misrepresentations.]—*SMITH v. REED* (1886), 2 T. L. R. 442, C. A.

Annotation:—*Reid*. *Firbank's Exrs. v. Humphreys, Mowbray, etc. Charnwood Forest Ry.* (1886), 3 T. L. R. 49.

3549. ——— Liability for representations beyond scope of authority.]—The secretary of a co. is in the position of a servant, & has no power to bind the co. by representations beyond the scope of his instructions & duties.

The secretary of a co. in order to assist a shareholder in carrying out a fraud, falsely certified that certificates of shares had been deposited with him to meet certain transfers, when in fact no such certificates had been deposited:—*Held*: the co. were not thereby estopped from denying the right of the proposed transferee to be put upon the register of shareholders.—*WHITECHURCH (GEORGE), LTD. v. CAVANAGH*, [1902] A. C. 117; 71 L. J. K. B. 400; 85 L. T. 349; 50 W. R. 218; 17 T. L. R. 746; 9 Mans. 351, H. L.; *reversing* S. C. *sub nom. CAVANAGH v. WHITECHURCH (GEORGE), LTD.* (1900), 16 T. L. R. 303, C. A.

Annotations:—*Consd.* *Ruben v. Great Fingall Consolidated*, [1904] 2 K. B. 712. *Reid*. *Tendring Hundred Waterworks Co. v. Jones*, [1903] 2 Ch. 615. *Mentd.* *Hambro v. Burnand*, [1903] 2 K. B. 399; *Porter v. Moore*, [1904] 2 Ch. 367; *Comitti v. Maher* (1905), 22 T. L. R. 121; *Anglo-American Oil Co. v. Manning*, [1908] 1 K. B. 536; *Malcolm, Brunner v. Waterhouse* (1908), 24 T. L. R. 854; *Platt v. Rowe & Mitchell* (1909), 26 T. L. R. 49; *Lloyd*

v. Grace, Smith, [1911] 2 K. B. 489; *Fry v. Smellie*, [1912] 3 K. B. 282; *Brandon v. Michelham* (1919), 35 T. L. R. 617; *Doey v. L. & N. W. Ry.*, [1919] 1 K. B. 623.

See, also, No. 3325, *ante*.

3550. ——— Where no salary received—Whether disqualified as director as holding "office" under company.]—By the arts. of assocn. of a joint-stock co. it was provided that any director who should accept or hold any other office under the co. than that of manager, should thereupon be disqualified from being & should cease to be a director. A. had been appointed secretary at a salary, & whilst secretary he was elected a director, & appointed upon a committee to exercise certain powers of the directors; from the time of his election he received salary as a committeeman, but ceased to receive salary as secretary, though he continued to perform all the duties of the office:—*Held*: A. did not hold an "office" under the co. so as to disqualify him from being party as a director to the making of a call.—*IRON SHIP COATING CO. v. BLUNT* (1868), L. R. 3 C. P. 484; 37 L. J. C. P. 273; 16 W. R. 868.

3551. ——— Fiduciary—Right to retain commission for placing shares.]—The secretary & solr. of a co. is in a fiduciary position towards the co. & therefore is not entitled, in a winding up, to retain any commission for shares allotted to a client even where it had been advertised that any one introducing a client as a shareholder would be allowed a commission on the shares allotted, & the solr. of the co. had expressly stipulated for the advertised commission, & it had been resolved at a board meeting that this commission should be paid to him.—*Re STAPLEFORD COLLIERY CO., BARROW'S CASE* (No. 2) (1880), 42 L. T. 12; 28 W. R. 341.

3552. ——— When also vice-chairman—Member of staff.]—*BURLAND v. EARLE*, No. 3526, *ante*.

3553. ——— Where secretary of two companies—Whether notice notice to both companies.]—Where a man acts as secretary of two cos., it is not true as a general proposition that a fact which comes to his knowledge as secretary of one co. is notice to him as secretary of the other co. from the mere existence of the common relationship. In order to make it notice, it must be shown that it was his duty to the first co. to communicate his knowledge to the second co.—*Re FENWICK, STOBART & CO., LTD., DEEP SEA FISHERY CO.'S, LTD. CLAIM*, [1902] 1 Ch. 507; 71 L. J. Ch. 321; 86 L. T. 193; 9 Mans. 205.

3554. ——— Where member of partnership—Secretaryship belonging to partnership business—Partners not liable for frauds.]—Where a secretaryship held by one partner is included in the partnership business, the partners of the secretary are not liable for fraud committed by him outside his duties as secretary.—*TENDRING HUNDRED WATERWORKS CO. v. JONES*, [1903] 2 Ch. 615; 73 L. J. Ch. 41; 52 W. R. 61; 19 T. L. R. 720.

Annotation:—*Mentd.* *Lloyd v. Grace, Smith*, [1911] 2 K. B. 489.

See, generally, PARTNERSHIP.

3555. ——— Whether "manager"—Under 1862 Act, s. 26.]—Applt. was appointed secretary of a joint-stock co. registered on July 31, 1872. Before the formation of the co., applt. had entered

PART III. SECT. 29, SUB-SECT. 2.—A.

h. Appointment—Evidence of.]—In an action for wages as secretary of an incorporated co., pltf. relied on defts. having used & paid for goods ordered by him, & having paid for work done for their benefit also by his direction. Before the goods were ordered, defts. had notified pltf. that he was not the secretary of the co.:—

Held: the payment by the co. for the work & goods was not a recognition of the pltf.'s right to give the orders, or an acknowledgment that he was the secretary of the co.—*ANSLEY v. ALBERT MINING CO.* (1862), 10 N. B. R. 5 (All.) 391.—CAN.

3553 i. Position—Where secretary of two companies—Whether notice notice to both companies.]—A fact which comes

to the knowledge of a man as secretary of one co. is not notice to him as secretary of another co. from the mere existence of the common relationship.—*EDMONTON PORTLAND CEMENT CO. v. DUPLESSIS* (1916), 34 W. L. R. 250; 10 W. W. R. 514.—CAN.

k. ——— Whether demand on secretary demand on company.]—A demand upon a ry. co. to register the bonds was

Sect. 29.—The secretary and other officers and servants: Sub-sect. 2, A., B. & C. (a) & (b).]

into several contracts to enable the co. to acquire patents to carry out its objects, & he was a contracting party to a subsequent agreement, dated Dec. 29, 1872. He called a general meeting of the directors which was held on Dec. 9, 1872, & on Jan. 13, 1874, he threatened to call a general meeting. No general meeting was held in the year 1873, & no list of members as required by above sect. was forwarded during that year:—**Held:** (1) there was evidence upon which applt. might be held to be a “manager,” liable within sects. 26 & 27, for not forwarding the list of members; (2) inasmuch as he did not take any steps to call a general meeting in 1873, he could not defend himself against the information for not forwarding the list, by saying that no meeting had been held; (3) a general meeting of the co. ought to be held once in each calendar year.—**GIBSON v. BARTON** (1875), L. R. 10 Q. B. 329; 44 L. J. M. C. 81; 32 L. T. 396; 39 J. P. 628; 23 W. R. 858.

Annotations:—As to (1) **Consd. Re Canadian Land Reclaiming & Colonising Co., Coventry & Dixons' Case** (1880), 14 Ch. D. 660; **Re Western Counties Steam Bakeries & Milling Co.**, [1897] 1 Ch. 617. **Appld. R. v. Lawson**, [1905] 1 K. B. 541. As to (2) **Appld. Edmonds v. Foster** (1875), 45 L. J. M. C. 41; **Park v. Lawton**, [1911] 1 K. B. 588.

See, now, 1908 Act, s. 26.

3556. — Whether person taking part in formation or promotion—1890 (Winding up) Act, s. 10.]—H., in 1888, acted temporarily as secretary of a co. formed for the purchase of an hotel & gardens, the vendor of which had offered £2,000 to him & other persons if they would form such a co. H. received £250 of this amount to the knowledge of the other persons, who became the directors & the date & parties to the agreement under which he took this profit were stated in the prospectus issued to the public inviting share subscriptions. In May, 1894, the voluntary winding up of the co. was ordered to be continued under the supervision of the ct. A summons was taken out by the liquidator, under the above sect. asking that H. might be ordered to contribute to the assets £250 & interest as secret profit made by him in a fiduciary position, for which he must be held liable:—Held:** although the facts showed that H. was in every sense of the words a “person who had taken part in the formation or promotion of the co.,” within the above sect., yet there was no legal obligation on him to account to the co. for the money which he had received.—**Re SALE HOTEL & BOTANICAL GARDENS, LTD.****

held sufficiently made upon the assistant secretary, who, it was shown, performed all the duties of the secretary's office.—**Re THOMSON & VICTORIA RY. Co.** (1881), 9 P. R. 119.—**CAN.**

PART III. SECT. 29, SUB-SECT. 2.—B.

1. Extra remuneration—Illegality—Recovery back by company.]—By a resolution of the directors, the secretary of the co. had been authorised to sell the co.'s bonds, for which he was to be paid a commission at the rate of 5 per cent on the amounts received. Subsequently, at a time when they had no authority to do so, the directors converted the preferred stock held by certain shareholders into bonds, & paid the secretary for his services in making the conversion at the rate of 5 per cent on the amount of bonds thus disposed of. In an action to recover back from the secretary the money so received by him as commission:—**Held:** although the secretary

had received the commissions under mistake of law, yet, as he must be assumed to have had knowledge of the illegality of the transaction, the money could be recovered back by the co. Subsequently the scheme of conversion was approved of by a resolution of the shareholders, but it did not appear that they had been fully informed as to the arrangement for the payment of a commission to the secretary in that respect, in addition to his regular salary:—**Held:** the resolution of the shareholders had not the effect of ratifying the payment of the commissions.—**ROUNTREE v. SYDNEY LAND & LOAN Co.** (1907), 39 S. C. R. 614.—**CAN.**

m. Whether right to lien.]—The secretary-treasurer of a lumber co., who was also one of the incorporators thereof, held not entitled to a lien under the Woodman's Lien for Wages Act, R. S. B. C. 1911, c. 243, for the amount alleged to be owing him as salary,

Ex p. HESKETH (1898), 78 L. T. 368; 46 W. R. 617; 14 T. L. R. 344; 42 Sol. Jo. 416, C. A.

Annotation:—Mentd. Re Olympia (1898), 78 L. T. 159.

See, now, 1908 Act, s. 215.

3557. — Whether clerk or servant—Preferential Payments in Bankruptcy Acts, 1888 (c. 62), & 1897 (c. 19).]—A secretary to a co. may be a “clerk or servant” within 1888 Act, s. 1 (1) (b), but a secretary who does not give his whole time to the service of the co., & discharges the general duties of his office by a clerk appointed & paid by himself is not a “clerk or servant” within the sect.—**CAIRNEY v. BACK**, [1906] 2 K. B. 746; 75 L. J. K. B. 1014; 96 L. T. 111; 22 T. L. R. 776; 50 Sol. Jo. 697; 14 Mans. 58.

Annotations:—Mentd. Evans v. Rival Granite Quarries, [1910] 2 K. B. 979; **Sinnott v. Bowden**, [1912] 2 Ch. 414.

See, now, Bankruptcy Act, 1914 (c. 59), s. 331 (1) (b), & compare 1908 Act, s. 209 (1) (b).

3558. — 1908 Act, s. 209 (1) (b).]—**Re CALLENDER'S PAPER MANUFACTURING Co.** (1908), cited in Halsbury's Laws of England, Vol. V., p. 518.

Compare Nos. 3517–3519, ante.

3559. — Whether officer—Within 1862 Act, s. 165.]—Re MORVAH CONSOLS TIN MINING Co. MCKAY'S CASE (1875), 2 Ch. D. 1; 45 L. J. Ch. 148; 33 L. T. 517; 24 W. R. 49, C. A.

Annotations:—Mentd. Re Western Canada Oil Land & Works Co. (1875), 45 L. J. Ch. 5; **Phosphate Sewage Co. v. Hartmont** (1877), 5 Ch. D. 394; **Nant-y-glo & Blaينا Ironworks Co. v. Grave** (1878), 12 Ch. D. 738; **Re Ambrose Lake Tin & Copper Mining Co., Ex p. Taylor, Ex p. Moss** (1880), 14 Ch. D. 390; **Hirsche v. Sims**, [1894] A. C. 654.

See, now, 1908 Act, s. 215.

B. Remuneration.

3560. Gift on termination of employment by shareholders—No remuneration by company—Whether assessable to income tax.]—Applt. had been secretary & liquidator of a co. without any remuneration for his service, & on the termination of his employment he received a gift of money from the shareholders:—**Held:** the payment was not a profit of an office, but rather a testimonial for past services, & was not assessable to income tax under Income Tax Act, 1842 (c. 35), s. 146, r. 1, sched. E.—**COWAN v. SEYMOUR**, [1920] 1 K. B. 500; 89 L. J. K. B. 459; 122 L. T. 465; 36 T. L. R. 155; 64 Sol. Jo. 259, C. A.

See, generally, INCOME TAX.

Right to prove in winding up.]—See Sect. 36, sub-sect. 11, A. (c), post.

Compare Part IX., Sect. 10, post, & CLUBS & OTHER VOLUNTARY ASSOCIATIONS, Vol. VIII., pp. 514, 515, Nos. 60, 61.

although it was alleged, & apparently proved, that he had worked at loading, piling & watching the lumber on which he claimed the lien.—**VIPOND v. GALBRAITH & BRENNAN LAKE LUMBER Co., LTD.**, [1922] 2 W. W. R. 135; 65 D. L. R. 91.—**CAN.**

n. —.]—A petition presented under 1862 Act, ss. 100 & 138, by the liquidator of a co., which was being voluntarily wound up, to have the co.'s secretary ordained to deliver by his minute book is competent. A person who had been secretary of a co. prior to its liquidation has no right of retention or lien over its minute book for a debt due to him by the co.—**GLADSTONE v. M'CALLUM** (1896), 23 R. (Ct. of Sess.) 783; 33 Sc. L. R. 618; 4 S. L. T. 41.—**SCOT.**

o. —.]—The secretary of a co. has no lien over the book of the co. coming into his possession as secretary.—**BARTON HOTEL Co., LTD. v. COOK** (1899), 1 F. (Ct. of Sess.) 1190.—**SCOT.**

C. Powers.

(a) *In General.*

3561. Employment of clerk.]—*Semble*: to employ a clerk for necessary duties of the office of a co. is not within the scope of the secretary's authority.—*WEBB v. HARRIES* (1848), 12 L. T. O. S. 275.

3562. Admission on behalf of company—Receipt of letter.]—The secretary of a co. is not authorised to admit the receipt of a letter to him on behalf of the co.—*BRUFF v. GREAT NORTHERN RY. CO.* (1858), 1 F. & F. 344, N. P.

3563. Signature of memorandum to satisfy Statute of Frauds—Sale of houses—Company dealing in houses.]—An agreement for the sale of certain leasehold houses, the property of a co. was signed as follows: "A., Secretary for the B. Co." 1867 Act, s. 37 (2), provides that such an agreement may be signed on behalf of the co. by any person acting under the express or implied authority of the co. It appeared from the memorandum of assocn. that one of the objects of the co. was to sell houses. On demurrer:—*Held*: (1) as selling houses was part of the ordinary business of the co. the secretary in signing was acting under the implied authority of the co.; (2) the agreement was sufficient to satisfy Stat. Frauds.—*BEER v. LONDON & PARIS HOTEL CO.* (1875), L. R. 20 Eq. 412; 32 L. T. 715.

Annotations:—As to (2) *Reid*. *Cartwright v. Miller* (1877), 36 L. T. 398; *Rositer v. Miller* (1877), 5 Ch. D. 648.

3564. — Charge on lands.]—A statement signed by the secretary of a co. that certain properties were hypothecated to the trustees for the bondholders:—*Held*: to be a sufficient memorandum in writing.—*GILES v. NUTHALL* (1889), 6 T. L. R. 33, C. A.

See, generally, CONTRACT, Vol. XII., pp. 155 *et seq.*, Nos. 1099 *et seq.*

Convention of meetings.]—*See* Nos. 3735, 3743, *post*.

Registration of transfers.]—*See* No. 2432, *ante*.

3565. In connection with legal proceedings—To commence action.]—A co. was incorporated in England for the purpose of selling in England tyres made in Germany by a German co., who held the bulk of the shares in the English co. The holders of the remaining shares, save one, & all the directors were Germans resident in Germany. The one share was registered in the name of the secretary, who was born in Germany, but resident in England & had become a naturalised British subject. After the outbreak of the war between England & Germany an action was commenced in the name of the English co. by specially indorsed writ, issued by the co.'s solrs. on the instructions of the secretary, for payment of a trade debt. In answer to a summons for judgment under R. S. C. Ord. 14, defts. alleged (1) that the co. was an alien enemy co. & that payment of the debt would be a trading with the enemy; (2) that the action was commenced without the authority of the co. The master gave leave to pltf. co.

to sign final judgment, & his order was affirmed by the judge in chambers & by the Ct. of Appeal:—*Held*: the action was commenced without authority & ought to be struck out as irregular.—*DAIMLER CO. LTD. v. CONTINENTAL TYRE & RUBBER CO. (GREAT BRITAIN), LTD.*, [1916] 2 A. C. 307; 85 L. J. K. B. 1333; 114 L. T. 1049; 32 T. L. R. 624; 60 Sol Jo. 602; 22 Com. Cas. 32, H. L.; *revisg. S. C. sub nom. CONTINENTAL TYRE & RUBBER CO. (GREAT BRITAIN), LTD. v. DAIMLER CO., LTD.*, [1915] 1 K. B. 893, C. A.

Annotations:—*Mentd.* *The Poona* (1915), 84 L. J. P. 150; *R. v. L. C. C., Ex p. London & Provincial Electric Theatres*, [1915] 2 K. B. 466; *The St. Tudno*, [1916] P. 291; *Re Armayo Francke Mines*, [1917] 1 Ch. 451; *Clapham S. S. Co. v. Handels-en-Transport-Maatschappij Vulcaan of Rotterdam*, [1917] 2 K. B. 639; *Continho Caro v. Vermont* [1917] 2 K. B. 587; *Re Hilckes, Ex p. Muhesa Rubber Plantations*, [1917] 1 K. B. 48; *Tingley v. Müller*, [1917] 2 Ch. 144; *Elders & Fyffes v. Hamburg Amerikanische Packetfahrt Act, Elders & Fyffes v. Hamburg-Columbien Bananen Act* (1918), 34 T. L. R. 275; *Ertel Bieher v. Rio Tinto Co., Dynamit Act v. Rio Tinto Co., Vereinigte Königs & Laurahütte Act v. Rio Tinto Co.*, [1918] A. C. 260; *Naylor, Benzoni v. Krainische Industrie Gesellschaft*, [1918] 1 K. B. 331; *Stevenson v. Act Für Carton-nagen-Industrie*, [1918] A. C. 239; *The Hamborn*, [1919] A. C. 993; *The Nordam (No. 2)*, [1919] P. 255; *Rodriguez v. Speyer*, [1919] A. C. 59; *Re Münster*, [1920] 1 Ch. 268; *The Naxos* (1920), 123 L. T. 556; *The Vesta*, [1920] P. 385; *Re Badische Co., Bayer Co., etc.*, [1921] 2 Ch. 331; *Re Ferdinand, Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107; *I. R. Comrs. v. Sansom* (1921), 8 Tax Cas. 20; *Russian Commercial & Industrial Bank v. British Bank for Foreign Trade*, [1921] 2 A. C. 438; *Bradbury v. English Sewing Cotton Co.*, [1922] 2 K. B. 569; *Re British Incandescent Mantle Works* (1923), 129 L. T. 126; *Re Rush, Warre v. Rush*, [1923] 1 Ch. 56; *Russian Commercial & Industrial Bank v. Comptoir D'Escompte de Mulhouse* [1923] 2 K. B. 630.

3566. — To make affidavit under Ord. 14, r. 1, on behalf of plaintiff company.]—Where pltf. in an action are a corpn., & the writ has been specially indorsed under the above rule, the secretary of the corpn. cannot make an affidavit as to pltf.'s belief, on an application to sign judgment, within the meaning of the rule.—*BANK OF MONTREAL v. CAMERON* (1877), 2 Q. B. D. 536; 46 L. J. Q. B. 425; 36 L. T. 415; 25 W. R. 593, C. A.

Annotations:—*Mentd.* *Shelford v. Louth & East Coast Ry.* (1879), 4 Ex. D. 317; *Re Wilson*, [1916] 1 K. B. 382.

— To present bankruptcy petition on behalf of company.]—*See* BANKRUPTCY & INSOLVENCY, Vol. IV., p. 111, Nos. 993–997.

(b) *To Bind Others.*

3567. Whether company bound.]—*RENNIE v. WYNN*, No. 3427, *ante*.

3568. — Purchase of goods for company's trade—In fact unauthorised.]—*SMITH v. HULL GLASS CO.*, No. 3514, *ante*.

3569. — By representations to induce purchase of shares—General rule.]—The secretary of a co. has no general authority to make representations to induce persons to take shares in a co.; so that a person, who is induced to take shares in a co. by a fraudulent misrepresentation, not authorised by or known to the officers of the co. entitled to make representations, of the secretary of a co., is not entitled to maintain an

PART III. SECT. 29, SUB-SECT. 2.—
C. (a).

*p. Accommodation acceptance made without authority.]—*The secretary of deft. co., whose authority was limited to the acceptance of drafts, indorsed, in the co.'s name, a number of drafts in which the co. had no interest, for the accommodation of C. The trial judge found that the pltf. bank, where the drafts were discounted, had knowledge that the indorsements were made for the accommodation of C.:—*Held*: deft. was not liable.

Semble: where the directors might,

under the power given them, delegate to the secretary power to indorse for the co., the bank, taking the paper *bond fide*, would be entitled to assume that the secretary had such power, although it had not, as a matter of fact, been delegated.—*UNION BANK v. EUREKA WOOLLEN MANUFACTURING CO.* (1900), 33 N. S. R. 302.—CAN.

PART III. SECT. 29, SUB-SECT. 2.—
C. (b).

*a. Whether company bound—By receipt given to secretary.]—*C. bought shares from S., a shareholder &

secretary of a co.; S. having embezzled moneys of the co. The co. gave S. a receipt for £980 "in full of all demands." Subsequently co. discovered that S. was indebted to them in further sum:—*Held*: the co. was under the circumstances bound by receipt given to S. & order made to register C.—*RE GIPPSLAND STEAM NAVIGATION CO., Ex p. CHUCK* (1875), 1 V. L. R. 141.—AUS.

*r. — By representation to transfer of shares.]—*Where the vendor of shares in a co. executed a transfer of them to the purchaser, & lodged it for

Sect. 29.—The secretary and other officers and servants: Sub-sect. 2, C. (b) & D.; sub-sect. 3, A.]

action against the co. for the rescission of the contract or for damages for such misrepresentation.

—**NEWLANDS v. NATIONAL EMPLOYERS' ACCIDENT ASSOCN., LTD.** (1885), 54 L. J. Q. B. 428; 53 L. T. 242; 49 J. P. 628, C. A.

Annotation:—Follid. Barnett v. South London Tram. Co. (1887), 18 Q. B. D. 815.

3570. — Enlargement of time to debtor—
Authority.]—Pltf., in order to secure repayment of a sum of money lent to him by defts., assigned by deed in the ordinary form of a bill of sale all his household furniture, etc., subject to a proviso for redemption if the sum was paid by weekly instalments; provided that if pltf. should make default in payment of the sum or any part thereof when it should become due, the whole of the moneys secured should be then immediately due & payable, & it should be lawful for defts. to take possession of the goods & sell them. Pltf. being unable to pay one of the instalments went to the offices of debt., a co., & saw their secretary, who consented to wait till a later day; but before that day possession of the goods was taken, & on a subsequent day, after the tender of a sum which pltf. had been told would be sufficient to cover all claims, the goods were removed & sold. In an action to recover damages for the seizure & sale:—*Held*: (1) parol evidence of the time having been enlarged for payment of the money was admissible, as it showed that there had been no "default" within the meaning of the deed; (2) the secretary had authority to bind the co. & therefore pltf. was entitled to maintain the action.—**ALBERT v. GROSVENOR INVESTMENT CO.** (1867), L. R. 3 Q. B. 123; 8 B. & S. 664; 37 L. J. Q. B. 24.

Annotation:—As to (1) Dbtd. Williams v. Stern (1879), 5 Q. B. D. 409.

3571. — Misrepresentation—In absence of authority.]—Misrepresentations made by a secretary or manager, in the absence of authority, do not bind the co. It cannot be assumed that he was an agent to commit a fraud.—*Re DEPOSIT & GENERAL LIFE ASSURANCE CO., AYRE'S CASE* (1858), 25 Beav. 513; 27 L. J. Ch. 579; 31 L. T. O. S. 192; 4 Jur. N. S. 596; 53 E. R. 733.

Annotations:—Refd. Re Liverpool Borough Bank, Duranty's Case (1858), 26 Beav. 268; *Re Northumberland & Durham District Banking Co., Ex p. Bigge* (1858), 28 L. J. Ch. 50; *Leeds Banking Co., Ex p. Barrett* (1865), 11 Jur. N. S. 234.

3572. — Stock fraudulently issued.]—Where the secretary of a co. had taken part with another person in fraudulently issuing debenture-stock of his co. in excess of its powers, but without any benefit to the co., & on inquiry made of him by pltf., had represented without authority from the co. that the stock was good:—*Held*: the co. was not liable.—**BRITISH MUTUAL**

registration with the co.'s secretary, his liability for calls is not lessened even if, after lodgment of the script for transfer, he is told by the secretary that by reason of the sale & transfer he was no longer a shareholder in the co., nor liable as such, in the absence of anything to show that the secretary was authorised to bind the co. by such statement.—**ESSENDON LAND, TRAMWAY & INVESTMENT CO., LTD. v. UPTON** (1891), 17 V. L. R. 248.—**AUS.**

s. — Contract of insurance — Knowledge of absence of authority.]—Pltf. presented to the secretary-treasurer of debt. co. a proposal to insure the property of the co. according to a plan which he claimed would effect a reduction of twenty-five per cent in the rate of premium then being

paid. The officer of the co., to pltf.'s knowledge, had no authority to make a contract, but he agreed to submit the proposition & to recommend its acceptance, & in the belief that his recommendation would be approved of, prepared a cheque for the amount to which pltf. would be entitled. The president of the co. refused to give his assent to the proposition:—*Held*: it having been shown, to the knowledge of pltf., that the officer had no authority to bind the co., it would only be some act of the directors—a holding out of the officer as authorised to contract, or knowingly permitting him to assume that character—which would estop the co. from saying that he had no authority to bind them by his conduct. Also, in the absence of authority on the part of the officer to bind the co.,

& in the absence of any representation or warranty of such authority on the part of the officer, pltf. could not succeed against either the co. or the officer.—**DOUGLAS v. EASTERN CAR CO.** (1915), 49 N. S. R. 208.—**CAN.**

t. — Misrepresentation—Whether company estopped by negligence.]—Misrepresentations by a shareholder which induce a member of the public to take up shares in the co., will not entitle the person so induced to a rescission of the contract unless it can be shown that the shareholder was a duly authorised agent of the co. A co. resolved to double its capital & left it to the directors to take the necessary steps to effect the issue of new shares. It was proved that the secretary was the "strong man" in

BANKING CO. v. CHARNWOOD FOREST RY. CO. (1887), 18 Q. B. D. 714; 56 L. J. Q. B. 449; 57 L. T. 833; 52 J. P. 150; 35 W. R. 590, C. A.

Annotations:—Distd. Bishop v. Balkis Consolidated Co. (1890), 25 Q. B. D. 512. *Apld. Thorne v. Heard*, [1894] 1 Ch. 599. *Consd. Whitechurch v. Cavanagh*, [1902] A. C. 117; *Hambro v. Burnand*, [1903] 2 K. B. 399; *Ruben v. Great Fingall Consolidated*, [1904] 2 K. B. 712. *Apld. Anglo-American Oil Co. v. Manning*, [1908] 1 K. B. 536. *Consd. Lloyd v. Grace, Smith*, [1912] A. C. 716. *Refd. Crapp v. East Stonehouse L. B.* (1889), 5 T. L. R. 501; *Tomkinson v. Balkis Consolidated Co.* (1891), 60 L. J. Q. B. 558; *Spooner v. Browning, Todd & Whish.* (1897), 77 L. T. 685; *Trott v. National Discount Co.* (1900), 17 T. L. R. 37; *Malcolm, Brunner v. Waterhouse* (1908), 24 T. L. R. 854. *Mentd. Moss S.S. Co. v. Whinney*, [1912] A. C. 254; *Re Jubilee Cotton Mills*, [1923] 1 Ch. 1.

3573. — — — — —.]—A firm of contractors applied to pltf. for an advance of money, offering as security an assignment of retention money which the contractors alleged to be in the hands of defts., & payable to them upon the completion of their contract. Pltf. made inquiries, & were informed by defts.' secretary that a certain amount of retention money in the hands of defts. would become payable to the contractors upon the completion of their contract. As a fact this was not so; but pltf., on the faith of these representations, advanced money to the contractors, taking as security an assignment of the retention money:—*Held*: in an action by pltf. as assignees of the retention money, it was not within the scope of a secretary's duty to make such representations, & therefore defts., in the absence of any evidence to show that the secretary had authority to make the representations which he made, were not estopped from denying that the retention money was due.—**BARNETT v. SOUTH LONDON TRAMWAYS CO.** (1887), 18 Q. B. D. 815; 56 L. J. Q. B. 452; 57 L. T. 436; 35 W. R. 640; 3 T. L. R. 611, C. A.

Annotations:—Refd. Capel v. Sim's Ships Compositions Co. (1888), 57 L. J. Ch. 713; *Whitechurch v. Cavanagh*, [1902] A. C. 117; *Tendring Hundred Waterworks Co. v. Jones*, [1903] 2 Ch. 615.

3574. — — — — —.]—**WHITECHURCH (GEORGE), LTD. v. CAVANAGH**, No. 3549, *ante*.

3575. — — — — —.]—**Unknown to company.]—****NEWLANDS v. NATIONAL EMPLOYERS' ACCIDENT ASSOCN., LTD.**, No. 3569, *ante*.

See, also, No. 3195, *ante*.

3576. — Forgery—Directors' signatures to cheques—Whether company estopped by negligence.]—Three directors of a limited co., of whom one was the chairman, appointed the son of the chairman as secretary. Some years before, to the knowledge of the chairman, the son had forged his name, but since then down to the time of his appointment he had lived apparently a blameless life. With the directors' consent the secretary had charge of all the books of the co., including the cheque-book & pass-book, & by means of an elaborate system of fraud, not only

succeeded in forging a director's name to cheques which were duly honoured by the bank, but for a long period escaped detection. In an action against the bank to recover the amount of the forged cheques honoured & paid:—*Held*: the limited co. was not estopped by negligence from recovering the amount of such forged cheques from the bank.—LEWES SANITARY STEAM LAUNDRY CO., LTD. v. BARCLAY & CO., LTD. (1906), 95 L. T. 444; 22 T. L. R. 737; 11 Com. Cas. 255.

Annotations:—*Consd.* London Joint Stock Bank v. Macmillan & Arthur, [1918] A. C. 777. *Refd.* Kepitigalla Rubber Estates v. National Bank of India, [1909] 2 K. B. 1010.

— Of share certificate.]—*See* No. 1794, *ante*.

Whether directors bound.]—*See* Nos. 98, 3548, *ante*.

Whether secretary's partners bound.]—*See* No. 3554, *ante*.

D. Liabilities.

3577. When fraudulent reports issued—Signed by directors.]—CULLEN v. THOMSON, No. 3525, *ante*.

3578. Whether personally liable—Agreement for lease—As trustee for company.]—KAY v. JOHNSON, No. 3170, *ante*.

— On bills of exchange, promissory notes & negotiable instruments—Effect of signature with or without qualification.]—*Sec, generally*, AGENCY, Vol. I., pp. 628 *et seq.*, 643 *et seq.*, & BILLS OF EXCHANGE, PROMISSORY NOTES & NEGOTIABLE INSTRUMENTS, Vol. VI., pp. 112 *et seq.*

3579. Negligence in preparation of balance-sheets—Dividends improperly paid—Application of Statute of Limitations.]—MUNICIPAL FREEHOLD LAND CO., LTD. v. POLLINGTON, No. 3061, *ante*.

3580. Criminal liability—Embezzlement—What must be proved.]—To support a charge of embezzlement against the secretary of a co., whose duty it was to receive moneys & pay wages, etc. out of the said moneys, & to account for the balance, proof must be given of a specific appropriation of a particular sum of money.—R. v. WOLSTENHOLME (1869), 11 Cox, C. C. 313.

3581. — Larceny Act, 1861 (c. 96), s. 84—Circulation of false reports.]—The mere fact that a report & balance sheet prepared & published by the secretary of a public co. contains errors or misstatements, does not afford "reasonable & probable cause" for charging him criminally under Larceny Act, 1861 (c. 96), s. 84, & will be no defence to an action for malicious prosecution brought by him if he has been so charged, unless some proof be given that he made & circulated the report & balance-sheet as a wilful falsehood & with a fraudulent intent.—AYRES v. ELBOROUGH (1870), 22 L. T. 106, N. P.

3582. — Committal order for non-payment of rates—Name on rate book for company's premises.]—R. v. EGERTON, *Ex p.* MUNBY (1902), 46 Sol. Jo. 452, D. C.

— Licensing Act, 1872, s. 3—Sales of beer by carmen.]—*See* No. 3544, *ante*.

the co. & that the whole of the business was done by him. At the time when one would have expected that canvassers would have been appointed to sell shares, S. interviewed several persons in order to induce them to take up shares. It was proved that he had previously only acted as agent for the co. to sell loan certificates. It was also proved that in one interview at least he had a letter of introduction from the secretary in which he was described as "our superinten-

dent" & a request was made for every assistance in his efforts to further the interests of the co.:—*Held*: this amounted to a holding out by the secretary that S. was an agent of the co. for the purpose of disposing of the new shares, & as the directors had left everything to the secretary in connection with the steps to be taken to have the new shares taken up, he was authorised to appoint S. as canvasser to dispose of the shares, & the co. was therefore liable for misrepresentations

Secretary acting as manager.]—*See* No. 3555, *ante*.

Compare Part IX., sect. 10, *post*, & Part XIV., sect. 2, sub-sect. 6, *post*.

SUB-SECT. 3.—MANAGERS.

A. Appointment and Position.

3583. Appointment—Capacity—Limited company.]—*Re* BULAWAYO MARKET & OFFICES CO., LTD., No. 2824, *ante*.

3584. — Subscribers of memorandum subject to confirmation by general meeting—Appointment not confirmed.]—Defts. were a joint-stock co., incorporated by the registration of a memorandum of assocn. under 1856 Act, but no arts. of assocn. were executed. Before the first general meeting the subscribers of the memorandum of assocn., acting as directors of the co., appointed one of their own number manager of the mine, at a salary of £350 a year:—*Held*: under the provisions contained in Table B. the subscribers of the memorandum of assocn., as directors, had power to make the appointment, & it was not illegal either at common law or otherwise.—EALLES v. CUMBERLAND BLACK LEAD MINE CO., LTD. (1861), 6 H. & N. 481; 30 L. J. Ex. 141; 3 L. T. 861; 7 Jur. N. S. 169; 158 E. R. 198.

3585. Position—Manager of two companies—Whether agent of each—Payments by one to the other through manager.]—A building society & a finance co. had some common directors & a common manager. The society had no power by their rules to lend money on deposit. They deposited money from time to time with the finance co., & repayments were from time to time made. Ultimately a balance of £375 was called in, & a cheque was drawn for it by the finance co., & was given to the manager to pay the building society. He misappropriated the money. A bill was filed by the trustees of the building society against the co. to recover the money:—*Held*: the manager held the money as agent for the finance co. until he paid it to some one authorised to give a receipt for it on behalf of the building society; as, therefore, he never did this, the money must be taken to be still in the hands of the finance co., & being trust money, a suit to recover it was maintainable.

A decree for repayment with interest was accordingly made.—HARDY v. METROPOLITAN LAND & FINANCE CO. (1872), 7 Ch. App. 427; 41 L. J. Ch. 257; 26 L. T. 407; 20 W. R. 425, L. JJ.

Annotation:—*Mentd.* *Re* Coltman, Coltman v. Coltman (1881), 19 Ch. D. 64.

3586. — Trustee—Patent taken out in own name for company.]—An American corpn. employed M. as their agent & manager in England. His relationship with them was one of the closest & most confidential character. M. took out three patents & employed them in the business of the corpn. He was subsequently dismissed, & then claimed to restrain the corpn. from using the patented inventions. The corpn. brought an

made by S.—ALEXANDER v. AFRICAN INVESTMENT & CREDIT CO. (1917), 38 N. L. R. 133.—S. AF.

PART III. SECT. 29, SUB-SECT. 3.—A.

a. Appointment—By provisional directors.]—Pltf. was appointed by the board of provisional directors of a co. to be a director, & was also appointed manager before the co. was organised. In an action for salary or compensation for services rendered, in which it was

Sect. 29.—The secretary and other officers and servants: Sub-sect. 3, A., B. & C.]

action against him for a declaration that he was a trustee of the patents for them, but at the trial they abandoned the case as to one patent:—*Held*: under the circumstances the degree of good faith due from M. to the corpn. was little, if at all, less than that due from a partner to his firm; &, having regard to the nature & scope of his employment & to the obligations & duties arising therefrom, to the trust reposed in him & to his own conduct, he could not hold the two patents against the corpn.—*WORTHINGTON PUMPING ENGINE CO. v. MOORE* (1902), 19 T. L. R. 84; 20 R. P. C. 41.

Annotations:—*Mentd.* *Richmond v. Wrightson* (1904), 22 R. P. C. 25; *Hop Extract Co. v. Horst* (1919), 36 R. P. C. 177.

3587. Vacation of office—By removal—Provision of contract of service.—By the draft of a contract originally made between a joint-stock co. & their manager, it was provided that the manager should be removed without the concurrence of the whole committee of management, & that upon removal he should receive such compensation as the committee should adjudge, but the contract was not signed. A new contract was afterwards signed, by which the manager was removable by a majority consisting of two-thirds of the committee; in which new contract there was no provision for compensation upon removal. The manager was removed by a vote of two-thirds of the committee:—*Held*: the removal was valid, & no compensation could be recovered, either under the contract or by implication of law.—*COMMERCIAL BANK OF SCOTLAND v. POLLOCK* (1829), 4 Bli. N. S. 543; 5 E. R. 193, II. L.

3588. — By winding up of company.—By arts. of assocn. of a co. it was provided that, in case of the dismissal of S., the manager, he should be paid the full amount of money paid upon his shares. A resolution was passed to wind up the co., & S. was appointed liquidator. S. had paid £2000 on his shares, & received £400 for remuneration as liquidator:—*Held*: the winding-up was equivalent to a dismissal of S., & he was entitled to prove in the winding up for £2000, subject to a set-off of the £400.—*Re IMPERIAL WINE CO., SHIRREFF'S CASE* (1872), L. R. 14 Eq. 417; 42 L. J. Ch. 5; 27 L. T. 367; 20 W. R. 966.

Annotations:—*Consd.* *Reid v. Explosives Co.* (1886), 56 L. J. Q. B. 68; *Midland Counties District Bank v. Attwood*, [1905] 1 Ch. 357.

3589. — Where appointment to be entered on minutes—No entry within reasonable time.—*TOMS v. CINEMA TRUST CO., LTD.*, [1915] W. N. 29.

3590. Whether office of company place of abode—Income tax—Service of notice.—By Taxes Management Act, 1880 (c. 19), s. 16 (e), it is provided that "all notices or forms required or allowed to be served on any person may be either delivered to such person or left at the usual or last known place of abode of such person."

B. was the manager of a co. having its registered office in the City of London. The co. did no business, & B. who resided at W., was very rarely in attendance at the office. Various notices relating to demands for income tax under sched. E. were addressed to B. at the office of the co., but in fact such notices never were delivered to him, & he knew nothing of them:—*Held*: there was no

rule of law which made the office of the co. the "usual or last known place of abode" of the manager or other official of the co.—*BERRY v. FARROW*, [1914] 1 K. B. 632; 83 L. J. K. B. 487; 110 L. T. 104; 30 T. L. R. 129.

Annotation:—*Mentd.* *G. W. Ry. v. Bater*, [1922] 2 A. C. 1.

Managing directors.—See Sect. 28, sub-sect. 9, *ante*.

B. Remuneration.

3591. Power of directors—Remuneration payable after cessation of concern.—(1) The governing body of a joint-stock co. have no right to do acts out of the common routine of the co.'s business except such as they are authorised by their deed of settlement to do.

(2) Where, in pursuance of a prior contract, the directors of a co. by deed agree to give to a general manager a remuneration which may by possibility be payable after the cessation of the concern, such instrument is not only proper but valid, under the deed of settlement, where it gives the directors power to pay & allow to the general manager, etc., such remuneration as they shall think proper, & to confirm all acts done by persons acting as directors in the formation of the co.

(3) Where power is given to the directors for the time being, of a co., at a general meeting, to do certain acts, the words "general meeting" do not import that the act shall be done by the "general meeting," but that the directors themselves have the power to do those acts, provided they are done at a general meeting.—*WILKINS v. ROEBUCK* (1858), 4 Drew. 281; 6 W. R. 644; 62 E. R. 109.

Annotation:—*As to* (2) *Refd.* *Re State Fire Insee., Ex p. Morrison's Assignees* (1867), 36 L. J. Ch. 634.

3592. When remuneration commences—After first public allotment—Where no allotment made—Damages for wrongful dismissal.—*SMITH v. CHARING CROSS, EUSTON, & HAMPSTEAD RY. CO.* (1904), 20 T. L. R. 465, C. A.

3593. Remuneration by commission—Commission shared with members—No concern of company.—*SELLERS v. NEWTON* (1891), 7 T. L. R. 554.

3594. — Based on profits—Deduction of excess profits duty.—By an agreement of service made in 1913 between a co. & its manager it was provided that whenever the profits of the co. made during the financial year were more than sufficient to pay the preference dividends, & also a dividend of 7 per cent. on the ordinary shares, the manager, in addition to his fixed salary, should be paid by way of commission a sum equal to 5 per cent. of the excess. The co. made excess profits within the meaning of the agreement.

Upon a summons raising the question whether, before ascertaining such excess, the co. was or was not entitled to deduct the excess profits duty payable under the Finance (No. 2) Act, 1915 (c. 89), & the Finance Act, 1916 (c. 24):—*Held*: the excess profits duty was a contribution to the Exchequer of a proportion of the co.'s profits standing on much the same footing as the income tax, & ought not to be deducted before ascertaining the excess profits on which the manager's commission was to be calculated.—*HOLLINS (W.) & CO., LTD. v. PAGET*, [1917] 1 Ch. 187; 86 L. J. Ch. 287; 116 L. T. 9; 61 Sol. Jo. 170.

Annotations:—*Distd.* *Re Condran, Condran v. Stark*, [1917]

shown that the services rendered had not resulted in any benefit to the co., & that the co. had never gone into operation:—*Held*: as he was not appointed by bye-law approved of by the shareholders, & had no contract

under seal, he could not recover.—*BIRNIE v. TORONTO MILK CO.* (1902), 23 C. L. T. Occ. N. 11; 5 O. L. R. 1; 1 O. W. R. 736.—*CAN.*

b. *Right to preference—Assignments Act (Sask.), s. 27.*—The duly

employed manager of a co. is entitled to the preference given by above sect. although he was also a director of the co.—*HIVES v. IMPERIAL CANADIAN TRUST CO.* (1916), 34 W. L. R. 433; 10 W. W. R. 596; 9 Sask. L. R. 248.—*CAN.*

Sect. 29.—The secretary and other officers and servants: Sub-sect. 3, C. & D.; sub-sect. 4, A.]

—Whether within ordinary course of business.]

—The business of a co. was that of importers & dealers in tinned ox-tongues & other provisions. H. was appointed manager of the co.'s business in South America, "to take the entire charge of the interests of the co. there." No express authority was conferred on him to sign or accept bills or promissory notes on behalf of the co. He was desirous of entering into a contract with L. for the supply of ox-tongues to the co. in South America. L. refused to enter into a contract unless a guarantee was given by some third person, & at the request of H., S. agreed to give the required guarantee, which he did by depositing £1000 in a bank to the order of L. As a counter-security to S., H. gave him a promissory note for £1000 signed by him "in representation of" the co. The co. made default in carrying out the provisions of the contract with L., & under a power contained in it, he forfeited the deposit, which was paid over to him at the bank. No goods were supplied to the co. under the contract. The co. never recognised the promissory note, & it was dishonoured at maturity. The co. being in liquidation, S. claimed to prove in the winding up upon the note:—*Held*: it not being shown that the giving of the note was necessary for the carrying on of the business of the co., or that it was in the ordinary course of the business of such a co., the note was not binding upon the co., & the claim in respect of it could not be admitted.—*Re CUNNINGHAM & Co., LTD., SIMPSON'S CLAIM* (1887), 36 Ch. D. 532; 57 L. J. Ch. 169; 58 L. T. 16.

3604. — What may be delegated—Power expressly conferred on directors.]—*Re COUNTY PALATINE LOAN & DISCOUNT CO., CARTMELL'S CASE*, No. 3158, *ante*.

3605. — Power to conduct department

without interference by directors—Supreme control vested in directors by articles.]—An art. of assocn. of a limited co. provided that "the governing directors as such should have the supreme control in the management & affairs of the co."

A special agreement made between the co. & manager of a department provided "that the department & all extensions of the same should be under the sole management of the manager in all respects, & he should have full power to conduct in a reasonable manner the practical & commercial business of the same without in any way being interfered with by the governing directors or board of directors" with certain exceptions:—*Held*: the special agreement was *ultra vires* of the arts. of assocn.—*HORN v. FAULDER (HENRY) & Co., LTD.* (1908), 99 L. T. 524.

D. Liabilities.

3606. For fraudulent reports—Not protected as servants of directors.]—*CULLEN v. THOMSON*, No. 3525, *ante*.

3607. For dividend improperly paid—Based on inaccurate accounts.]—*LEEDS ESTATE BUILDING & INVESTMENT CO. v. SHEPHERD*, No. 3668, *post*.

3608. Criminal liability—Under Licensing Act, 1872 (c. 94), s. 3—Sale of liquors to shareholders.]—The manager of a co., formed for the purpose of providing a club-house, hotel, & other conveniences, for the use of its shareholders, cannot be convicted under Licensing Act, 1872 (c. 94), s. 3, for the sale, at the club, of intoxicating liquors to such shareholders.

It was clear that what the manager did was not "selling" in the ordinary sense of the word "sale." There was nothing in the nature of a sale between him & the members; his was merely the hand which supplied them with the liquors he purchased for them. To hold that to be a selling of liquors by him would be straining the law & going far beyond its real purport (*LORD*

BOYCE v. McDONALD (1893), 9 Man. L. R. 297.—CAN.

d. — — — — —.]—The general manager of a co. cannot make a binding agreement for the sale of its real estate without special authorisation for that purpose.—*CALLOWAY v. STOBART, SONS & Co.* (1904), 35 S. C. R. 301.—CAN.

e. — — — — —.]—The manager of deft. co. engaged pltf. as foreman. There was a written contract of hiring, but no period of hiring was mentioned therein. This was signed by pltf. & by the manager, using the name of defts. & his own name, & by 3 directors, but the corporate seal was not affixed. The pltf. began work on Mar. 15 & continued until July 2 following, when he was summarily dismissed by the general manager:—*Held*: the contract was binding on defts., being made by an official who, on the uncontradicted evidence, had a general authority for that purpose.—*ARMSTRONG v. TYNDALE QUARRY CO.* (1910), 16 W. L. R. 111; 20 Man. L. R. 254.—CAN.

f. — — — — —.]—In an action brought to recover compensation from the deft. co. for surgical attendance rendered by pltf. at the request of defts.' manager to an employee, who had been injured whilst in deft.'s works:—*Held*: the manager had implied authority to employ a physician in the circumstances.—*LEDWELL v. CHARLOTTETOWN LIGHT & POWER CO.* (1913), 13 E. L. R. 225.—CAN.

g. — — — — —.]—*ROSS, SKOLFIELD & Co. v. STATE LINE S.S. CO.* (1875), 13 Sc. L. R. 78.—SCOT.

h. — — — — — Only as going con-

cern.]—*Seemle*: even if a general manager of a co. positively agreed that any winding-up proceeding that should be necessary should be taken in O. rather than elsewhere, this would not bind the co., for the business of the manager is to manage a going concern.—*Re BRITON MEDICAL & GENERAL LIFE ASSOCN., LTD.* (1886), 12 O. R. 441.—CAN.

k. — — — — — Arrest.]—The manager of a co. directed the prosecution of pltf. for larceny of the co.'s property. The solicitor of the co. advised the arrest, prepared the information & concluded the prosecution. The by-laws did not provide for taking such proceedings. There was no evidence of express authority from the co. or that the arrest was within the scope of the manager's duties:—*Held*: the co. was not liable for the arrest.—*MILLER v. MANITOBA LUMBER & FUEL CO.* (1890), 6 Man. L. R. 487.—CAN.

l. — — — — — To employ solicitor.]—The general manager of a co. had authority to do acts which occasionally required legal advice:—*Held*: he had implied authority to retain a solicitor whenever, in his judgment, it was prudent to do so, but that such authority ceased on the suspension of the co.—*CLARKE v. UNION FIRE INSURANCE CO., CASTON'S CASE* (1884), 10 P. R. 339.—CAN.

m. — — — — — To pledge goods of company.]—The authority of a manager of a company, carrying on the business of the manufacture & sale of farm utensils, to pledge the goods of the company, for a present debt & future advances, will not be assumed, but must be proved.—*JONES v. HENDERSON*

(1885), 3 Man. L. R. 433.—CAN.

PART III. SECT. 29, SUB-SECT. 3.—D.

n. Loss of company's books.]—*REEVES v. CROYLE* (1871), 2 V. R. 42.—AUS.

o. Fraud in winding up.]—L., being the manager & part owner of a co. which was in financial difficulties & owing him \$1,600 on account of salary, agreed with H. that the latter should acquire the outstanding debts of the co., obtain judgment, sell the property at sheriff's sale & organise a new company in which H. was to have a controlling interest. L. was to refrain from taking any steps towards winding up the company, & in consideration therefor he was to be given in the new company a proportionate amount of fully paid-up shares to those held by him in the old company. He also agreed not to reveal this understanding to certain of the shareholders:—*Held*: that if any consideration passed, it was an illegal consideration, a fraud on certain of the shareholders, & a breach of trust.—*LASELL v. THISTLE GOLD CO., LTD. (NON-PERSONABLE LIABILITY) & HANNAH* (1905), 11 B. C. R. 466; 37 S. C. R. 324.—CAN.

p. Using company's money for personal benefit.]—Deft. was employed by the pltf. co. to manage a farm. He had had, to their knowledge, very little agricultural experience, & was employed chiefly because of his ability to handle men, a large number of whom were under his control. While he was manager, a quantity of grain became heated & damaged. He also while manager made profits in carrying on a shop & from the purchase, subdivision, & sale of land near the farm.

COLERIDGE, C.J.).—NEWELL v. HEMINGWAY (1888), 58 L. J. M. C. 46; 60 L. T. 544; 53 J. P. 324; 5 T. L. R. 93; 18 Cox, C. C. 604.

Annotations.—*Consd.* National Sporting Club v. Cope (1900), 82 L. T. 352. *Mentd.* Ranken v. Hunt (1894), 38 Sol. Jo. 290; Metford v. Edwards (1914), 112 L. T. 78.

3609. — **Contempt of court—Dissemination of newspaper paragraphs.**—Where an assocn. which was a limited co. disseminated amongst newspapers paragraphs amounting to contempt of ct., the manager of such assocn. was dealt with by the ct. as being responsible.—*Re* ROBBINS OF PRESS ASSOCN., *Ex p.* GREEN (1891), 7 T. L. R. 411, D. C.

— **Under Larceny Act, 1861 (c. 96), s. 34.**—*See* No. 3611, *post*.

3610. Manager de facto—Secretary—Omission to send in return under 1862 Act, s. 27.—GIBSON v. BARTON, No. 3555, *ante*.

See, now, 1908 Act, s. 26.

3611. — **Larceny Act, 1861 (c. 96), s. 84.**—Larceny Act, 1861 (c. 96), s. 84, which makes it a misdemeanour for "any director, manager, or public officer of any body corporate or public co." to publish false statements with intent to deceive or defraud, applies to a person who, without having been appointed an officer of the co., has in fact acted throughout as the manager of the affairs of the co.—*R. v.* LAWSON, [1905] 1 K. B. 541; 74 L. J. K. B. 296; 92 L. T. 301; 69 J. P. 122; 53 W. R. 459; 21 T. L. R. 231; 20 Cox, C. C. 812, C. C. R.

3612. For acts of company's employees—Infringement of patent.—BERTS v. NEILSON, BERTS v. DE VITRE, No. 2327, *ante*.

SUB-SECT 4.—THE SOLICITOR.

A. Appointment and Position.

3613. Appointment—By articles—Whether enforceable contract.—Arts. of assocn. contained a clause in which it was stated that pltf. should be solr. to the co., & should transact all the legal business of the co., including parliamentary business, for the usual & accustomed fees & charges, & should not be removed from his office, unless for misconduct. The arts. were signed by seven members of the co., & were duly registered, & the co. incorporated under 1862 Act. Pltf. acted as solr. to the co. for some time, but ultimately the co. ceased to employ him & employed other solrs. Pltf. brought an action against the co. for breach of contract in not employing him

as solr. to transact their legal business on the terms of the arts.:—*Held*: the arts. of assocn. were a matter between the shareholders *inter se*, or the shareholders & the directors, & did not create any contract between pltf. & the co.—*ELEY v. POSITIVE GOVERNMENT SECURITY LIFE ASSURANCE CO.* (1876), 1 Ex. D. 88; 45 L. J. Q. B. 451; 34 L. T. 190; 24 W. R. 338, C. A.

Annotations.—*Consd.* *Re* Rotherham Alum & Chemical Co. (1883), 25 Ch. D. 103. *Foll.* *Browne v. La Trinidad* (1887), 37 Ch. D. 1. *Apld.* *Boston Deep Sea Fishing & Ice Co. v. Ansell* (1888), 59 L. T. 345. *Foll.* *Baring-Gould v. Sharpington Combined Pick & Shovel Syndicate*, [1899] 2 Ch. 80; *Re* Famatina Development Corpn. [1914] 2 Ch. 271; *Hickman v. Kent or Romney Marsh Sheep-Breeders' Assocn.*, [1915] 1 Ch. 881. *Apld.* *Plantations Trust v. Bila* (Sumatra) Rubber Lands (1916), 114 L. T. 676. *Reid.* *Re* Dale & Plant (1889), 61 L. T. 206. *Mentd.* *Davey v. Shannon* (1879), 4 Ex. D. 81; *Gandy v. Gandy* (1885), 30 Ch. D. 57; *Re* Anglo-Austrian Printing & Publishing Union, *Isaac's Case*, [1892] 2 Ch. 158; *Re* Olympia, [1898] 2 Ch. 153.

See, also, No. 3615, *post*, & generally, Sect. 7, sub-sect. 5, B., *ante*.

3614. — **By managing director—Solicitor appointed by directors.**—*DE REUTER v. MORRIS PROCESS CO., LTD.*, No. 3508, *ante*.

3615. Termination of appointment—Solicitor appointed by articles & resolution of company.—*COLWYN BAY PIER CO. v. HILL* (1892), 36 Sol. Jo. 744.

3616. — **Effect of termination—Power to act for petitioner to wind up company.**—Notwithstanding the rule that a solr. must not use information acquired in his professional capacity in any subsequent proceedings against his former client, a solr., who has acted in the formation of a co. & been discharged, may act for a petitioner to wind up the same co., when all the facts upon which the petition is based might have been ascertained by any person in the position of petitioner.—*Re* HOLMES, *Re* ELECTRIC POWER CO., LTD. (1877), 25 W. R. 603.

Annotation.—*Consd.* *Little v. Kingswood Collieries Co.* (1882), 20 Ch. D. 733.

3617. Position—Whether officer—Whether disqualified as director as holding office under company.—*Re* HARPER'S TICKET ISSUING & RECORDING MACHINE, LTD., No. 3477, *ante*.

3618. — **Under 1862 Act, s. 165—Solicitor acting in early stages.**—A solr. is not an officer of the co., within 1862 Act, s. 165, so as to be amenable to the jurisdiction of that sect.

A solr. acting for a co. in its early stages is not to be treated as a promoter of the co.—*Re* GREAT WHEAL POLGOOTH CO., LTD. (1883), 53 L. J. Ch. 42; 49 L. T. 20; 47 J. P. 710; 32 W. R. 107.

3619. — **—**—A solr. of a co. is not

Some payments of purchase-money for this land had been made by him from a blank account, in which, for the financial convenience of the co., some of its funds had been deposited in his name along with his own funds:—*Held*: (1) while a farmer of experience would have inspected the grain & would have seen the danger of heating & have taken measures which probably would have prevented the damage, the same degree of care was not to be expected from the deft., & that he was not liable for the loss; (2) as the co. had no power to carry on a shop, & as the shop was carried on by deft. to a great extent for the co.'s convenience & with the knowledge of the directors, deft. was not bound to account for the profits made in carrying it on; (3) the purchase of the adjoining land was justifiable, the co. not being one to deal in land, & there being nothing in what the deft. did that came in conflict with his duty to the co.; (4) that, as deft. had acted in good faith in using the co.'s funds, & as only a small

portion of the purchase-money had been so paid, the co. could not claim the benefit of the purchase, but was entitled to a lien on the land not sold for the amount of its money & interest; (5) deft. was liable for the value of work done for his benefit with engines & waggons of the co. & for damage thereto while the work was being done for him.—*WEITZEN LAND & AGRICULTURAL CO. v. WINTER* (1914), 28 W. L. R. 212.—CAN.

g. Negotiating bills for company.—The sub-agents of a co. accepted bills drawn upon them by the managers of the co. in anticipation of the freight of one of the co.'s steamers. The bills passed through the managers' books, were discounted by them & were retired at maturity by the sub-agents. The managers ceased to hold that office during the currency of the bills, which were sequestered the day after they came to maturity, & the sub-agents brought an action against the co. for the amount due to them in

respect of the above transaction. The ct. assailed defenders, in respect that pursuers had failed to prove (1) that the bills were granted by the managers under the powers conferred upon them by the terms of their appointment; (2) that the managers had, subsequent to their appointment, received from the co. authority, either direct or implied, to borrow money; & (3) that the proceeds of the discount of the bills had been applied for the behoof of the co.—*ROSS, SKOLFIELD & CO. v. STATE LINE S.S. CO.* (1875), 3 R. (Ct. of Sess.) 134; 13 Sc. L. R. 78.—SCOT.

PART III. SECT. 29, SUB-SECT. 4.—A.

r. Appointment—Repeal by general meeting—Remuneration for services actually rendered.—Where the directors of a railway co. passed a bye-law enacting that the salary of the pltf., as solr. of the co., should be fixed at \$1,000 per annum, which bye-law was afterwards, at a meeting of the shareholders, repealed:—*Held*: the bye-law was within the competence of

Sect. 29.—The secretary and other officers and servants: Sub-sect. 4, A., B. & C.]

an officer of that co. within 1862 Act, s. 165.—*Re* GREAT WESTERN FOREST OF DEAN COAL CONSUMERS CO., CARTER'S CASE (1886), 31 Ch. D. 496; 55 L. J. Ch. 494; 54 L. T. 531; 34 W. R. 516; 2 T. L. R. 293.

Annotations:—Distd. Re Liberator Permanent Benefit Bldg. Soc. (1894), 71 L. T. 406. *Apprvd. Re* Carpenter & Bristol Corpn., [1907] 2 K. B. 617. *Follid. Re* Harper's Ticket Issuing & Recording Machine, Hamlen v. Harper's Ticket Issuing & Recording Machine (1912), 57 Sol. Jo. 78. *Refd. Re* Western Counties Steam Bakeries & Milling Co., [1897] 1 Ch. 671.

See, now, 1908 Act, s. 215.

3620. — Whether promoter—Under 1862 Act, s. 165.]—*Re* GREAT WHEAL POLGOOTH CO., LTD., No. 3618, *ante*.

See, now, 1908 Act, s. 215.

3621. — — —.]—TYRRELL v. BANK OF LONDON, No. 34, *ante*.

3622. — In relation to company—Retainer clause inserted in articles.]—*Re* RHODESIAN PROPERTIES, LTD. (1901), 45 Sol. Jo. 580.

— — — Fiduciary position—Solicitor also secretary.]—*See* No. 3551, *ante*.

3623. Duty as to registration of charges.]—A solr. not usually employed by a co. was employed by them to act in a particular matter, & having required security for costs, they gave him a charge on certain debts due to them. About five weeks after this a winding-up petition was presented, on which an order was shortly afterwards made. The charge had not been registered:—*Held*: though under 1862 Act, s. 43, the want of registration did not make the charge void, yet the solr. could not avail himself of the charge, for it was his duty, as being the solr. of the co. in this transaction, to see that the directions of the Legislature as to registration were obeyed.—*Re* PATENT BREAD MACHINERY CO., *Ex p.* VALPY & CHAPLIN (1872), 7 Ch. App. 289; 26 L. T. 228; 20 W. R. 347, L. JJ.

Annotations:—Consd. Re General Provident Assce., *Ex p.* National Bank (1872), L. R. 14 Eq. 507. *Apld. Re* Native Iron Ore Co. (1876), 2 Ch. D. 345. *Consd. Re* International Pulp & Paper Co., Knowles' Mortgage (1877), 6 Ch. D. 556; *Re* Globe New Patent Iron & Steel Co. (1879), 48 L. J. Ch. 295. *Expld. Re* South Durham Iron Co., Smith's Case (1879), 11 Ch. D. 579. *Consd. Re* Great Western Forest of Dean Coal Consumers Co., Carter's Case (1886), 31 Ch. D. 496. *Refd. Re* Underbank Mills Cotton Spinning & Manufacturing Co. (1885), 55 L. J. Ch. 255; *Wright v. Horton* (1887), 12 App. Cas. 371; *Re* Kingston Cotton Mill Co. (1895), 44 W. R. 210. *Mentd. Re* General South American Co. (1876), 34 L. T. 706. *Withington L. B. v. Manchester Corpn.* (1893), 62 L. J. Ch. 393.

B. Powers and Liabilities.

See, generally, SOLICITORS.

3624. Solicitors also promoters & vendors to company—Liability for profits on sale.]—A firm of solrs. purchased a certain leasehold property, & soon afterwards they formed a co. of which they were appointed the solrs., to take over the property, which they sold to the co. at a price greatly in excess of that which they had paid for it. On a bill by the official liquidator of the co., which had been ordered to be wound up, seeking to make the solrs. answerable for the profit which they had made by the sale of the co. :

—*Held*: no fiduciary relation having existed between the parties at the time when the solrs. purchased the property, & there having been no fraud, concealment, or misrepresentation on the part of the solrs., & all the then members of the co. having been fully aware of the facts of the case, the sale could not be opened, & the solrs. were not accountable for the profit made on the transaction.—*MASON'S HALL TAVERN CO. v. NOKES* (1870), 22 L. T. 503.

Annotation:—Refd. Re Glory Paper Mills Co., Dunster's Case, [1924] 3 Ch. 473.

3625. Extent of authority—Misrepresentations.]

—A joint stock marine insurance co. had declared dividends, which, as it afterwards appeared, were not warranted by the real condition of the co. The law agent of the co. who was also a member of it, when applied to for information, mentioned these dividends as proofs of the flourishing state of the co. The person to whom he so mentioned them became afterwards a purchaser of the shares :

—*Held*: (1) he could not relieve himself from his contract on account of these representations; (2) the law agent of the co. was not its agent to bind it in such matters; nor could he bind it as a partner, for a joint stock co. is not, like an ordinary partnership, bound by the acts of any individual member of it; (3) if the directors of a co. agreed to publish false statements of the affairs of the co., under such circumstances as showed a fraudulent intent to deceive, they were not civilly liable to those whom they had deceived & injured, but might be criminally prosecuted & punished.—*BURNES v. PENNELL* (1849), 2 H. L. Cas. 497; 14 L. T. O. S. 245; 13 Jur. 897; 9 E. R. 1181, H. L.

Annotations:—As to (2) *Consd.* National Exchange Co. v. Drew (1855), 25 L. T. O. S. 223; *Re* Royal British Bank, Nicol's Case (1859), 3 De G. & J. 387. *Refd. Re* Royal British Bank, *Ex p.* Brockwell (1857), 26 L. J. Ch. 855. *As to* (3) *Refd.* Pock v. Gurney (1871), L. R. 13 Eq. 79. *Generally, Mentd.* Fuller v. Earle (1852), 21 L. J. Ex. 314; *Deposit Life Assce. v. Ayscough* (1856), 6 E. & B. 761; *Bailey v. Universal Provident Assce., Re* Copeland (1857), 26 L. J. C. P. 87.

3626. Solicitor acting without authority—Liability for costs—Action in name of company—On authority of one director only.]—A bill had been filed by one of the directors of an incorporated co., in the name of the co., praying an injunction against the other alleged directors of the co., to restrain them from allotting or pretending to allot any shares, from affixing their present seal, or otherwise acting or pretending to act in the name of the directors of the co. On motion to take this bill off the file, on the ground that the solr. had not the authority of the co., it appearing that one director alone had authorised such bill to be filed, without the consent of the other directors:—*Held*: such bill should be taken off the file, & the costs of the application & of the suit should be paid by the solr. filing such bill.—*FERGUS NAVIGATION & EMBANKMENT CO. v. KINGDON* (1861), 4 L. T. 262.

3627. — — —.]—An order dismissing the action & directing that the solr., who had issued the writ in the name of a co., should pay pltf's. costs, on the ground that he had not received any authority to that effect from pltf. co., affirmed.

the directors, under C. S. C. c. 66, s. 47, & the shareholder could not undo the arrangement in respect of past services of the solr. received by them.—*FALKNER v. GRAND JUNCTION RY. CO.* (1883), 4 O. R. 350.—*CAN.*

s. — By acceptance of services.]—When a partner of one of the directors of the co. did work for the directors as solr. & there was nothing

to show that he had not been duly appointed by the directors, his claim in respect of such work was allowed.—*Re* PORT CANNING LAND INVESTMENT RECLAMATION & DOCKING CO., LTD. (1871), 6 B. L. R. 278.—*IND.*

PART III. SECT. 29, SUB-SECT. 4.—B.

t. Authority to issue writ in name of company—Costs of action wrongly

*commenced.]—*Where a solr.'s right to issue a writ in the name of a co. is questioned, the *onus* is on the said solr. to show his authority. It is not sufficient for the said solr. to show that the writ was issued on instructions from the managing director, but he must also show that the managing director had authority to give the instructions, or, that the board of

In future, in such a case, the practice prevailing in the common law cts. prior to Jud. Act of serving deft. with notice of the application, & ordering the solr. to pay the costs of both pltf. & deft., will prevail, instead of the old practice of the Ct. of Chancery by which in such a case deft. was not served, but pltf. was left liable to pay deft.'s costs, with the right to get them over again from the solr.—**NEWBIGGIN-BY-THE-SEA GAS CO. v. ARMSTRONG** (1879), 13 Ch. D. 310; 49 L. J. Ch. 231; 41 L. T. 637; 28 W. R. 217, C. A.

Annotations:—**Appld.** *Fricker v. Van Grutten*, [1896] 2 Ch. 649. **Refd.** *Williams v. Preston* (1882), 30 W. R. 555; *John Morley Building Co. v. Barras*, [1891] 2 Ch. 386; *Gellinger v. Gibbs*, [1897] 1 Ch. 479; *Gold Reefs of Western Australia v. Dawson*, [1897] 1 Ch. 115; *Didisheim v. London & Westminster Bank*, [1900] 2 Ch. 15; *Yonge v. Toynbee*, [1910] 1 K. B. 215. **Mentd.** *Smith v. Day* (1881), 50 L. J. Ch. 333; *London Scottish Permanent Benefit Soc. v. Chorley* (1884), 50 L. T. 265; *Boswell v. Coaks* (1887), 57 L. J. Ch. 101; *Puddephatt v. Leith* (No. 2), [1916] 2 Ch. 168.

3628. Termination of authority—By dissolution of company.—A solr. had originally authority to defend an action in the name of a co., but his authority was revoked by the dissolution of the co. shortly before the trial. The trial of the action was delayed owing partly to the state of the business of the ct. & partly to the pleadings being amended. The action was tried on the assumption that the co. was in existence, & judgment was given for pltf. Neither the solr. nor pltf. knew till after the trial that the co. had been dissolved; but on the day of the trial the solr. was informed that the co. had held its final meeting, & he took no steps to ascertain whether or not it had been dissolved. Upon motion by pltf. that the solr. might be ordered to pay his costs of the action as from the date of the dissolution of the co.:—**Held**: (1) the solr. having originally authority to represent the co. was not liable for acting on that authority after it had been revoked by the dissolution of the co. until he knew or, by the exercise of due diligence, might have known of the dissolution; (2) on the day of the trial the solr. did not use due diligence in ascertaining whether or not the co. had been dissolved, & he ought to pay pltf.'s costs of the action after that date as between solr. & client.—**SALTON v. NEW BEESTON CYCLE CO.**, [1900] 1 Ch. 43; 69 L. J. Ch. 20; 81 L. T. 437; 48 W. R. 92; 16 T. L. R. 25; 7 Mans. 74.

Annotation:—**Mentd.** *Yonge v. Toynbee*, [1910] 1 K. B. 215.

Compare Part IX., Sect. 10, *post*.

C. Costs.

See, generally, SOLICITORS.

3629. Liability for—Directors—Instructions by one director.—**BURCHALL v. SPOTTISWOODE**, No. 3084, *ante*.

directors ratified his action in so doing, or that the co.'s shareholders had so acquiesced therein as to bind the co.:—**Held**: the solrs. who issued the writ, & not the managing-director, must pay the costs of deft., as between party & party, as well as the costs of appeal, the solrs. having a right of action against the managing director for the costs which they had reasonably been put to in the matter.—**STANDARD CONSTRUCTION CO. v. CRABB** (1914), 30 W. L. R. 151; 7 W. W. R. 719; 7 Sask. L. R. 365.—**CAN.**

PART III. SECT. 29, SUB-SECT. 4.—C.

3629 i. Liability for—Directors—Instructions by one director.—A solr. for a co. is entitled to charge such co. for special work & journeys undertaken at the request of individual directors &

the general manager, & the request need not be under the corporate seal.—**CLARKE v. UNION FIRE INSURANCE CO., CASTON'S CASE** (1884), 10 P. R. 339.—**CAN.**

a. — **Company—Professional services paid for by stock.**—The Act of incorporation of a joint stock co. provided "that no subscription for stock should be legal or valid until 10 per cent. should have been actually & *bona fide* paid thereon." C. gave to the manager of the co. a power of attorney to subscribe for him ten shares in the co., containing the words: "& I herewith enclose 10 per cent thereof, & ratify & confirm all that my said attorney may do by virtue thereof." The 10 per cent was not, in fact, enclosed, but the amount was placed to the credit of C. in the books

3630. — Company—Documents surrendered to liquidator on undertaking to pay—Nine years' delay in delivering bill.—Where solrs. of a joint-stock co., after an order to wind up, delivered up documents to the official manager on his undertaking that they should be paid out of the first money in their hands, & allowed nine years to elapse before delivering their bill the official manager having until then had no funds in his hands:—**Held**: the claim was not barred by the Stat. Limitations.

Qu.: whether, after such delay, the solrs. were entitled to have a call made to satisfy their demand.—**Re GLOUCESTER, ABERYSTWITH & CENTRAL WALES RY. CO.** (1860), 2 Giff. 47; 29 L. J. Ch. 383; 8 W. R. 175; 66 E. R. 20; *sub nom.* **Re GLOUCESTER, ABERYSTWITH & CENTRAL WALES RY. CO., Ex p. OFFICIAL MANAGER**, 1 L. T. 320; 6 Jur. N. S. 116.

3631. — Company illegal—Solicitors party to formation.—The solrs. of an illegal co. presented a petition for the winding up of the co. as creditors in respect of a bill of costs which consisted partly of their professional charges in connection with the formation of the co., & partly of charges for work done on the retainer of the manager & committee of superintendence of the co.:—**Held**: as the solrs., having been parties to the illegal act of forming the co., could not recover their charges in connection with its formation, & as the authority of the manager & committee to retain them for the other work could only be proved by the production of the deed constituting the co., which, owing to its illegality, could not be admitted as evidence, they could not establish a sufficient debt to support their petition, which was accordingly dismissed with costs.—**Re SOUTH WALES ATLANTIC S.S. CO.** (1876), 2 Ch. D. 763; 46 L. J. Ch. 177; 35 L. T. 294, C. A.

Annotations:—**Mentd.** *Re Shepherd, Ex p. Ball* (1879), 10 Ch. D. 667; *Re Padstow Total Loss & Collision Assoc. Assocn.* (1882), 20 Ch. D. 137; *Shaw v. Benson* (1883), 11 Q. B. D. 563; *Re National Debenture & Assets Corpn.* (1891), 60 L. J. Ch. 533.

3632. — Costs of formation.—A solr., on the instructions of persons who afterwards joined the board of a co. then about to be formed, prepared the memorandum & arts. of assocn. of the co. & paid the fees for its registration:—**Held**: (1) he was not entitled to recover from the co. the costs of the preparation of the memorandum & arts. of assocn.; (2) inasmuch as the co. was under a statutory liability to pay the registration fees, he was entitled to recover those fees from the co.

(3) The fact that a co. adopts & takes the benefit of services rendered under a contract entered into before its formation does not make the co. liable in equity to pay for those services.—**Re ENGLISH**

of the co., & a certificate of stock issued to him which he held for several years. The co. having failed, proceedings were taken to have C. placed on the list of contributories. The sum to his credit was for professional services to the co. as solr., & there had been an arrangement that his stock was to be paid for by such services:—**Held**: C. was rightly placed on the list of contributories.—**Re STANDARD FIRE INSURANCE CO., CASTON'S CASE** (1886), 12 S. C. R. 644.—**CAN.**

b. — — — — —]—Where a committee of a joint-stock co. was appointed to make an investigation for behoof of the co., & one of their number, a writer to the signet, acted as their clerk, but did not stipulate for remuneration:—**Held**: he was not entitled to make a charge for his time

Sect. 29.—The secretary and other officers and servants: Sub-sect. 4, C. & D.]

& COLONIAL PRODUCE CO., LTD., [1906] 2 Ch. 435; 75 L. J. Ch. 831; 95 L. T. 580; 22 T. L. R. 669; 50 Sol. Jo. 595; 13 Mans. 387, C. A.

Annotation:—As to (2) N.F. Re National Motor Mail Coach Co., Clinton's Claim, [1908] 2 Ch. 515.

3633. What costs may be allowed—Costs of formation—Equitable debt.]—Certain persons proposed to form a co.; they employed A. as their solr.; he was so named, on provisional registration; the directors were not to be personally liable to the officers of the co.; the solr. was continuously employed, until after the co. had been completely formed & registered, & until it was wound up. Art. 44 of the deed of settlement declared, that "a sufficient part of the funds of the co. should, upon complete registration, be appropriated in payment of the expenses of & incidental to the formation of the co., including those of or having reference to the preparation & execution of that deed." When the co. was before the master, the solr. presented a demand for services from the earliest period up to that time. The master allowed the demand as a claim only, & not as a debt, leaving the solr. to proceed at law:—*Held*: the master ought to have allowed this demand as a debt, but subject to proof that the items came under the description contained in art. 44, & subject also to taxation.—*TERRELL v. HUTTON* (1854), 4 H. L. Cas. 1091; 2 Eq. Rep. 754; 23 L. T. O. S. 13; 18 Jur. 707; 10 E. R. 790; *sub nom. Re INDEPENDENT ASSURANCE CO., TERRELL v. HUTTON*, 23 L. J. Ch. 345, H. L.

Annotations:—Consd. Re Skegness & St. Leonard's Tram. Co., Ex p. Hanly (1888), 41 Ch. D. 215. *Refd. Re Counties Union Assce.* (1857), 5 W. R. 389; *Re Warwick & Worcester Rly.* (1858), 31 L. T. O. S. 145.

3634. — Under contract by promoter.]—P., a solr. employed by M. in the formation of a co. formed to purchase & carry on M.'s business, incurred costs & made certain disbursements in such formation. One of the arts. of assocn. of the co. provided that the directors should pay all "the costs incidental to the formation of the co." An agreement between M. & the co. was approved & settled, one clause of which provided that all preliminary costs & expenses of & incidental to the co. should be considered as incurred & paid or payable by the co. The agreement was not executed, but the co. entered into possession of the property agreed to be purchased. On the winding-up of the co. P. sent in a claim for his costs & disbursements. The taxing master disallowed all the items prior to the date of the registration of the co.:—*Held*: the certificate was right, & the solr. could not claim payment of

the costs; the arts. of assocn. gave him no privity of contract, & the fact that the co. had had the benefit of his services was immaterial, as those services had been rendered on the retainer of M.—*Re ROTHERHAM ALUM & CHEMICAL CO.* (1883), 25 Ch. D. 103; 53 L. J. Ch. 290; 50 L. T. 219; *sub nom. Re ROTHERHAM ALUM & CHEMICAL CO., LTD., Ex p. PEACE & Co.*, 32 W. R. 131, C. A.

Annotations:—Consd. Re English & Colonial Produce Co., [1906] 2 Ch. 435. Mentd. Hume v. Record Reign Jubilee Syndicate (1899), 80 L. T. 404; *Re Fireproof Doors, Umney v. Fireproof Doors*, [1916] 2 Ch. 142.

3635. — Costs of ultra vires proceedings—Solicitors with notice.]—When the solrs. of a public co. bring or defend actions or suits in respect of matters in which the co. is acting *ultra vires*, & this is plainly known to them, they will not be allowed to charge the co. for costs incurred in the conduct of such business, nor will they be allowed to appropriate sums paid to them on a general account to the liquidation of such costs.—*Re PHOENIX LIFE ASSURANCE CO., HOWARD & DOLLMAN'S CASE* (1863), 1 Hem. & M. 433; 2 New Rep. 548; 8 L. T. 728; 11 W. R. 984; 71 E. R. 189.

3636. — Costs incurred without formal instructions—Subsequent ratification by directors.]—S. was the solr. of the F. Co., formed to work a silver mine in America, & had received instructions to institute a suit in Chancery on behalf of the F. Co. against their former directors & the person who had sold the mine to the co. Counsel who drafted the bill advised that information should be obtained in America as to certain matters in dispute. Before the draft bill was finally settled S. took a journey to America & to the neighbourhood of the F. Co.'s mine in relation to the business of another co. for whom he was also solr., & who paid his expenses there & back. While in America he paid a visit to the F. Co.'s mine, & there made inquiries & obtained information which he alleged were very material for the purposes of the F. Co.'s suit. When the directors of the F. Co., who knew of his visit to America, heard of S.'s return to England, they passed a resolution that he should be asked to attend the board "to give such information as he should be able as to the mine." S. attended accordingly, & the minutes of the meeting were as follows: "S. attended the board by request & gave information as to his journey" & it was then resolved to file the bill at once. The bill was afterwards filed, having been re-settled in consequence of, & according to, the information obtained by S. in America.

S. in his bill of costs, made a charge of £100 in respect of the American journey, & this amount

& trouble, but entitled to reimbursement of his outlay, besides a charge for making copies, in his own chambers, of the proceedings of the committee for their behoof.—*DUNCAN v. UNION CANAL CO.* (1831), 9 Sh. (Ct. of Sess.) 398.—*SCOT.*

3633 i. What costs may be allowed—Costs of formation—Equitable debt.]—A co. incorporated by a special Act is not liable for the expenses of procuring its incorporation in the absence of a provision in the Act that it shall be so liable, unless after incorporation it agrees to pay such expenses; & solrs. have no equitable claim against a co. for the costs of procuring such an Act on the ground that the co. has taken the benefit of their services. Where, however, the co. has made a payment on account to its solrs. they may be permitted to appropriate such payment to their claim for pre-incorpora-

tion costs.—*Re CROWN HAIL INSURANCE CO.* (1908), 18 Man. L. R. 51.—*CAN.*

c. — Project abandoned.]—This undertaking having been abandoned a process was raised for the determination of the rights of parties to the parliamentary deposit fund, there being no other assets of the co.:—*Held*: (1) the solrs. who had given their professional services in preparing & carrying through Parliament the bill for the creation of the ry. co. were creditors of the co. & entitled to recover payment of their accounts out of the deposit fund, although they had given their services not on the employment of any one, but solely in the prospect of their being remunerated by the co. when formed; (2) in the exercise of their discretion in the distribution of the assets the ct. could give direct effect to the claims of the professional persons who had given

their services in the promotion of the co.—*MUIR v. FORMAN'S TRUSTEE* (1903), 5 F. (Ct. of Sess.) 546.—*SCOT.*

d. — — —.]—Where a co. is being formed for the purpose of taking over an existing business & an agent at law has been employed to carry through the whole transaction, including the flotation of the co.:—*Held*: (1) the flotation of a company being outside the ordinary business of a law agent, the Table of Fees does not supply a standard for regulating his scale of remuneration; (2) the agent at law is entitled to charge against sellers the ordinary seller's commission of $\frac{1}{4}$ per cent for negotiating the sale; (3) the agent at law is also entitled to charge a commission on the flotation, which will vary in amount according to the nature of the work done, but which is chargeable against the promoters but not against the

was allowed on taxation by the master; but was disallowed on appeal:—*Held*: although the directors had given S. no previous specific instructions to do what he did in America, still the same was within his retainer, & had been subsequently adopted & ratified by the directors, & the charge having been found reasonable by the taxing master, the same must be allowed.

S. had also taken three journeys to Paris in relation to a proposed compromise of the snit, which compromise was ultimately effected. The taxing master allowed the expense of the journeys, & also costs at the rate of 5 guineas a day, but such expenses & costs were disallowed:—*Held*: although no formal instructions had been given to S. by the directors of the co., still, as he was under the impression from the conduct of some of the directors that he was authorised to make the journeys, & as what he did was in furtherance of the interests of the co.—though that alone would not entitle S. to charge for the same—& as the directors had adopted & ratified what he had done, these charges must be allowed.—*Re SNELL* (A SOLICITOR) (1877), 5 Ch. D. 815; 36 L. T. 534; 25 W. R. 736, C. A.

Annotations:—*Consd.* *Re Hill* (1886), 55 L. T. 456. *Mentd.* *The Soto*, [1893] P. 73.

3637. — Lump sum paid in advance—Subsequent appointment of receiver & manager.—A co. paid to their solr. the sum of £80, for costs incurred, & a further sum of £500, to meet the expenses of a threatened action in bkpcy., certain conveyancing expenses in connection with the co.'s premises, & to secure the solr.'s own remuneration. A month later a receiver was appointed on behalf of the co.'s debenture-holders, & the amount of £580 was claimed from the solr. as part of the co.'s assets. It was subsequently agreed that the solr. should have his costs up to the date of the bkpcy.:—*Held*: the solr. was entitled to all his costs incurred up to the appointment of a receiver, & from that date the sum remaining in his hands unexhausted could be claimed on behalf of the debenture-holders; but, pltf. not objecting, a fair remuneration should be paid to the solr., out of the fund, for his work in connection with the conveyancing matters undertaken for the co. since the date of the receiving order, & such remuneration should be fixed by the taxing master.—*Re BRITISH TEA TABLE CO.* (1897), LTD., *PEARCE v. BRITISH TEA TABLE CO.* (1897), LTD. (1909), 101 L. T. 707.

3638. Enforcing payment—By restoration of name to register—Abortive company never carrying on business.—*Re BRITISH INCANDESCENT HEATING SYNDICATE, LTD.* (1904), cited in Halsbury's Laws of England, Vol. V., p. 611.

3639. Set-off—Against calls.—Calls due from a shareholder who is also the solr. of the co. may be set off against his bill of costs.—*Re EXCHANGE BANKING CO., LTD., RAMWELL'S CASE* (1881), 50 L. J. Ch. 827; 45 L. T. 431; 29 W. R. 882.

Annotation:—*Mentd.* *Randt Gold-Mining Co. v. New Balkis* *Eersteling* (1901), 71 L. J. K. B. 346.

sellers; (4) when he charges such a commission on the flotation he is not entitled to charge in addition against the purchasers the purchaser's $\frac{1}{2}$ per cent commission for negotiating the sale, but the commission must be held to be covered by & included in the commission on the flotation.—*WELSH v. JOHNSON* (1906), 8 F. (Ct. of Sess.) 453.—*SCOT.*

e. — Causes conducted by solicitor in court—Not for business done out of court.—Where a director, who was also president, of a co. was appointed by the board of directors &

acted as solr. for the co. In winding-up proceedings:—*Held*: he was entitled to profit costs in respect of causes in ct. conducted by him as solr. for the co., but not in respect of business done out of ct., & was entitled to set off the amount of such costs against the amount of his liability as a shareholder.—*Re MIMICO SEWER PIPE & BRICK MANUFACTURING CO., PEARSON'S CASE* (1895), 26 O. R. 289.—*CAN.*

PART III. SECT. 29, SUB-SECT. 4.—D.

1. Extent — Over what property — Whether money in his hands belonging

3640. Charge given to secure costs—Effect of omission to register.—*Re PATENT BREAD MACHINERY CO., Ex p. VALPY & CHAPLIN*, No. 3623, ante.

Compare Part IX., Sect. 10, post.

D. Solicitor's Lien.

See, generally, SOLICITORS.

3641. Extent—Over what property—Mortgages securing debentures—No lien.—On the issue of debentures by a co., the property of the co. was mortgaged to trustees—two of the directors of the co.—to secure the payment of such debentures. The same solrs. acted for both mtgors. & mtgees. in the matter. The co. went into liquidation, & the costs of the preparation of the deed & incidental thereto remained unpaid. The solrs. when applied to by the trustees to hand over the mortgaged deed & the title deeds of the property declined to do so, claiming a lien upon them for costs:—*Held*: the solrs. had no lien upon the deed for their costs & must hand them over.—*Re MASON & TAYLOR* (1878), 10 Ch. D. 729; 48 L. J. Ch. 193; 27 W. R. 311.

Annotations:—*Refd.* *Branton v. Electrical Engineering Corp.*, [1892] 1 Ch. 434; *Re Lawrence, Bowker v. Austin*, [1894] 1 Ch. 556; *Re Dee Estates, Wright v. Dee Estates*, [1911] 2 Ch. 85.

3642. — Documents—Statutory books—Register of members.—On Sept. 18, 1882, a petition was presented for winding up a co., which was dismissed in the ct. below, but on which a winding-up order was made by the Ct. of Appeal on Feb. 7, 1883. Before Sept. 18 the register of shareholders, the minute book, & certain original applications for shares of shareholders in the co. & allotment notes, came into the possession of B., the solr. of the co., in the ordinary course of business. After Sept. 18, but before the winding-up order was made, other books of the co. came into the possession of B. in the same way. The liquidator did not employ B. in the winding up, & applied for delivery over of all books, etc., in B.'s possession. B. claimed a lien on all the books, etc., for costs due to him from the co. incurred both before & after Sept. 18:—*Held*: (1) as to the register of members, having regard to 1862 Act, s. 32, & as to the minute book, having regard to the constitution of the co. & the arts. of assocn., the directors could not create a lien on those books so as to interfere with the liquidation.

Qu.: whether the solr. could have any lien at all on these books.

Held: (2) as to the documents which came into his possession after the presentation of the petition, the solr., having received them with notice of the rights of other persons interested in the liquidation, could not claim a lien on them so as to interfere with the liquidation: (3) as to the application for shares & allotment notes, the solr. could resist delivery on the ground of his lien.—*Re CAPITAL FIRE INSURANCE ASSOCN.* (1883), 24 Ch. D. 408; 49 L. T. 697; 32 W. R.

to company.—*Deft.*, when solr. for pltf., collected certain moneys for them. He was a director of pltf. co. & also the holder of debentures past due:—*Held*: he had a right to set off the debenture debt against the moneys collected, & he has no right to charge a commission for collection over & above his costs.—*SYDNEY LAND & LOAN CO. v. A SOLICITOR* (1910), 7 E. L. R. 549.—*CAN.*

g. — Documents.—Documents received by solrs. for a co. in the ordinary course of business, in this instance for the purpose of endeavour-

Sect. 29.—The secretary and other officers and servants: Sub-sect. 4, D.; sub-sect. 5, A.]

260; *sub nom.* *Re* CAPITAL FIRE INSURANCE ASSOCN., LTD., *Ex p.* BEALL, 53 L. J. Ch. 71, C. A.

Annotations:—As to (1) Exple. & Appl. Re Anglo-Maltese Hydraulic Dock Co. (1885), 54 L. J. Ch. 730. Re Kent Coalfields Syndicate, [1898] 1 Q. B. 754. As to (2) Appl. Re Anglo-Maltese Hydraulic Dock Co. (1885), 54 L. J. Ch. 730. Re Boden v. Hensby, [1892] 1 Ch. 101; Re Hawkes, Ackerman v. Lockhart, [1898] 2 Ch. 1; Re Caudery, London Joint Stock Bank v. Wightman (1910), 54 Sol. Jo. 444. As to (3) Re Hawkes, Ackerman v. Lockhart, [1898] 2 Ch. 1; Re Rapid Road Transit Co., [1909] 1 Ch. 96.

3643. — Minute book.]—*Re*
CAPITAL FIRE INSURANCE ASSOCN., No. 3642,
ante.

3644. —————.]—(1) Books & documents belonging to a co., which, under the arts. of the co., or the provisions of the Cos. Acts, ought to be kept at the registered office of the co., ought not to be put into the possession of the solrs. of the co., &, if they are, the solrs. cannot acquire a lien for costs over them, & on the winding up of the co. will be ordered to deliver them up to the liquidator.

(2) The solrs. are entitled to a lien upon books & documents other than those that ought to be kept at the registered office of the co. if such books & documents came into their possession before the commencement of the winding up.—*Re ANGLO-MALTESE HYDRAULIC DOCK CO., LTD.* (1885), 54 L. J. Ch. 730 ; 52 L. T. 841 ; 33 W. R. 652 ; 1 T. L. R. 392.

3645. — Applications for shares.]—
Re CAPITAL FIRE INSURANCE ASSOCN., No. 3642,
ante.

3646. — — — **Allotment notes.]—***Re*
CAPITAL FIRE INSURANCE ASSOCN., No. 3642, *ante*.

3647. — — — — — Possession acquired before liquidation begun.] — *Re* ANGLO-MALTESE HYDRAULIC DOCK CO., LTD., No. 3644, *ante*.

3648. ————.]—An action was brought by a co. against its directors for penalties for acting without qualification. N. acted as solr. for the co., & documents came into his hands in the course of the action. The co. was ordered to be wound up compulsorily & a liquidator was appointed. The liquidator continued the action & retained N., but afterwards discharged him & appointed another solr., to whom he required N. to hand over all documents relating to the action. N. claimed a lien for costs. This summons was taken out by the liquidator for an order for the delivery of documents:—*Held*: N. had a good lien on, & was entitled to retain, until his costs were paid, all documents which had come into his possession, & on which he had acquired a lien before the order for winding up, but must deliver those acquired in the course of the winding up.—*Re RAPID ROAD TRANSIT Co.*, [1909] 1 Ch. 96;

78 L. J. Ch. 132 ; 99 L. T. 774 ; 53 Sol. Jo. 83 ;
16 Mans. 289.

Annotations :—*Reid. Re Caudery*, London Joint Stock Bank v. Wightman (1910), 54 Sol. Jo. 444; *Meguerditchian v. Lightbound* (1917), 116 L. T. 790.

3649. ——— Possession acquired after liquidation begun.]—*Re* CAPITAL FIRE INSURANCE ASSOCN., No. 3642, *ante*.

3650. ————.]—*Re* RAPID ROAD
TRANSIT CO., No. 3648, *ante*.

3651. ——— Reconstruction—Assets purchased by new company.—A limited co. being unable to meet its liabilities, executions were levied on the co.'s property by creditors, & other creditors threatened actions. An extraordinary meeting of the co. was then held, & resolutions were duly passed to wind up the co. voluntarily. It was further resolved that the liquidator should submit a proposal for the reconstruction of the co. A scheme of arrangement, sanctioned by order of the ct., under the Joint Stock Companies Arrangement Act, 1870 (c. 104), provided that a new co. should be incorporated; that one of its objects should be the acquisition & undertaking of the assets & liabilities of the co.; that the new co. should discharge the unsecured debts of the co. by allotting to the unsecured creditors fully paid-up shares in the new co. in full discharge of their claims against the co.; & that the shareholders of the co. should receive partly paid-up shares in the new co. It was also provided that the new co. should pay all the costs of the winding up & of the scheme of arrangement. In pursuance of this order an agreement, subsequently adopted by the new co., was made between the liquidator & the trustee of the future new co. whereby it was provided that part of the consideration payable by the new co. to the liquidator should be cash. The new co. did not pay cash, & the assets of the co. accordingly were not transferred to the new co.:—*Held*: the co.'s assets purchased by the new co. & retained by the liquidator were to be charged with the costs of the co.'s solr. which had arisen in connection with the winding up & reconstruction of the co., the co.'s property having been "recovered or preserved" through the instrumentality of the solr. within Solicitors Act, 1860 (c. 127), s. 28.—*Re CLAYTON (J.), LTD.* (1905) 92 L. T. 223; 49 Sol. Jo. 238.

3652. Priority conferred—Costs of representative action—Change of plaintiffs.]—In a suit instituted by a debenture-holder of a co., on behalf of himself & the other debenture-holders, against the co. & the trustees of a deed, by which leasehold collieries & plant of the co. were assigned to trustees to secure the payment of the debentures, to enforce the security, a receiver & manager was appointed. He worked the collieries for some years at a loss. Ultimately the property was sold, pltf. having the conduct of the sale, & the purchase-money was

ing to realise the amount due by subscribers to the capital stock of the co., in respect of which the solrs. became entitled to costs, are subject only to a passive or "retaining" lien & not to a "particular" or common law lien on property recovered by the efforts of the solrs. or such a lien as to entitle them to a charging order, & when the co. has gone into liquidation the solrs. are not entitled to assert their lien to the prejudice of the due prosecution of the winding up, nor to a lien upon any monies in the hands of the liquidator for their costs incurred.—EXECUTORS & ADMINISTRATORS TRUST v. SEABORN (1916), 34 W. L. R. 112; 10 W. W. R. 343; 9 Sask. L. R. 232.—CAN.

h. ————.]— Where solrs.

in proving a debt due to them, notified the liquidator that they had no security for the indebtedness or any part thereof except a solr.'s lien upon certain specified documents:—*Held*: there was no intention on the part of the solrs. to abandon or waive their lien & no election, by the filing of the proof of claim, to adopt its allowance as payment & the lien still existed.—*Re SOLICITORS*, [1917] 3 W. W. R. 771.

—CAN

k. ————.]—A solr. acted as solr. for a limited co. from its incorporation until the date of an order to wind up the co., & as such solr. he held certain documents belonging to the co. including an agreement of a lease of certain mining rights.

Pursuant to an order of the ct. he lodged these documents in ct. without prejudice to his lien thereon for costs. The official liquidator entered into an agreement with an intending purchaser for the sale to him of the mining rights comprised in the said agreement for a lease, & obtained from him a deposit of £50. The intending purchaser did not proceed with the purchase, & his deposit was forfeited, & thus became assets of the co. :—*Held* : the amount of the deposit was, in the first place, applicable to satisfy the solr.'s lien for costs in priority to all other claims thereon.—*Re ARDTULLY COPPER MINES, LTD. (1915), 50 I. L. T. 95.—IR.*

1, ———,] — On the

paid into ct. The fund was insufficient. The original pltf. became bkpt. in the course of the proceedings, & another debenture-holder was substituted for him as pltf. An order was made that the solrs. of the first pltf. should, without prejudice to their lien—if any—deliver up to the solr. of the second pltf. all documents in their possession relating to the conduct & prosecution of the suit:—*Held*: the solrs. of the first pltf. had no lien on the documents which could entitle them to priority in respect of their costs.—**BATTEN v. WEDGWOOD COAL & IRON CO.** (1884), 28 Ch. D. 317; 54 L. J. Ch. 686; 52 L. T. 212; 33 W. R. 303.

Annotations:—*Re*ld. *Re* Rapid Road Transit Co., [1909] 1 Ch. 96. *Mentd.* *Lathom v. Greenwich Ferry Co.* (1895), 72 L. T. 790; *Strapp v. Bull, Shaw v. School Board of London*, [1895] 2 Ch. 1; *Re* London United Breweries, *Smith v. London United Breweries*, [1907] 2 Ch. 511; *Re* Boynton, *Hoffman v. Boynton* (1910), 79 L. J. Ch. 247.

3653. — As against debentures—Debentures restraining company from creating prior charge.—A limited co. issued mtgc. debentures charging all its undertaking & property, one of the conditions of the debentures being that they were to rank *pari passu* as a first charge & to be a “floating security,” but so that the co. should “not be at liberty to create any mtgc. or charge in priority to the said debentures.” There was no trust deed for further securing the debenture debt. Subsequently an order appointing a receiver was made in a debenture-holders’ action, the co. being ordered to deliver up to such receiver all documents relating to the property comprised in the debentures. The co.’s title deeds were then in the possession of their solr., who refused to deliver them up, claiming a lien for costs incurred by the co. to him as their solr. prior to the appointment of the receiver:—*Held*: so long as the debentures continued to be a “floating security”—that is, until the appointment of the receiver—they did not interfere with the co.’s business being carried on in the ordinary way, & the debenture-holders could not prevent the co.’s solr. employed by them in the usual course of their business, from acquiring the ordinary solr.’s lien; &, inasmuch as that lien was a right given by the general law, & not a “charge,” or, at any rate, not a charge “created” by the co., the solr. was not precluded by the condition of the debentures from asserting his lien in priority to the debenture-holders.—**BRUNTON v. ELECTRICAL ENGINEERING CORPN.**, [1892] 1 Ch. 434; 61 L. J. Ch. 256; 65 L. T. 745; 8 T. L. R. 158.

Annotations:—*Re*ld. *Re* Walker, *Meredith v. Walker* (1893), 68 L. T. 517; *Robson v. Smith*, [1895] 2 Ch. 118. *Mentd.* *Taunton v. Warwickshire Sheriff*, [1895] 1 Ch. 734.

3654. Waiver—Specific security given—Lien not expressly reserved.—**BISSILL v. BRADFORD & DISTRICT TRAMWAYS CO., LTD.** (No. 1) (1893), 9 T. L. R. 337; 37 Sol. Jo. 343, C. A.

Annotation:—*Re*ld. *Re* Morris, [1908] 1 K. B. 473.

3655. Production of documents subject to lien—Company in liquidation—Though lien prejudiced.—The ct. has jurisdiction, under 1862 Act, s. 115,

to order, at the instance of the official liquidator, production of documents relating to a co. in process of liquidation, which are in the possession of the solr. to the co., notwithstanding the claim of the solr. to a lien which may be prejudiced by such production.—*Re* SOUTH ESSEX ESTUARY & RECLAMATION CO., *Ex p.* PAINE & LAYTON (1869), 4 Ch. App. 215; 38 L. J. Ch. 305, L. C.

Annotations:—*Re*ld. *Re* Capital Fire Insee. Assocn. (1883), 24 Ch. D. 408; *Re* Hawkes, *Ackerman v. Lockhart*, [1898] 2 Ch. 1.

Compare Part IX., Sect. 2, *post*.

SUB-SECT. 5.—AUDITORS.

A. Position.

3656. Whether officer of company—Within 1890 (Winding-up) Act, s. 10.—Auditors who have been appointed by a banking co. in pursuance of Companies Act, 1879 (c. 76), s. 7, & are spoken of as officers of the co. in the arts. of assocn., are officers within 1890 (Winding-up) Act, & if guilty of misfeasance may be made liable in proceedings under that sect.—*Re* LONDON & GENERAL BANK, [1895] 2 Ch. 166; 72 L. T. 611; 43 W. R. 481; 11 T. L. R. 374; 39 Sol. Jo. 450; 2 Mans. 282; 12 R. 263, C. A.; *sub nom.* LONDON & GENERAL BANK, LTD., *THEOBALD’S CASE*, 64 L. J. Ch. 866, C. A.; *subsequent proceedings*, [1895] 2 Ch. 673, C. A.

Annotations:—*Folld.* *Re* Kingston Cotton Mill Co., [1896] 1 Ch. 6. *Re*ld. *Re* London & General Bank, *Ex p.* Theobald (1895), 73 L. T. 304; *Re* Kingston Cotton Mill Co. (No. 2), [1896] 2 Ch. 279; *Re* Western Counties Steam Bakeries & Milling Co., [1897] 1 Ch. 617. *Mentd.* *Re* National Bank of Wales, *Cory’s Case* (1899), 68 L. J. Ch. 634; *Re* Republic of Bolivia Exploration Syndicate (No. 2) (1913), 83 L. J. Ch. 235.

3657. — — — — ——An auditor of a limited co. was appointed under arts. of assocn. which, so far as they related to the audit of accounts, were in substantially the same terms as the audit clauses of Table A, & as the articles of association in *Re London & General Bank*, No. 3656, *ante*, although it was not a joint stock banking co.:—*Held*: on the authority of that case, that he was an officer of the co. within 1890 (Winding-up) Act, s. 16.

In every case where an auditor of a co. is appointed under arts. of assocn. which impose upon him the duty of examining the balance-sheet & reporting to the members whether, in his opinion, it is a full & fair balance-sheet, containing the particulars required by the articles, & properly drawn up so as to exhibit a true & correct view of the co.’s affairs, he is an officer of the co. within 1890 (Winding-up) Act.—*Re* KINGSTON COTTON MILL CO., [1896] 1 Ch. 6; 65 L. J. Ch. 145; 44 W. R. 210; 12 T. L. R. 60; 2 Mans. 626; *sub nom.* *Re* KINGSTON COTTON MILL CO., LTD., *Ex p.* PICKERING & PEASEGOOD, 73 L. T. 482, C. A.; *subsequent proceedings*, [1896] 2 Ch. 279, C. A.

Annotations:—*Re*ld. *Re* Western Counties Steam Bakeries & Milling Co., [1897] 1 Ch. 617; *Squire Cash Chemist v. Ball, Baker, Mead v. Ball, Baker* (1911), 27 T. L. R. 269.

motion of the official liquidator of a co. which was being wound up by the ct. the law agents of the co. were ordained to produce all books title deeds papers & other deeds or documents in their custody relating to the co. “without prejudice to the lien claimed by them.”—**GRAHAM v. WHITE & PARK**, [1908] S. C. 309.—**SCOT.**

m. — — — — ——Where a law agent has acted for a co. & is its creditor for professional services, in obedience to an order under 1862 Act, s. 115, pronounced in the liquidation of the co. has produced the title deeds of the heritage belonging to the co. without prejudice to any lien which

he may have over them, the mere reservation of his lien does not give him a preference over the general assets of the co. unless it can be shown that, had the title deeds not been ordered to be delivered up, he would have had an effectual lien over them for his account.—**RORIE (LIQUIDATOR OF LOCHER SAW MILLS CO., LTD.) v. STEVENSON**, [1908] S. C. 559.—**SCOT.**

n. — — — — — Minute-book.—A solr. cannot acquire as against a liquidator a lien upon the share register & minute-book of a co.—*Re* PIONEER TRACTOR CO., [1918] 1 W. W. R. 329.—**CAN.**

PART III. SECT. 29, SUB-SECT. 5.—A.

o. Whether officer of company.—An auditor employed in auditing books of a co. does not come within the designation of “clerks & other persons having been in the employment of the co. in or about its business or trade” so as to entitle him to the special privilege given by Winding-up Act, R. S. C. c. 129, s. 56, to be collocated in the dividend sheet for arrears of salary or wages.—*Re* ONTARIO FORGE & BOLT CO., *TOWNSEND’S CASE* (1895), 27 O. R. 230.—**CAN.**

p. — — — — ——An auditor of a co. to which Act 6 of 1882 applies, who is

Sect. 29.—The secretary and other officers and servants; Sub-sect. 5, A. & B.]

3658. ———.]—An auditor may or may not be an "officer" of a co., & *prima facie* he is not; but if he is appointed to the office of auditor to the co., & acts in that office, he will be an "officer" within 1890 (Winding-up) Act, s. 10; & in case the co. is wound up he will be liable to a misfeasance summons under that sect. in respect of dividends declared upon the faith of his audit; & no irregularity in his appointment would avail him as a defence. But, seeing that the word "auditor" does not occur in sect. 10, the performance of auditor's work upon a given occasion by a person who has never been appointed to the office of auditor of the co. does not make that person an "officer" of the co. so as to render him liable under the section.—*Re WESTERN COUNTIES STEAM BAKERIES & MILLING CO.*, [1897] 1 Ch. 617; 45 W. R. 418; 13 T. L. R. 276; 41 Sol. Jo. 365; *sub nom. Re WESTERN COUNTIES STEAM BAKERIES & MILLING CO., PARSONS & ROBJENT'S CASE*, 66 L. J. Ch. 354; 76 L. T. 239, C. A.

*Annotations:—*Reid. *Openshaw v. Fletcher* (1916), 32 T. L. R. 372. *Mentd. R. v. Lawson*, [1905] 1 K. B. 541.

See, now, 1908 Act, s. 215.

3659. Position—Where action brought against auditors—May be examined on knowledge of company's books.]—*BALE v. CLELAND* (1864), 4 F. & F. 117.

3660. ——— **What knowledge presumed—Notice of shareholder's register—Entry of own name.]—**W. was an auditor of the co.:—*Held*: (1) sufficient to give him notice who were the shareholders on the register, & that he himself was one of them; (2) having allowed his name to remain there till after the winding-up order was made, he must be fixed on the list of contributories.—*Re MATLOCK OLD BATH HYDROPATHIC CO., LTD., WHEATCROFT'S CASE* (1873), 42 L. J. Ch. 853; 29 L. T. 324.

*Annotation:—*As to (2) *Reid. Re Wincham Shipbuilding, Boiler & Salt Co., Hallmark's Case* (1878), 9 Ch. D. 329.

B. Powers and Duties.

3661. General rule.]—Where an officer of a co. has committed a breach of his duty to the co., the direct consequence of which has been a misapplication of its assets, for which he could be made responsible in an action, such breach of duty is a "misfeasance" for which he may be summarily proceeded against under the 1890 (Winding up) Act, s. 10, & it is not necessary that an action should be brought.

For some years before a co. was wound up, balance-sheets signed by the auditors were published by the directors to the shareholders in which the value of the co.'s stock-in-trade at the end of each year was grossly overstated. The auditors relied on certificates, wilfully false, given by J., one of the directors who was also manager, as to the value of the stock-in-trade. Dividends were paid for some years on the footing that the balance-sheets were correct; but if the stock-in-trade had been stated at its true value it would have appeared that there were no profits out of which a dividend could be declared. If the auditors had compared the different books & added to the stock-in-trade at the beginning of the year the amounts purchased during the year, & deducted the amounts sold, they would have seen that the statement of the

stock-in-trade at the end of the year was so large as to call for explanation; but they did not do so:—*Held*: it being no part of the duty of the auditors to take stock, they were justified in relying on the certificates of the manager, a person of acknowledged competence & high reputation, & were not bound to check his certificates in the absence of anything to raise suspicion, & they were not liable for the dividends wrongfully paid.

An auditor is not bound to be suspicious where there are no circumstances to arouse suspicion; he is only bound to exercise a reasonable amount of care & skill.—*Re KINGSTON COTTON MILL CO.* (No. 2), [1896] 2 Ch. 279; 65 L. J. Ch. 673; 12 T. L. R. 430; 40 Sol. Jo. 531; 3 Mans. 171; *sub nom. Re KINGSTON COTTON MILL CO., LTD., Ex p. PICKERING & PEASEGOOD* (No. 2), 74 L. T. 568, C. A.

*Annotations:—*Consd. *Squire Cash Chemist v. Ball, Baker, Mead v. Ball, Baker* (1911), 106 L. T. 197. *Apld. Re Republic of Bolivia Exploration Syndicate*, [1914] 1 Ch. 139. *Mentd. Dixon v. Kennaway*, [1900] 1 Ch. 833.

3662. Inspection of books—Enforcement by mandatory order—Discretion of court.]—The secretary of a co. having been guilty of defalcations, by which loss was occasioned to the co., the directors alleged that the co.'s auditors had by negligence in the performance of their duties conduced to these defalcations, & refused to give them access to the co.'s books for the purposes of audit. The auditors thereupon brought an action against the co. & the directors, claiming a declaration that they, as auditors, were entitled at all times to access to the co.'s books, & an order for access thereto. The time having arrived when, in the ordinary course, the audit of the co.'s accounts by pl'tfs. should be proceeding for the purposes of the next annual general meeting, pl'tfs. made an interlocutory application in the action for an order that defts. should give them access to the books:—*Held*: it was a question for the judicial discretion of the ct. whether the right of access to the books claimed by pl'tfs. should be enforced by a mandatory order, & such an order ought not, under the circumstances of the case, to have been made upon an interlocutory application, & without any steps to ascertain whether the co. were desirous that pl'tfs. should continue to act as auditors or not.—*CUFF v. LONDON & COUNTY LAND & BUILDING CO., LTD.*, [1912] 1 Ch. 440; 81 L. J. Ch. 426; 106 L. T. 285; 28 T. L. R. 218; 19 Mans. 166, C. A.

3663. Certificate as to profits—How far conclusive—Certificate given on wrong principle.]—*JOHNSTON v. CHESTERGATE HAT MANUFACTURING CO., LTD.*, No. 3597, *ante*.

3664. Disclosure to shareholders—Article providing for non-disclosure of secret reserve fund.]—A co. under the Cos. Acts has no power to make regulations precluding its auditors from availing themselves of all the information to which under Cos. Act, 1900 (c. 48), they are entitled as material for the report to be made by them to the shareholders as to the true state of the co.'s affairs.

Resolutions were passed by a co. to alter their arts. by inserting a provision that the directors might set aside out of profits, without disclosing the fact, sums to form an internal reserve fund; that this fund need not be shown in or disclosed by the balance-sheet, & that no information need be given to the shareholders as to its amount,

duly appointed by a general meeting of the co. & not casually called in as occasion may require, is an officer of the co. within the meaning of sect. 214.—*CONNELL v. HIMALAYA BANK, LTD.* (1895), 1 E. R. 18 All. 12.—IND.

q. — Auditor not an accountant.]—It is not necessary for a co. registered under Act 31, of 1909, to hold any of its meetings within the Transvaal Province, & its auditor need not be an accountant registered under

Ord. 3 (Private), 1904.—*WAYNE v. EGNEP*, [1921] W. L. D. 91.—S. AF.

PART III. SECT. 29, SUB-SECT. 5.—B. r. Right to lien on company's books—For payment of his fees.]—An ac-

investment or application; that the directors might invest it as they thought fit without being liable for loss in consequence of such investment; that they might apply it for any purposes which they considered would advance the interests of the co.; & that, while the particulars as to this fund were to be disclosed to the auditors, it was to be the auditors' duty not to disclose any information with regard to it to the shareholders or otherwise:—*Held*: these resolutions were *ultra vires* as being inconsistent with the obligations imposed upon auditors by Cos. Act, 1900 (c. 48), s. 23.—*NEWTON v. BIRMINGHAM SMALL ARMS CO., LTD.*, [1906] 2 Ch. 378; 75 L. J. Ch. 627; 95 L. T. 135; 54 W. R. 621; 22 T. L. R. 664; 50 Sol. Jo. 593; 13 Mans. 267.

3665. — *Attention of directors called to impropriety.*—Although it is not the duty of the auditors of a co., appointed under the Cos. Act, 1879 (c. 76), to consider whether its business is prudently or imprudently conducted, it is their duty to consider & report to the shareholders whether the balance-sheet exhibits a correct view of the state of the co.'s affairs, & the true financial position of the co. at the time of the audit. They must ascertain this by examining the books of the co., & must take reasonable care that what they certify as to the co.'s financial position is true. Except in very special cases it is their duty to place before the shareholders the necessary information as to the true financial position of the co., & not merely to indicate the means of acquiring it.

An auditor presented a confidential report to the directors calling their attention to the insufficiency of the securities on which the capital of the co. was invested, & the difficulty of realising them, but in his report to the shareholders merely stated that the value of the assets was dependent on realisation, & in the result the shareholders were deceived as to the condition of the co., & a dividend was declared out of capital & not out of income:—*Held*: the auditor had been guilty of misfeasance under 1890 (Winding up) Act, s. 10, & was liable to make good the amount of the dividend paid.—*Re LONDON & GENERAL BANK (No. 2)*, [1895] 2 Ch. 673; 44 W. R. 80; 39 Sol. Jo. 706; 2 Mans. 555; 12 R. 520; *sub nom.* *LONDON & GENERAL BANK, LTD.*, *THEOBALD'S CASE*, 64 L. J. Ch. 866; 73 L. T. 304; 11 T. L. R. 573, C. A.

Annotations:—*Folld. Re Kingston Cotton Mill Co. (No. 2)*, [1896] 2 Ch. 279. *Apld. Re Republic of Bolivia Exploration Syndicate*, [1914] 1 Ch. 139. *Mentd. Re National Bank of Wales*, [1899] 2 Ch. 629; *R. v. Roberts*, [1908] 1 K. B. 407.

3666. *To take stock.*—*Re KINGSTON COTTON MILL CO. (No. 2)*, No. 3661, *ante*.

3667. *Compliance with articles.*—(1) Co. auditors are bound to know or make themselves acquainted with their duties under the co.'s arts. & under the Cos. Acts for the time being in force, & if the audited balance-sheets do not show the true financial condition of the co., & damage is thereby occasioned, the *onus* is on the auditors to show that this damage is not the result of any breach of duty on their part.

(2) Auditors are *prima facie* responsible for *ultra vires* payments made on the faith of their balance-sheet, but whether & to what extent they are responsible for not discovering & calling attention to the illegality of payments made prior to the audit must depend on the special circumstances of each case.

The payment of a commission for placing shares

was authorised by the co.'s memorandum & a board resolution. In reliance on the memorandum & resolution the auditors passed certain payments for commission in their balance-sheet without discovering & drawing attention to the fact that they were not authorised by Table A (1906), by which in default of arts. the co. was regulated:—*Held*: in the special circumstances, the auditors were not liable for this omission.

A solr. who became a director three months after the incorporation of the co. was subsequently paid certain sums for agreed costs of incorporation & other sums for costs, rent of office, & clerical assistance. These payments were confirmed as such by boards of which the solr. was a member. The auditors passed these payments in their balance-sheet without discovering, appreciating, & drawing attention to the fact that as there was no power under Table A (1906) for a director to contract with the co., the solr. could not charge profit costs, so that the payments to him were *pro tanto* unauthorised:—*Held*: in the special circumstances, the auditors were not liable.—*Re REPUBLIC OF BOLIVIA EXPLORATION SYNDICATE, LTD.*, [1914] 1 Ch. 139; 83 L. J. Ch. 235; 110 L. T. 141; 30 T. L. R. 146; 58 Sol. Jo. 321; 21 Mans. 67.

Annotation:—*Generally, Mentd. Re Suarez, Suarez v. Suarez*, [1917] 2 Ch. 131.

— *Balance-sheet.*—*See No. 3668, post.*

3668. *As to balance-sheet—Compliance with articles.*—(1) It is the duty of an auditor, in auditing the accounts of a co., to ascertain that the balance-sheet fulfils the requirements specified in the arts., & that it is a correct representation of the co.'s affairs.

By the arts. of pltf. co. the directors were empowered to declare a dividend upon such estimates of account as they might see proper to recommend, so that no dividend should be payable except out of profits, & they were required annually to lay before the co. a statement of the income & expenditure of the past year, & also a balance-sheet containing a summary of the property & liabilities of the co.; & it was provided that the auditor should make a report to the members on the balance-sheet & accounts, stating whether in his opinion the balance-sheet was a full & fair balance-sheet containing the particulars required by the arts., & properly drawn so as to exhibit a true view of the state of the co.'s affairs. The remuneration of the directors & the manager was regulated by the rate of dividend. From its commencement in 1870, until its winding up in 1882, the co. earned no profits available for dividend. The directors annually submitted to the co. a balance-sheet purporting to show a profit, on the faith of which a dividend was declared. No statement of income & expenditure was ever submitted to the co. The balance-sheets were prepared by the manager, & contained false items. The directors had no knowledge that the balance-sheets were false, but they relied exclusively upon the statements of the manager. In auditing the accounts the auditor, without referring to the arts., merely certified that the accounts were a true copy of those shown in the books of the co. The balance-sheets were literally copied from balance-sheets in the ledger of the co., but the false items did not appear elsewhere in the books of the co.:—*Held*: (2) the directors, & the estate of a deceased director, were jointly & severally liable to make good sums improperly paid out of capital for dividends, for

countant who received a co.'s books for the purpose of balancing them & preparing a balance-sheet has a right

of retention over them for the payment of his fees.—*FINDLAY (LIQUIDATOR OF SCOTTISH WORKMEN'S ASSURANCE CO.,*

LTD.) v. WADDELL, [1910] S. C. 670; 47 Sc. L. R. 478; 1 S. L. T. 315,—*SCOT.*

Sect. 29.—The secretary and other officers and servants: Sub-sect. 5, B. & C. Sect. 30: Sub-sects. 1 & 2, A., B. & C. (a) & (b) i.]

directors' fees, & for bonuses to the manager; (3) the manager & auditor were liable for damages on the same footing.—LEEDS ESTATE BUILDING & INVESTMENT CO. v. SHEPHERD (1887), 36 Ch. D. 787; 57 L. J. Ch. 46; 57 L. T. 684; 38 W. R. 322; 3 T. L. J. 841.

Annotations:—As to (1) Apld. Re Republic of Bolivia Exploration Syndicate, [1914] 1 Ch. 139. As to (2) Apprvd. Dovey v. Cory, [1901] A. C. 477. Refd. Lee v. Neuchatel Asphalte Co. (1889), 41 Ch. D. 1; Re Sharpe, Re Bennett, Masonic & General Life Assce. v. Sharpe (1891), 65 L. T. 76; Re Kingston Cotton Mill Co. (No. 2), [1896] 1 Ch. 331. As to (3) Refd. Re London & General Bank (No. 2), [1895] 2 Ch. 673; Re Kingston Cotton Mill Co. (No. 2), [1896] 1 Ch. 331. Generally, Mentd. Municipal Freehold Land Co. v. Pollington (1890), 59 L. J. Ch. 734.

3669. — Correct representation of company's affairs.]—LEEDS ESTATE BUILDING & INVESTMENT CO. v. SHEPHERD, No. 3668, *ante*.

3670. — Liability where true position not disclosed.]—Re REPUBLIC OF BOLIVIA EXPLORATION SYNDICATE, LTD., No. 3667, *ante*.

3671. — Whether agreement with books sufficient—Books not showing true position of company.]—Re LONDON & GENERAL BANK (No. 2), No. 3665, *ante*.

3672. — Reliance on certificates of value of stock-in-trade—Certificates wilfully false.]—Re KINGSTON COTTON MILL CO. (No. 2), No. 3661, *ante*.

3673. As to books—Accuracy as to true position of company.]—Re LONDON & GENERAL BANK (No. 2), No. 3665, *ante*.

3674. — Duty to check.]—Re KINGSTON COTTON MILL CO. (No. 2), No. 3661, *ante*.

C. Liabilities.

3675. Ultra vires payments made on faith of balance-sheet—Rendered possible by neglect of duty.]—LEEDS ESTATE BUILDING & INVESTMENT CO. v. SHEPHERD, No. 3668, *ante*.

3676. — —.]—Re LONDON & GENERAL BANK (No. 2), No. 3665, *ante*.

3677. — Primâ facie liable.]—Re REPUBLIC OF BOLIVIA EXPLORATION SYNDICATE, LTD., No. 3667, *ante*.

3678. Reliance on fraudulent certificates of manager—No ground for suspicion.]—Re KINGSTON COTTON MILL CO. (No. 2), No. 3661, *ante*.

3679. Misfeasance under 1890 (Winding-up) Act, s. 10—Information withheld from shareholders—Directors' attention called to impropriety.]—Re LONDON & GENERAL BANK (No. 2), No. 3665, *ante*.

SECT. 30.—REGULATION AND MANAGEMENT.

SUB-SECT. 1.—IN GENERAL.

3680. Where no properly constituted governing body—Appointment of receiver.]—Where there is no properly constituted governing body of a joint-stock co. the ct. will interfere by appointing a receiver until a meeting can be called for the purpose of properly appointing a governing body.—TRADE AUXILIARY CO. v. VICKERS (1873), L. R. 16 Eq. 303; 21 W. R. 836.

3681. — Subscribers as directors—Provision in articles for meetings to be summoned by directors.]—Re BRICK & STONE CO., [1878] W. N. 140.

3682. — Whether liable to retire at first ordinary meeting.]—(1) 1862 Act, Table A, art. 58, providing that "at the first ordinary meeting after the registration of the co. the whole of the

directors shall retire from office," does not apply to mere *de facto* directors; nor does it apply to subscribers of the memorandum of assocn. who, not having appointed directors under art. 52, are—by art. 53—"deemed to be directors"; it only applies to directors who have been duly appointed under the arts.

(2) Art. 62 does not apply so as to continue mere *de facto* directors as directors till the ordinary meeting in the year next after that in which a meeting has been held at which an election of directors ought to have taken place, when no directors have been elected either at such earlier meeting or the adjournment thereof.

(3) The power given, by art. 52, to the subscribers of the memorandum to determine who shall be the first directors remains in force notwithstanding the first ordinary meeting after registration & the adjourned meeting held seven days afterwards have been held without any directors being appointed thereat.

(4) Art. 35, prescribing seven days' notice for summoning a meeting, only applies to general meetings of the co. Table A contains no special provision as to summoning meetings of subscribers of the memorandum of assocn., & only reasonable notice of such meetings is necessary.—JOHN MORLEY BUILDING CO. v. BARRAS, [1891] 2 Ch. 386; 60 L. J. Ch. 496; 64 L. T. 856; 39 W. R. 619.

NOTE.—Table A of 1908 Act contains no article corresponding to Art. 53 of Table A of 1862 Act by which the subscribers were deemed to be appointed directors.

3683. Whether directors necessary.]—It is not *ultra vires* for a co. to have no directors or to have another co. as its sole managers.—Re BULAWAYO MARKET & OFFICES CO., LTD., [1907] 2 Ch. 458; 76 L. J. Ch. 673; 97 L. T. 752; 23 T. L. R. 714; 51 Sol. Jo. 703; 14 Mans. 312.

By directors.]—*See, generally, Sect. 28, sub-sect. 5, ante.*

Interference by court.]—*See, generally, Sect. 31, sub-sect. 3, E., post.*

— In whose name proceedings taken.]—*See Sect. 33, sub-sect. 3, A., post.*

SUB-SECT. 2.—UNDER ARTICLES OF ASSOCIATION.

A. Where Table A. Adopted.

3684. Application—Company before incorporation.]—The subscribers to the memorandum of assocn. of a co. met, & before the registration of the co., purported to appoint certain persons as directors. The co. was then registered, but without arts. of assocn., & it was therefore governed by the regulations in 1862 Act, Table A. Relying on this appointment, these directors objected to their management of the affairs of the co. being interfered with by certain persons who set up that they had been appointed directors after registration of the co.:—*Held*: art. 52 of Table A can apply only to empower the subscribers to appoint directors after the co. has been registered.

Table A cannot have any application to regulate a co. before its incorporation (KAY, J.).—MÖLLER v. MACLEAN (1889), 1 Meg. 274.

3685. Whether particular article excluded—By implication.]—FISHER v. BLACK & WHITE PUBLISHING CO., No. 4021, *post*.

3686. — —.]—PATERSON (R.) & SONS, LTD. v. PATERSON, [1916] W. N. 352, H. L.

See, also, No. 2137, ante.

Construction of individual articles—1862 Act, Table A, art. 4.]—See No. 2145, ante.

—1862 Act, Table A, art. 6.]—See No. 2145, ante.

—1862 Act, Table A, art. 10.]—See No. 2399, ante.

—1862 Act, Table A, art. 27.]—See No. 3717, post.

—1862 Act, Table A, art. 35.]—See No. 3682, ante.

—1862 Act, Table A, art. 43.]—See No. 3819, post.

—1862 Act, Table A, art. 52.]—See No. 3684, ante.

—1862 Act, Table A, art. 58.]—See Nos. 2832, 3682, ante.

—1862 Act, Table A, art. 62.]—See Nos. 2832, 3622, ante.

—1906 Act, Table A, art. 88.]—See No. 3890, post.

—1906 Act, Table A, art. 91.]—See No. 3890, post.

B. Under Special Articles.

Contents.]—See No. 159, ante.

Validity.]—See Sect. 7, sub-sect. 8, ante.

Construction generally.]—See Sect. 7, sub-sect. 3, ante.

Effect generally.]—See Sect. 7, sub-sect. 5, ante.

C. Alteration of Articles.

(a) In General.

3687. Required by court—Reduction of capital affecting voting rights conferred by articles.]—The ct. has power, under 1867 Act & Companies Act, 1877 (c. 26), to sanction a resolution by a limited co. for a partial reduction of one class of its shares, as for instance, a reduction of original shares already issued & fully paid-up, leaving the unissued shares unreduced; but, if the co.'s arts. of assocn. confer on each shareholder a voting power proportionate to his holding of original shares, the ct. will, before sanctioning the reduction, require that the co. shall alter its arts. so as to make the voting power proportionate to the reduced capital.—*Re PINKNEY & SONS S.S. Co.*, [1892] 3 Ch. 125; 61 L. J. Ch. 691; 67 L. T. 117; 40 W. R. 698; 8 T. L. R. 667; 36 Sol. Jo. 609.

(b) Power to Alter.

i. In General.

3688. Extent of power—Matter of regulation—Not constitution of company.]—(1) The power given by 1862 Act, s. 50, to a general meeting by special resolution to modify the regulations of the co., is limited to altering the regulations relating to the management of the co., but not to altering its constitution.

(2) Therefore, where a general meeting altered the arts. of assocn. by inserting power to issue new shares with preferential dividend, no such power existing before:—*Held*: such alteration was an alteration in the constitution of the co., the intention of all parties to the original contract

being that all shareholders should stand *pari passu* with regard to the receipt of dividends, & the ct. granted an injunction restraining the issue of preference shares.—*HUTTON v. SCARBOROUGH CLIFF HOTEL CO. (LTD.)*, B. (1865), 2 Drew. & Sm. 521; 13 L. T. 57; 11 Jur. N. S. 849; 13 W. R. 1059; 62 E. R. 717; *sub nom.* *HUTTON v. BERRY*, 6 New Rep. 376.

Annotations:—As to (1) Consd. British & American Trustee & Finance Corpn. v. Couper, [1894] A. C. 399. **Dbtd. *Mellquham v. Taylor*, [1895] 1 Ch. 53. **Refd.** *Re Hyderabad (Deccan) Co.* (1896), 75 L. T. 23; *Re Colmer*, [1897] 1 Ch. 524; *Sidebottom v. Kershaw, Leese*, [1920] 1 Ch. 154. **As to (2) Consd.** *Melhado v. Hamilton* (1873), 28 L. T. 578; *Ashbury v. Watson* (1885), 30 Ch. D. 376; *Mellquham v. Taylor*, [1895] 1 Ch. 53. **Overd.** *Andrews v. Gas Meter Co.*, [1897] 1 Ch. 361. **Refd.** *Re Bangor & Portmadoc Slate & Slab Co.* (1875), L. R. 20 Eq. 59; *Harrison v. Mexican Ry.* (1875), L. R. 19 Eq. 358; *Re South Durham Brewery Co.* (1885), 31 Ch. D. 261; *Re Bridgewater Navigation Co.* (1888), 39 Ch. D. 1; *British & American Trustee & Finance Corpn. v. Couper*, [1894] A. C. 399; *Re Hyderabad (Deccan) Co.* (1896), 75 L. T. 23; *Re Colmer*, [1897] 1 Ch. 524; *Sidebottom v. Kershaw, Leese*, [1920] 1 Ch. 154. **Generally, Mentd.** *Re Irrigation Co. of France, Fox's Case* (1870), 23 L. T. 453; *Welton v. Saffery*, [1897] A. C. 299.**

3689. —What may be included.]—SIDEBOTTOM v. KERSHAW, LEESE & CO., No. 3704, post.

3690. Between application for shares & allotment.]—Alteration of the arts. of assocn. of a co. between an application for shares & their allotment:—Held: not to invalidate the allotment, such alteration being made under 1862 Act, & the objects of the co. not being thereby altered.—*Re ENGLISH, ETC. ROLLING STOCK CO., LYON'S CASE* (1866), 35 Beav. 646; 55 E. R. 1048.

3691. For purpose of rectifying mistake—Under general jurisdiction of court.]—(1) Under its ordinary jurisdiction to rectify written instruments the ct. has no power to rectify a mistake in the arts. of assocn. of a co. which have been executed by the seven signatories to the memorandum, although no one else has come in under the arts. & no shares have been allotted. The proper mode of rectifying a mistake is by 1862 Act, s. 50.

(2) A document of this kind has only a statutory effect, & can only be rectified by statutory authority (*JOYCE, J.*).—*EVANS v. CHAPMAN* (1902), 86 L. T. 381; 18 T. L. R. 506; 46 Sol. Jo. 432.

3692. Delegation of authority from company to directors—Increase of capital.]—By the original arts. of a limited co. it had the power in general meeting both to create & issue new shares on such terms as it thought fit. Upon the true construction of certain arts. the power of creating, not the power of issuing, was transferred to the directors:—Held: although the language of art. 9 was general, the generality of it was restrained by the obvious effect & the obvious intention of arts. 53 & 59 & the directors had not power to issue new shares without the authority of a resolution in general meeting.—*KOFFYFONTEIN MINES, LTD. v. MOSELY*, [1911] A. C. 409; 80 L. J. Ch. 668; 105 L. T. 115; 27 T. L. R. 501; 55 Sol. Jo. 551; 18 Mans. 365, H. L.; *affg.* S. C. *sub nom.* *MOSELY v. KOFFYFONTEIN MINES, LTD.*, [1911] 1 Ch. 73, C. A.

Validity of individual articles.]—See, generally, Sect. 7, ante.

PART III. SECT. 30, SUB-SECT. 2.—C. (b) i.

s. Extent of power.]—A co.'s arts. can only be altered by special resolution.—TWIGG v. THUNDER HILL MINING CO. (1893), 3 B. C. R. 101.—CAN.

t. —What may be included—Remuneration of directors.]—At a

special general meeting of a co. a resolution was passed deleting the sects. of the arts. referring to the payment of the directors & substituting a provision that the remuneration of the directors should from time to time be settled by the co. at its annual general meeting:—*Held*: the portions of the arts. of assocn. relating to the remuneration of directors could pro-

perly be amended by a majority vote of the shareholders.—*ROSS & CO. v. COLEMAN* (1920), App. D. 408.—S. AF.

a. For purpose of rectifying mistake.]—A mistake in the arts. of assocn. can only be rectified by special resolution.—MIDAS GOLD-DREDGING CO., LTD. v. HENRY (1904), 23 N. Z. L. R. 158.—N.Z.

Sect. 30.—Regulation and management: Sub-sect. 2, C. (b) ii. & iii.]

ii. *Where Special Contractual Rights exist.*

3693. Rights of member—No implied term that rights not subject to alteration.]—(1) A limited co. by one of its arts. provided that it should have a lien for all debts & liabilities of any member to the co. "upon all shares—not being fully-paid—held by such member." The co., by way of purchase-money for the property acquired by it, allotted fully-paid shares to Z., a nominee of the vendor to the co. Z. also applied for & had allotted to him shares not paid-up. He was the only holder of fully paid-up shares. At his death he was indebted to the co. in arrears of calls on the unpaid shares, but his assets were insufficient to pay the arrears. Thereupon the co., by special resolution under 1862 Act, s. 50, altered the above art. by omitting therefrom the words "not being fully-paid," thus creating a lien on Z.'s fully-paid shares:—*Held*: (1) the co. had power to alter its arts. by extending its lien to fully-paid shares; (2) the lien so extended, having been made in good faith, was enforceable against Z.'s fully-paid shares, since he took them subject to the original arts. & the power of altering them given to the co. by 1862 Act, s. 50, & did not make any special or implied bargain that they should not be affected by any subsequent alteration of the arts.; & the fact of those shares being vendor's shares allotted in payment for the property purchased by the co., instead of being shares paid for in cash in the ordinary way, was immaterial.

(2) I am of opinion that the arts. can be so altered [as to impose a lien or restriction in respect of a debt contracted before & existing at the time when the arts. are so altered], & that if they are altered *bonâ fide* for the benefit of the co., they will be valid & binding as altered on the existing holders of paid-up shares, whether such holders are indebted or not indebted to the co. when the alteration is made. But, it does not by any means follow that the altered art. may not be inapplicable to some particular fully paid-up shareholder. He may have special rights against the co., which do not invalidate the resolution to alter the arts., but which may exempt him from the operation of the arts. as altered (LINDLEY, M.R.).

(3) We are all agreed that a co. cannot contract itself out of the statutory power of alteration conferred by [1862 Act], sect. 50. I take it to be clear that the alteration must be made in good faith & that an alteration in the arts. which involved oppression of one shareholder would not be made in good faith (VAUGHAN WILLIAMS, L.J.).—ALLEN v. GOLD REEFS OF WEST AFRICA, LTD., [1900] 1 Ch. 656; 69 L. J. Ch. 266; 82 L. T. 210; 48 W. R. 452; 16 T. L. R. 213; 44 Sol. Jo. 261; 7 Mans. 417, C. A.

Annotations:—As to (3) *Refd.* Ayre v. Skelsey's Adamant Cement Co. (1904), 20 T. L. R. 587; Baily v. British Equitable Assce., [1904] 1 Ch. 374. *Generally, Consd.* Punt v. Symons, [1903] 2 Ch. 506; Brown v. British Abrasive Wheel Co., [1919] 1 Ch. 290; Dafen Tinplate Co. v. Llanelly Steel Co., [1920] 2 Ch. 124; Sidebottom v. Kershaw, Leese, [1920] 1 Ch. 154. *Refd.* *Re* Welsbach Incandescent Gas Light Co., [1904] 1 Ch. 87; British Murac Syndicate v. Alporton Rubber Co., [1915] 2 Ch. 186; Phillips v. Manufacturers' Securities (1917), 86 L. J. Ch. 305. *Mentd.* *Re* Artisans' Land & Mortgage Corp'n., [1904] 1 Ch. 796; McEllistram v. Ballymacelligott Co-op. Agricultural & Dairy Soc., [1919] A. C. 548.

— **Remuneration of director.]—See Sect. 36, sub-sect. 11, A. (c), post, & No. 3724, post.**

3694. — Creation of class rights.]—HUTTON v.

SCARBOROUGH CLIFF HOTEL Co. (LTD.), No. 3688, ante.

3695. — .]—A limited co., having no authority under its memorandum or arts. of assocn. to create any preference between different classes of shares, may by special resolution alter its arts. so as to authorise the directors to issue preference shares by way of increase of capital.—ANDREWS v. GAS METER Co., [1897] 1 Ch. 361; 66 L. J. Ch. 246; 76 L. T. 132; 45 W. R. 321; 13 T. L. R. 199; 41 Sol. Jo. 255, C. A.

Annotations:—*Consd.* Allen v. Gold Reefs of West Africa, [1900] 1 Ch. 656; *Re* Welsbach Incandescent Gas Light Co., [1904] 1 Ch. 87; Sidebottom v. Kershaw, Leese, [1920] 1 Ch. 154. *Refd.* *Re* Colmer, [1897] 1 Ch. 524. *Mentd.* Welton v. Saffery (1897), 66 L. J. Ch. 382.

See, generally, Sect. 15, ante.

3696. — Reduction of preference shares.]—

(1) A contract made on the issue of any particular class of shares, such as preference shares, that that class of shares shall not be liable to reduction, will be valid.

(2) The fact that, at the time when a class of preference shares was created, the arts. of assocn. of the co. did not authorise any reduction of the capital, will not prevent the reduction of the amount of the preference shares, if a special resolution is previously passed altering the arts. by the insertion of a power of reduction.

(3) The arts. of assocn. of a co., formed in 1864, under 1862 Act, provided that the directors might, from time to time, with the sanction of a special resolution previously given, increase the capital by the issue of *scribes* shares, & that any capital thus raised *be* considered as part of the original capital. *Whether* directors *be* subject to the same provisions for a co. to have no of the original capital, *either* co. as its sole managers: *for* the co. by special *resol.* & OFFICES Co., LTD. new shares should have suc. J. Ch. 673; 97 L. T. dividends as it should deem *exp.* 703; 14 Mans. did not contain any power to reduce *the* capital. In 1872 it was resolved to issue certain preference shares, "bearing interest at 8 per cent. per annum in perpetuity." In 1876 it was resolved to issue certain other preference shares, "entitling the holders to a fixed dividend at 6 per cent. per annum on the amount for the time being paid up in respect of such shares." In both cases it was provided that the preference shareholders should be entitled to attend the general meetings of the co., but that they should not be entitled in virtue of those shares to vote. Both classes of preference shares were issued & were paid up in full, as were also the ordinary shares. In 1885 a special resolution was passed, adding to the arts. of assocn. a clause, authorising the directors from time to time, with the sanction of a special resolution, to reduce the capital by cancelling lost capital, or capital unrepresented by available assets. In Apr. 1888, special resolutions were passed for the reduction of the whole of the capital—including the preference shares—by one-fourth, on the ground that capital to that extent had been lost. A petition by the co. for the confirmation of the resolutions by the ct. was opposed by some of the preference shareholders, who contended that there was no power to reduce the amount of the preference shares, or that at any rate the amount of the dividend payable on those shares could not be reduced:—*Held*: there was nothing in the bargain with the preference shareholders which prevented the reduction of their shares, & there was nothing unfair or inequitable in the proposed reduction.

The resolutions were accordingly confirmed.—*Re* BARROW HÆMATITE STEEL Co. (1888), 39 Ch. D.

582; 58 L. J. Ch. 148; 59 L. T. 500; 37 W. R. 249; 4 T. L. R. 775.

Annotations:—As to (3) *Consd. Re Union Plate Glass Co.* (1889), 42 Ch. D. 513. *Generally. Reid. British & American Trustee & Finance Corp. v. Couper*, [1894] A. C. 399; *Re Gatling Gun*, [1896] 43 Ch. D. 628. *Mentd. Christie v. Northern Counties Permanent Benefit Bldg. Soc.* (1889), 61 L. T. 796; *Re Alabama, New Orleans, Texas & Pacific Junction Ry.*, [1891] 1 Ch. 213.

3697. Member & non-member in same position.]

—(1) A co. cannot contract itself out of its statutory right to alter its arts., even by an agreement independent of & outside the arts. of assocn. The principle of *Allen v. Gold Reefs of West Africa*, No. 3693, *ante*, applies to a case between the co. & an outsider on a separate contract, as well as to a case between a co. & a shareholder on the contract contained in the arts.

(2) Where shares had been issued by the directors, not for the general benefit of the co., but for the purpose of controlling the holders of the greater number of shares by obtaining a majority of voting power:—*Held*: they ought to be restrained from holding the meeting at which the votes of the new shareholders were to have been used.—*PUNT v. SYMONS & Co., LTD.*, [1903] 2 Ch. 506; 72 L. J. Ch. 768; 89 L. T. 525; 52 W. R. 41; 47 Sol. Jo. 619; 10 Mans. 415.

Annotations:—As to (1) *Dhld. British Murac Syndicate v. Alpertou Rubber Co.*, [1915] 2 Ch. 186. *Reid. Abbotsford Hotel v. Kingham* (1909), 101 L. T. 777; *Piercy v. Mills*, [1920] 1 Ch. 77.

3698. Alteration a breach of contract—With non-member.]—The power which a co. has under 1862 Act, s. 50, of altering its arts. by special resolution, though it enables it to alter to some extent the rights of shareholders in respect of their shares, does not enable it to alter contracts between the co. & outsiders, or contracts between the co. & shareholders otherwise than in respect to their shares.—*BAILY v. BRITISH EQUITABLE ASSURANCE Co.*, [1904] 1 Ch. 374; 73 L. J. Ch. 240; 90 L. T. 335; 52 W. R. 549; 20 T. L. R. 242; 11 Mans. 169, C. A.; *reversd.* on other grounds *S. C. sub nom. BRITISH EQUITABLE ASSURANCE Co., LTD. v. BAILY*, [1906] A. C. 35, H. L.

Annotations:—*Apld. British Murac Syndicate v. Alpertou Rubber Co.*, [1915] 2 Ch. 186. *Mentd. McEllistim v. Ballymacelligott Co-op. Agricultural & Dairy Soc.*, [1919] A. C. 548.

3699. —.]—A co. cannot alter its arts. so as to commit a breach of contract; & therefore if a contract between the co. & another party involves as one of its terms that a particular art. is not altered, the co. is not at liberty to alter that art., & will be restrained by injunctions from doing so.—*BRITISH MURAC SYNDICATE, LTD. v. ALPERTON RUBBER Co., LTD.*, [1915] 2 Ch. 186; 84 L. J. Ch. 665; 113 L. T. 373; 31 T. L. R. 391; 59 Sol. Jo. 494.

Annotation:—*Mentd. Plantations Trust v. Bila (Sumatra) Rubber Lands*, (1916), 85 L. J. Ch. 801.

iii. *Exercise of Power.*

3700. In good faith.]—*ALLEN v. GOLD REEFS OF WEST AFRICA, LTD.*, No. 3693, *ante*.

3701. For benefit of company as whole.]—*ALLEN v. GOLD REEFS OF WEST AFRICA, LTD.*, No. 3693, *ante*.

3702. — Alteration enabling minority to be expropriated.]—A co. was in great need of further capital. The majority, representing 98 per cent. of the shares, were willing to provide this capital, if they could buy up the 2 per cent. minority.

Having failed to effect this by agreement, they proposed to pass an art. enabling them to purchase the minority shares compulsorily on certain terms therein mentioned, but were willing to adopt any other mode of ascertaining the value that the ct. thought fit:—*Held*: in the circumstances the proposed art. was not just or equitable or for the benefit of the co. as a whole, but was simply for the benefit of the majority; it was not therefore an art. that the majority could force on the minority under 1908 Act, s. 13.—*BROWN v. BRITISH ABRASIVE WHEEL Co.*, [1919] 1 Ch. 290; 88 L. J. Ch. 143; 120 L. T. 529; 35 T. L. R. 268; 63 Sol. Jo. 373.

Annotations:—*Consd. Dafen Tinplate Co. v. Llanelly Steel Co.*, [1920] 2 Ch. 124. *Distd. Sidebottom v. Kershaw, Loese*, [1920] 1 Ch. 154.

3703. — —.]—Deft. co., not having power under its original arts. of assocn. to acquire compulsorily the shares of members, passed special resolutions altering its arts. & introducing a power enabling the majority of the shareholders to determine that the shares of any member—other than a certain named co.—should be offered for sale by the directors to such person or persons—whether a member or members or not—as they should think fit at the fair value to be fixed from time to time at stated intervals by the directors. The shareholders in deft. co. were principally cos. & persons manufacturing tinplates who were originally invited to become shareholders on the understanding that, although under no legal obligation to do so, they were to take the steel bars required for their tinplates from deft. co. which was formed as a private co., with the object of providing such supply. Pltf. co., which was an original shareholder of deft. co., subsequently withdrew its custom & transferred it to a new rival steel co. which pltf. co. had been instrumental in forming. Being unable to acquire pltf. co.'s shares by agreement, deft. co. passed the resolutions in question with the object of acquiring pltf. co.'s shares & of protecting deft. co. against conduct on the part of its shareholders detrimental to the interests of the co.:—*Held*: the resolutions in conferring an unrestricted & unlimited power on the majority of the shareholders to expropriate any shareholder they might think proper at their will & pleasure, went much further than was necessary for the protection of the co. from the conduct of shareholders detrimental to the co.'s interests, & the power thereby conferred could not be *bonâ fide* or genuinely for the benefit of the co. as a whole & was not such a power as could be assumed by the majority.—*DAFEN TINPLATE Co. v. LLANELLY STEEL Co.*, [1920] 2 Ch. 124; 89 L. J. Ch. 346; 123 L. T. 225; 36 T. L. R. 428; 64 Sol. Jo. 446.

3704. — Compulsory transfer of shares at full value.]—A private trading co., in which the majority of the shares were held by the directors, passed a special resolution to alter its arts. by introducing a power for the directors to require any shareholder who competed with the co.'s business to transfer his shares, at their full value, to nominees of the directors. Pltfs., who carried on a competing business, held the minority of the shares, & had voted against the resolution. They brought an action for a declaration that it was invalid as against them:—*Held*: (1) the co. had power under 1908 Act, s. 13, to introduce into its

PART III. SECT. 30, SUB-SECT. 2.—
C. (b) iii.

3701 i. For benefit of company as whole.]—Shareholders of a co. adopted

a new art. empowering the directors to borrow generally such sums as they might think expedient:—*Held*: a valid exercise of the power to alter the rules reserved to the co. in special

meeting under its arts. of assocn.—*UNION BANK OF AUSTRALIA, LTD. v. SOUTH CANTERBURY BUILDING & INVESTMENT Co., LTD.* (1894), 13 N. Z. L. R. 489.—N.Z.

Sect. 30.—Regulation and management: Sub-sect. 2, C. (b) iii. & iv., (c) i. & ii. & (d).]

altered arts. anything that might have been included in its original arts., provided that the alteration was made *bond fide* for the benefit of the co. as a whole. A power to expel a shareholder by buying him out was valid in the case of original arts., & could therefore be included in altered arts., subject to the same limitation; (2) the resolution was passed *bond fide* for the benefit of the co. as a whole, & was therefore valid, & enforceable by the majority against the minority.—*SIDEBOTTOM v. KERSHAW, LEESE & CO.*, [1920] 1 Ch. 154; 89 L. J. Ch. 113; 122 L. T. 325; 36 T. L. R. 45; 64 Sol. Jo. 114, C. A.

Annotation:—As to (2) Consd. Dafen Tinplate Co. v. Llanelly Steel Co., [1920] 2 Ch. 124.

See, generally, Sect. 23, sub-sect. 16, ante.

iv. Exclusion of Power.

3705. General rule.]—MALLESON v. NATIONAL INSURANCE & GUARANTEE CORPN., No. 3709, *post*.

3706. —.]—ALLEN v. GOLD REEFS OF WEST AFRICA, LTD., No. 3693, *ante*.

3707. By articles.]—A co. cannot contract itself out of the provisions of 1862 Act, s. 50, by a clause in its arts. excepting any regulation contained in the arts. from the operation of the sect., & a resolution of a general meeting of the co. to alter or modify such regulation will be valid.—*WALKER v. LONDON TRAMWAYS Co.* (1879), 12 Ch. D. 705; 49 L. J. Ch. 23; 28 W. R. 163.

Annotations:—Refd. Re Barrow Hematite Steel Co. (1888), 58 L. J. Ch. 148; *Goode v. Ladies' Dress Assocn.* (1893), 37 Sol. Jo. 340; *Re Hyderabad (Deccan) Co.* (1896), 75 L. T. 23; *Andrews v. Gas Meter Co.*, [1897] 1 Ch. 361; *Allen v. Gold Reefs of West Africa*, [1900] 1 Ch. 656; *Punt v. Symons*, [1903] 2 Ch. 506; *Ayre v. Skelsey's Adamant Cement Co.* (1904), 48 Sol. Jo. 572.

3708. By covenant contained in share certificate.]—GOODE v. LADIES' DRESS ASSOCN., LTD. (1893), 37 Sol. Jo. 340.

3709. By statement in prospectus.]—(1) A co. cannot contract itself out of the power to alter its arts.

(2) Pltf. took shares in a limited co. in reliance on a prospectus which stated that a certain amount of the co.'s capital would be reserved capital, which "under the Act of 1879, it is not competent to the directors to call up."

One of the arts. of assocn. provided that £4 a share should be reserved capital not capable of being called up, except in case of a winding up, & that a special resolution to that effect should be passed in accordance with Companies Act, 1879 (c. 76). No valid special resolution to this effect was passed, & ultimately a special resolution was passed repealing the art.:—*Held*: this was valid.—*MALLESON v. NATIONAL INSURANCE & GUARANTEE CORPN.*, [1894] 1 Ch. 200; 63 L. J. Ch. 286; 70 L. T. 157; 42 W. R. 249; 10 T. L. R. 101; 38 Sol. Jo. 80; 1 Mans. 249; 8 R. 91.

Annotations:—As to (1) Refd. Re Hyderabad (Deccan) Co. (1896), 75 L. T. 23; *Andrews v. Gas Meter Co.*, [1897] 1 Ch. 361. *Generally, Mentd. Bartlett v. Mayfair Property Co.* (1897), 77 L. T. 652.

3710. By agreement.]—PUNT v. SYMONS & CO., LTD., No. 3697, *ante*.

3711. — Relating to particular articles.]—BRITISH MURAC SYNDICATE, LTD. v. ALPERTON RUBBER CO., LTD., No. 3699, *ante*.

Alteration as a breach of contract.]—See Sub-sect. 2, C. (b) ii., ante.

(c) Procedure.

i. In General.

See, now, 1908 Act, s. 13.

3712. General rule.]—EVANS v. CHAPMAN, No. 3691, *ante*.

3713. Resolution by directors—Unconfirmed by shareholders.]—The arts. of assocn. of a co. did not require that a director should be qualified by holding any shares, but the directors passed a resolution, which was not in any way confirmed by the shareholders, that the qualification should in future be 250 shares of £1 each:—*Held*: this resolution could not alter the constitution of the co.—*Re BRITISH PROVIDENT LIFE & GUARANTEE ASSOCN., DE RUVIGNE'S CASE* (1877), 5 Ch. D. 306; 46 L. J. Ch. 360; 36 L. T. 329; 25 W. R. 476, C. A.

Annotations:—Consd. Re Patent Davit & Boat Detaching Co., Ranken's Case (1879), 39 L. T. 664. *Mentd. Re Caerphilly Colliery Co.*, Ormerod's Case (1877), 37 L. T. 244; *Re Church & Empire Fire Insko.*, Pagin & Gill's Case (1877), 6 Ch. D. 681; *Re Eskorn Slate & Slab Quarries Co.*, Clarke & Helden's Cases (1877), 37 L. T. 222; *Re Eupion Fuel & Gas Co.*, Aspinall's Case (1877), 36 L. T. 362; *Re Englefield Colliery Co.* (1878), 8 Ch. D. 388; *Re Ambrose Lake Tin & Copper Mining Co.*, *Ex p. Moss*, *Ex p. Taylor* (1879), 49 L. J. Ch. 459, n.; *Re Macdonald*, [1894] 1 Ch. 89.

3714. Resolution by subscribers to memorandum.]—The arts. of assocn. of a co. did not require that a director should be qualified by holding any shares, but the subscribers to the memorandum of assocn. passed a resolution that the qualification of future directors should be the holding of fifty shares each, & that R. should be one of the future directors. R. subsequently became a director, & acted as chairman at some meetings. R.'s name also appeared as a director in the prospectus. R. stated that when he acted as chairman he was not aware that any qualification was necessary, & that as soon as he heard of it he took steps to get this resolution rescinded, & ultimately wrote to the secretary resigning his seat at the board. R. had signed a proxy paper as "a member of the co." but had never applied for any shares, nor were any ever allotted to him. The chief clerk settled R. on the list of contributories in respect of fifty qualification shares:—*Held*: a resolution of the subscribers could not alter the constitution of the co., & there being no contract on R.'s part, either express or implied, to take shares, his name must be removed.—*Re PATENT DAVIT & BOAT DETACHING CO.*, RANKEN'S CASE (1879), 39 L. T. 664.

3715. Alteration of one article—Altered article inconsistent with other article.]—HARBEN v. PHILLIPS, No. 4487, *post*.

3716. Resolution sanctioning departure from article—Resolution amounting to rescission of article.]—The directors of a co., by whose arts. of assocn. the directors were prohibited from investing or expending any money of the co. in the purchase of shares of the co., gave notice to the shareholders of an extraordinary general meeting at which a special resolution was to be proposed that, "notwithstanding anything contained in the arts. of assocn., the directors should be authorised, & be thereby directed," to do what

PART III. SECT. 30, SUB-SECT. 2.—C. (c) i.

b. Resolution sanctioning departure from article.]—A general meeting of a co. at which resolutions were taken was held upon nine days' notice.

The arts. of assocn. provided that fourteen days' notice was necessary for convening such a meeting, but another art. provided that the directors could convene a general meeting upon 48 hours' notice when they considered the business for discussion was of

sufficient urgency. The notice convening the meeting stated that it was to alter one of the arts. of the co. by removing all the limitations therein contained upon the powers of the directors, & the resolution as passed had the effect of removing such limi-

was equivalent to expending money of the co. in the purchase of fully paid-up vendors' shares in the co.; & the directors at the same time issued a circular to the shareholders recommending the adoption of the resolution. The resolution was carried at the meeting, & was afterwards duly confirmed at another extraordinary general meeting:—*Held*: the notice was a sufficient intimation to the shareholders of what it was proposed to do, & the resolution was valid & operative, as being in effect a rescission of the prohibitive art. so far as necessary, & an instruction to the directors to carry out the proposed scheme by virtue of their new powers.—*TAYLOR v. PILSEN JOEL & GENERAL ELECTRIC LIGHT CO.* (1884), 27 Ch. D. 268; 53 L. J. Ch. 856; 50 L. T. 480; 33 W. R. 134.

3717. — No resolution for alteration of article.]
—*Qu.*: whether, where one of the arts. of assocn. of a limited co. prescribes a particular mode of allotment of new shares, it is competent for the co. by special resolution to sanction a different mode of allotment without having first passed a special resolution duly altering that art.—*JAMES v. BUENA VENTURA NITRATE GROUNDS SYNDICATE, LTD.*, [1896] 1 Ch. 456; 65 L. J. Ch. 284; 74 L. T. 1; 44 W. R. 372; 12 T. L. R. 176; 40 Sol. Jo. 238, C. A.

Annotations:—*Refd.* *Allen v. Gold Reefs of West Africa*, [1900] 1 Ch. 656. *Mentd.* *Llewellyn v. Kasintoe Rubber Estates*, [1914] 2 Ch. 670.

3718. Adoption proved by long acquiescence.]
Although a special resolution is the statutory mode of enacting arts. of assocn., the adoption thereof by a co. may be proved by a long course of acquiescence.

The unsigned arts. of a co. incorporated under Hong Kong Ordinance I. of 1865—similar to 1862 Act—were irregularly registered along with its memorandum of assocn.; but it appeared that they had for nineteen years been published, acted on without objection, & from time to time amended & added to by special resolutions:—*Held*: they must be treated as valid & operative, & as having been adopted by the shareholders.—*HO TUNG v. MAN ON INSURANCE CO.*, [1902] A. C. 232; 71 L. J. P. C. 46; 85 L. T. 617; 18 T. L. R. 118; 9 Mans. 171, P. C.

Annotation:—*Refd.* *Re Walker & Smith* (1903), 51 W. R. 491.

3719. Alteration for purpose of correcting mistake.]—*EVANS v. CHAPMAN*, No. 3691, *ante*.

ii. Notice of Meeting.

3720. Notice of resolution empowering & directing directors—Notwithstanding anything in the articles.]—*TAYLOR v. PILSEN JOEL & GENERAL ELECTRIC LIGHT CO.*, No. 3716, *ante*.

3721. Notice of general character of business—Statement where proposed new articles might be seen.]—(1) The provision in 1862 Act, s. 51, that the declaration of the chairman that a resolution has been carried “shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes,” does not preclude the ct. from inquiring into the question whether the requisite proportion of votes was in fact given; & where the majority is insufficient, the ct. will

restrain the co. by injunction from proceeding further with the resolution.

(2) When it is proposed to alter the arts. of assocn. of a co., a notice of the meeting stating the general character of the business to be transacted, & that a copy of the proposed new arts. may be inspected at the office of the solrs. of the co., is sufficient notice to the shareholders.—*YOUNG v. SOUTH AFRICAN & AUSTRALIAN EXPLORATION & DEVELOPMENT SYNDICATE*, [1896] 2 Ch. 268; 65 L. J. Ch. 638; 74 L. T. 527; 44 W. R. 509; 40 Sol. Jo. 500.

Annotations:—*As to* (1) *N.F. Re Hadleigh Castle Gold Mines*, [1900] 2 Ch. 419. *Refd.* *Wall v. London & Northern Assets Corp.*, [1899] 1 Ch. 550. *Generally, Mentd.* *Ernest v. Loma Gold Mines* (1896), 75 L. T. 317.

3722. — Nature of alteration not indicated.]—*NORMANDY v. IND, COOPE & CO., LTD.*, No. 4428, *post*.

Increase of directors' remuneration.]—*See* No. 4488, *post*.

3723. Service of notice—After death of member.]
—*ALLEN v. GOLD REEFS OF WEST AFRICA, LTD.*, No. 3770, *post*.

(d) Effect of Alteration.

3724. Not retrospective—Alteration of directors' remuneration.]—A co., whose arts. of assocn. provided that the directors' remuneration should be at a certain rate, altered these arts. by special resolution, which purported to make the altered rate of remuneration effective from a date prior to the special resolution:—*Held*: though the arts. did not constitute a contract between the co. & the directors but only pointed out the terms on which the directors were serving, & though these terms could be altered by a special resolution altering the arts., still the alterations could have effect only for the future, & the directors were entitled to remuneration at the old rate until the arts. were altered.

The arts. do not themselves constitute a contract, they are merely the regulations by which provision is made for the way the business of the co. is to be carried on. A person who acts as director with those arts. before him enters into a contract with the co. to serve as a director, the remuneration to be at the rate contemplated by the arts. The person who does this has before him, as one of the stipulations of the contract, that it shall be possible for his employer to alter the terms upon which he is to serve, in which case he would have the option of continuing to serve, if he thought proper, at the reduced rate of remuneration. Those terms, however, could be altered only as to the future. In so far as the contract on those terms had already been carried into effect it is incapable of alteration by the co. (*LORD HALSBURY, C.*).

It would be absurd to hold that one of the parties to a contract could alter it as to service already performed under it. The co. has power to alter the arts., but the directors would be entitled to their salary at the rate originally stated in the arts. up to the time the arts. were altered (*LORD ESHER, M.R.*).—*SWABEY v. PORT DARWIN GOLD MINING CO.* (1889), 1 Meg. 385, C. A.

Annotations:—*Refd.* *Re Anglo-Austrian Printing & Publishing Union, Isaacs' Case*, [1892] 2 Ch. 158; *Re Inter-*

tations. The last art. of the co.'s deed provided for the alteration of any art. by resolution passed at a special general meeting. On an application by two shareholders, who had without objecting taken part thereat, for an interdict restraining the co. from acting upon the resolution:—*Held*: an interdict must be refused.—

SMYTH v. NATATITE (1920), 41 N. L. R. 177.—S. AF.

PART III. SECT. 30, SUB-SECT. 2.—C. (d).

c. Invalid alteration.]—At an extraordinary general meeting of a co. new arts. of assocn. were by

resolution adopted, empowering the co. to reduce its capital. At the same meeting a resolution was passed authorising the directors to procure by the necessary procedure the cancellation of £2 10s. per share of the capital. Both resolutions were confirmed as special resolutions at a subsequent general meeting. In a

Sect. 30.—Regulation and management: Sub-sect. 2, C. (d); sub-sect. 3, A. & B. (a).]

national Cable Co., *Ex p.* Official Liquidator (1892), 66 L. T. 253; *Allen v. Gold Reefs of West Africa*, [1900] 1 Ch. 656; *Moriarty v. Regent's Garage Co.*, [1921] 2 K. B. 766. **Mentd.** *Inman v. Ackroyd & Best*, [1901] 1 K. B. 613.

3725. Where inoperative against particular shareholder—Not invalidated in toto.—*ALLEN v. GOLD REEFS OF WEST AFRICA, LTD.*, No. 3693, *ante*.

3726. Invalid alteration—Void—Company not dissolved.—By the deed of settlement of a co. it was provided, "That the capital of the co. should consist of the sum of £2,000,000 sterling, divided into 20,000 shares of £100 each, & should be raised from among the proprietors for the time being," in the manner therein mentioned. By resolutions subsequently passed & confirmed at meetings duly convened & held in 1826, it was resolved, "That the capital to be raised for the purposes of the co. should no longer consist of the sum of £2,000,000 sterling, divided into 20,000 shares of £100 each, as declared by the deed of settlement, but should be limited to the sum of £1,000,000 sterling, & should be considered as divided into 20,000 shares of £50 each." By resolutions in 1838, the resolutions of 1826 were rescinded, & the original amount of capital & shares was again restored:—**Held**: (1) the amount of capital & of the shares was part of the constitution of the co., & could not be altered by the above resolutions; (2) the effect of passing such resolutions was not to dissolve the co., but the resolutions were simply inoperative & void, & the shares were always in point of law £100 shares.—*SMITH v. GOLDSWORTHY* (1843), 4 Q. B. 430; 3 Gal. & Dav. 448; 12 L. J. Q. B. 192; 7 Jur. 389; 114 E. R. 960.

Annotation:—**Mentd.** *Kirk v. Bell* (1851), 16 Q. B. 290.

3727. — Valid resolution passed at the same time not affected.—A co. which was in difficulties duly passed a resolution for voluntary winding up, with a view of disposing of its undertaking, which was carried on in France, to a French co. to be formed for the purpose; & at the same time it passed other resolutions as to the transfer to the French co., & a special resolution altering the arts. of assocn., so as to give power to carry out the arrangement without giving dissentient shareholders the option to receive the value of their shares in cash, as provided by 1862 Act, s. 161. These resolutions, except the resolution for winding up, were passed irregularly, but no shareholder dissented from them except one fully paid-up shareholder, who applied to the co. to pay him the value of his shares, which was refused. He then presented a petition praying that the co. might be wound up compulsorily, or under supervision, or that he might be at liberty to sue in the name of the co. to set aside the proposed arrangements, or that the value of his shares might be ascertained & paid:—**Held**: (1) the resolution to wind up voluntarily having been regularly passed, the ct. would not, on the application of a fully paid-up shareholder, interfere with it by ordering a compulsory winding up or a winding up under supervision, against the wishes of nearly all the shareholders; (2) the winding-up resolution

being good in itself, was not invalidated by being associated with resolutions which were not regularly passed.

Qu.: whether it would have been invalidated, even if those other resolutions had been *ultra vires*.

Held: (3) leave to sue in the name of the co. had rightly been refused, as the resolutions authorising a transfer to the French co. were not *ultra vires*, but, although irregular, were capable of confirmation; (4) the special resolution altering the arts. while the co. was in difficulties, & as a part of the scheme for transfer to the French co., was invalid, & petitioner was entitled to have the value of his shares ascertained & paid, as provided by 1862 Act, s. 161.—*Re IRRIGATION CO. OF FRANCE, Ex p. FOX* (1871), 6 Ch. App. 176; 40 L. J. Ch. 433; 24 L. T. 336, L. JJ.

Annotations:—*As to* (1) **Apld.** *Re Tunis Ry.* (1874), 10 Ch. D. 270, n. **Consd.** *Re Amalgamated Syndicate*, [1897] 2 Ch. 600. **Refd.** *Re Tumacacori Mining & Land Co.* (1874), 43 L. J. Ch. 417. *As to* (2) **Distd.** *Thomson v. Henderson's Transvaal Estates*, [1908] 1 Ch. 765. *As to* (3) **Refd.** *Thomas v. United Butter Co.'s of France*, [1909] 2 Ch. 484. *As to* (4) **Refd.** *Re Hester* (1875), 44 L. J. Ch. 757. **Generally, Mentd.** *Langley Mills Steel & Iron Works Co.* (1871), 40 L. J. Ch. 313; *Etheridge v. Central Uruguay Northern Extension Ry.*, [1913] 1 Ch. 425; *Re Anglo-Continental Supply Co.*, [1922] 2 Ch. 723.

3728. — May form basis of contract.—Pursuer insured his ship with the defenders, a mutual assurance assocn. The policy provided that the "provisions contained in the arts. of assocn. shall be deemed & considered part of this policy." Five years before the date of the policy the co., having full power under its arts. of assocn. to do so, resolved to alter, *inter alia*, one of its arts., by substituting these words for others: "That it shall be a condition of this insurance that the assured shall keep one-fifth," of the value of such ship, "uninsured." This addition to the art. was not confirmed by a special resolution passed in accordance with 1862 Act, ss. 50, 51; but it was registered, & printed with the arts. on the back of each policy. The pursuer had also insured with another co., the result being that he had insured altogether for more than four-fifths:—**Held**: the irregularity in the procedure by which the arts. had been altered did not prevent it from being binding upon the pursuer, & the condition, contained in such art. having been broken, he was not entitled to recover upon the policy.—*MURHEAD v. FORTH & NORTH SEA STEAMBOAT MUTUAL INSURANCE ASSOCN.*, [1894] A. C. 72; 10 T. L. R. 82; 6 R. 59, H. L.

Annotation:—**Refd.** *S.S. Balmoral Co. v. Marten*, [1901] 2 K. B. 896.

SUB-SECT. 3.—MEETINGS OF MEMBERS.

A. In General.

3729. Statutory meeting—What is.—A registered co. held a meeting within four months after registration, which was described in their minute book as the statutory meeting. It was adjourned:—**Held**: this meeting was an ordinary general meeting within 1862 Act, ss. 26, 27, & the directors were liable to a penalty for not returning a list of their shareholders within fourteen days

petition to the ct. for confirmation of the reduction of capital:—**Held**: the procedure had been irregular in respect that at the time when the resolution for reducing share capital was passed, the co. had no power to reduce capital & that no procedure could be taken on the resolution altering the arts. of assocn. & conferring power to reduce capital until that resolution had been

confirmed at a subsequent general meeting.—*OREGON MORTGAGE CO., LTD., PETITIONERS*, [1910] S. C. 964.—**SCOT.**

PART III. SECT. 30, SUB-SECT. 3.—A.

3729 1. Statutory meeting—What is.—"Statutory meeting" in Cos. Act, 1908, s. 96 (1), means a statutory meeting as defined in sect. 87 (1) of the

Act, & a co. which is not entitled to commence business as not having complied with sect. 99 of the Act cannot hold a statutory meeting within sect. 96 (1).—*SHORTLAND FLAT GOLD-MINING CO., LTD. v. KNEEBONE* (1912), 31 N. Z. L. R. 1039.—**N.Z.**

d. Who entitled to be summoned—Shareholders in arrear.—Where the

after such meeting.—*CHISHOLME v. CARTER* (1875), 40 J. P. 244.

3730. Sufficiency of notice convening.]—The T. co. was incorporated as a co. limited by shares under 1908 Act, on Jan. 3, 1911. Its arts. of assocn. provided that the statutory meeting of the co. should be held at such time—within the statutory limit—and at such place as the directors should determine, & that the notices convening general meetings of the co.—whether ordinary or extraordinary—must specify the general nature of the business to be transacted thereat. The T. co. held only two general meetings—one of which, held on Jan. 30, 1911, was for the purpose of passing, & the other, on Feb. 14, 1911, was for the purpose of confirming, a special resolution for the increase of the co.'s share capital. The meeting of Jan. 30 was held too soon to be the statutory meeting of the co.; & the notices of the meeting of Feb. 14 referred only to the business of confirming the resolution passed at the previous meeting; but this meeting, so far as its date was concerned, might have been the statutory meeting:—*Held*: if the meeting of Feb. 14, 1911, was intended to be the statutory meeting, it was not properly convened, for, if it was to be the statutory meeting, the notices convening it should have so stated.—*GARDNER v. IREDALE*, [1912] 1 Ch. 700; 81 L. J. Ch. 531; 106 L. T. 860; 19 Mans. 245.

3731. — Failure to file report—Directions by court for report to be filed.]—*MEXICAN SMELTING CORPN., LTD., WEMYS' PETITION* (1907), 51 Sol. Jo. 728.

3732. Annual meeting—Time for holding—"Year"—January 1 to December 31.]—*GIBSON v. BARTON*, No. 3917, *post*.

3733. — — — — —.]—On June 18, 1918, an information was laid under 1908 Act, s. 64, against a director of a co. for not holding a general meeting in the calendar year 1917. The last general meeting of the co. was held on Mar. 21, 1916:—*Held*: the sect. created two separate offences, that of not holding the meeting in the calendar year, & that of not holding it within fifteen months after the last meeting; the directors had the whole of the calendar year in which to comply with the former requirement none the less because the period of fifteen months from the date of the last meeting had already expired; & the offence charged in the information was not committed until after Dec. 31, 1917.—*SMEDLEY v. COMPANIES' REGISTRAR*, [1919] 1 K. B. 97; 88 L. J. K. B. 345; 120 L. T. 277; 83 J. P. 18; 35 T. L. R. 92; 26 Cox, C. C. 371, D. C.

3734. Who entitled to be summoned—Preference shareholders without voting rights—Provisions of articles.]—*Semble*: apart from some special provision in the arts. preference shareholders with no right of voting are not entitled to be summoned to general meetings.—*Re MACKENZIE & Co., LTD.*, [1916] 2 Ch. 450; 85 L. J. Ch. 804; 115 L. T. 440.

B. Convention of Meetings.

(a) Who may summon.

3735. Directors—Consents separately obtained—Not equivalent to resolution summoning.]—The consent, separately obtained by the secretary, of

directors sufficient in number to form a quorum, to the sending out of notices for an extraordinary general meeting of the co. is not equivalent to a resolution for the holding of such a meeting passed at a board meeting.—*Re HAYCRAFT GOLD REDUCTION & MINING Co.*, [1900] 2 Ch. 230; 69 L. J. Ch. 497; 83 L. T. 166; 16 T. L. R. 350; 7 Mans. 243.

Annotations:—*Fold*. *Re State of Wyoming Syndicate*, [1901] 2 Ch. 431. *Reid*. *Transport v. Schonberg* (1905), 21 T. L. R. 305; *Boschoek Proprietary Co. v. Fuke*, [1906] 1 Ch. 148. *Mentd*. *Re National Distribution of Electricity Co.*, [1902] 2 Ch. 34.

3736. — Where articles provide for ordinary general meetings—May call extraordinary general meetings.]—In the absence of express power in the arts. of assocn., directors have no power to postpone a general meeting of shareholders which has been properly convened. The fact that the directors have power to fix the time & place of the meeting & to adjourn the meeting does not give them the power.

The fact that the arts. of assocn. provide that ordinary general meetings are to be held in certain months does not prevent directors from calling extraordinary meetings of the shareholders at other times at which the business of ordinary meetings may be transacted, & if the meeting is called as an ordinary meeting at some other time of the year, it may nevertheless be treated as the ordinary meeting for the purpose of the election of directors & other ordinary business.—*SMITH v. PARINGA MINES, LTD., PARINGA MINES, LTD. v. BLAIR, PARINGA MINES, LTD. v. BOYLE*, [1906] 2 Ch. 193; 75 L. J. Ch. 702; 94 L. T. 571.

3737. Where no directors—Signatories of memorandum.]—*Re BRICK & STONE Co.*, No. 3681, *ante*.

3738. Requisition for meeting—Who entitled to make requisition.]—A co. had a nominal capital of 60,000 shares, of which 48,000 shares had been offered for subscription. The issued share capital was 22,357 shares, on 5,094 of which all calls & sums due had been paid. A requisition under 1908 Act, s. 66 (1) calling upon the directors to convene an extraordinary general meeting was signed by the holders of 690 out of the 5,094 shares. The requisition consisted of a number of documents which were in two forms. By the first form the directors were requested to call an extraordinary general meeting of the co. for the purpose of considering the reconstruction of the board & resolutions concerning the directorate & officers of the co. The second was in identical terms, except that there were added at the end of it the words "in addition to the affairs of the co. in general":—*Held*: (1) the "one-tenth" referred to in 1908 Act, s. 66 (1), was one-tenth of that part of the issued share capital of the co. upon which all calls or other sums then due had been paid, & not one-tenth of the issued share capital of the co. the holders of which one-tenth had paid all calls, etc., upon their shares, & therefore, the requisition was signed by a sufficient number of duly qualified shareholders; (2) the documents constituting the requisition were "in like form" within sect. 66 (2) of the Act.—*FRUIT & VEGETABLE GROWERS' ASSOCN., LTD. v. KEKEWICH*, [1912] 2 Ch. 52; 81 L. J. Ch. 499; 106 L. T. 1007; 28 T. L. R. 411; 56 Sol. Jo. 502; 19 Mans. 206.

3739. — Form of requisition.]—*FRUIT &*

arts. of assocn. of a co. provide that interest is payable on overdue calls, & that, so long as any moneys are due in respect of unpaid shares by the holder, he is not entitled to be present at any general meeting of the co., or to vote upon a poll, or to be reckoned in a quorum, a resolution passed at a general meeting by shareholders who

were all in arrear in respect of interest due on their shares is invalid.—*Re FRANKTON BEACH DREDGING Co., LTD.* (1893), 11 N. Z. L. R. 174.—N.Z.

PART III. SECT. 30, SUB-SECT. 3.—B. (a).

e. Requisition for meeting—Meet-

ing summoned by person without authority.]—A resolution authorising the transfer from one bank to another of an existing overdraft, incurred by a co., & giving authority to the directors of the co. to borrow money, was passed at an alleged extraordinary meeting, convened by a person having no authority to call one, by a notice which

Sect. 30.—Regulation and management: Sub-sect. 3, B. (a), (b), (c) & (d) i.]

VEGETABLE GROWERS' ASSOCN., LTD. v. KEKEWICH, No. 3738, *ante*.

3740. — Signature of requisition by joint holders.]—PATENT WOOD KEG SYNDICATE, LTD. v. PEARSE (1906), 50 Sol. Jo. 650.

3741. — By requisitionists—One may convene.]—ITALIAN RAILWAY CONSTRUCTION, LTD. v. COOPER (1904), 48 Sol. Jo. 709.

3742. — Meeting summoned by secretary without authority—Notice ratified by directors.]—On Dec. 10, 1900, the secretary of a co. sent out a notice convening an extraordinary general meeting to be held on Dec. 18. The notice purported to be issued by order of the board. A requisition had been served on the co. in accordance with the arts. requiring the calling of the meeting. In fact no meeting of directors was held after the receipt of the requisition, but a meeting of directors was held on Dec. 16, the day after the writ was issued, at which it was resolved that the directors should adopt, ratify, & confirm the action of the secretary in issuing the notice convening the meeting. The only question for determination was whether the meeting had been validly summoned:—*Held*: on ratification by the directors the notice became good for all purposes.—HOOPER v. KERR, STUART & Co., LTD. (1900), 83 L. T. 729; 17 T. L. R. 162; 45 Sol. Jo. 139.

3743. Requisition for meeting—Meeting summoned by secretary without authority—Validity.]—(1) A co. was governed, so far as the calling of meetings was concerned, by 1862 Act, Table A, art. 32. By the arts. of assocn. two directors constituted a quorum. A requisition was sent to the directors in accordance with Companies Act, 1900 (c. 48), s. 13, requesting them to convene a meeting to pass an extraordinary resolution for voluntary winding up. Within the 21 days allowed to the directors for convening a meeting, the secretary of the co., without the authority of the directors, summoned the meeting. At the meeting two directors, the requisitionists, & many shareholders were present, & the resolution was passed by the required majority. At the hearing of a petition by a creditor for the compulsory winding up of the co., the defence was set up that a voluntary winding up was pending, & that petitioner did not show that he was thereby prejudiced:—*Held*: the secretary had no power to issue the notices, there was no ratification of his

act, the so-called ratification of the co. was invalid & a compulsory winding-up order must be made.

(2) *Qu.*: whether, if the 21 days expire without any meeting being summoned by the directors, the requisitionists can call the meeting by notices signed by the secretary.—*Re STATE OF WYOMING SYNDICATE*, [1901] 2 Ch. 431; 70 L. J. Ch. 727; 84 L. T. 868; 49 W. R. 650; 17 T. L. R. 631; 45 Sol. Jo. 656; 8 Mans. 311.

Annotation:—As to (1) *Reid*. Boschoek Proprietary Co. v. Fuke, [1906] 1 Ch. 148.

Interference by court—Directors or in alternative shareholders empowered to summon meeting.]—See No. 3897, *post*.

(b) Time and Place.

3744. Time—Summoned early to prevent transference of shares from voting—Interference by court.]—CANNON v. TRASK, No. 3900, *post*.

—*See, also*, No. 3736, *ante*.

3745. Place—Whether where meetings usually held—Interference by court with directors' choice.]—MARTIN v. WALKER (1918), 145 L. T. Jo. 377.

(c) Length of Notice.

3746. Where seven days' notice to be given—Under 1862 Act, s. 52—Shareholders resident abroad—Not applicable.]—Notice was issued to the shareholders of a co. of a general meeting for the purpose of passing a resolution to wind up voluntarily; the resolution was passed, & confirmed at a subsequent general meeting. Some of the shareholders were resident in America, & consequently could not, in the ordinary course of the post, have received seven days' notice of either of the meetings as required by 1862 Act, s. 52:—*Held*: this sect. only applies to shareholders within the jurisdiction, & therefore the proceedings were valid.—*Re UNION HILL SILVER CO., LTD.*, (1870), 22 L. T. 400.

3747. — Under provisions of articles—To what meetings applies—Not to meetings of signatories of memorandum.]—JOHN MORLEY BUILDING CO. v. BARRAS, No. 3682, *ante*.

3748. — Seven days' notice not given—Meeting invalid.]—A co. was registered on Feb. 17, 1897, under the Cos. Acts, & on Feb. 18 a meeting of the subscribers to the memorandum of assocn. was held, at which one of the subscribers was appointed a director, & he afterwards acted as such. By the arts. of assocn. of the co., 1862 Act, Table A., so far as it dealt with the appoint-

contained no intimation of any intention to borrow. No mention was made in the co.'s books of any resolution giving authority to the directors of the co. to borrow. An order having been made to wind up the co., the foundation of which order was the debt so transferred & incurred:—*Held*: there was no valid petitioning creditor's debt, & no foundation for the order, & the order was quashed on *certiorari*.—*R. v. BOWMAN, Ex p. WILLAN* (1872), 3 V. R. (Law.) 258.—AUS.

PART III. SECT. 30, SUB-SECT. 3.—B. (b).

f. Time.]—Where the preliminary meeting for the passing of a special resolution is adjourned the time within which the confirmatory meeting must be held is calculated from the date at which the adjourned meeting is held.—MOUNT OXIDE MINES, LTD. v. GOULD (1915), 15 S. R. N. S. W. 290.—AUS.

g. —.]—The trust deed of a co. stipulated that a notice calling an extraordinary meeting of shareholders

should specify the place, the day & the hour of meeting. Notice was given that such a meeting would be held on a certain date "immediately after the ordinary general meeting convened for 12 o'clock on the same day. The ordinary meeting was convened, the shareholders met & the meeting was dissolved on objection being taken as to its legality. Immediately after the dissolution the extraordinary meeting was held:—*Held*: the notice of the extraordinary meeting sufficiently complied with the terms of the trust deed, the word "hour" in the trust deed merely referring to the period of the day at which the meeting was to be held.—*Re WEMMER GOLD MINING CO., Ex p. ALBU* (1890), 6 H. C. 6.—S. AF.

h. Place.]—It is not necessary for a co. registered under Act 31 of 1909 to hold any of its meetings within the Transvaal.—WAYNE v. EGNER, [1921] W. L. D. 91.—S. AF.

PART III. SECT. 30, SUB-SECT. 3.—B. (c).

k. Where seven days' notice to be

*given—Must be clear days.]—A bye-law of deft. co. provided that notice of the time & place of the holding of the annual or general meeting must be given at least seven days previous thereto, by delivering same by mail or otherwise duly addressed to each shareholder. A notice was sent by letter to each shareholder on Dec. 6, for Dec. 13:—*Held*: "at least" meant clear days excluding both the day of the act & that of the event.—*ASHTON v. POWERS* (1921), 67 D. L. R. 222; 51 O. L. R. 309.—CAN.*

l. —.]—The affidavit of the secretary of a co. showed that notice of a meeting of the shareholders of the co. was not duly given in manner prescribed by the regulations of the co. The co.'s arts. provided that seven clear days' notice, specifying the place, day, & hour of any meeting, & the purpose for which it was to be held, should be given, either by advertisement, or by notice sent by post, or otherwise served. The affidavit of the co.'s secretary showed that the meeting was convened for Aug. 28 by notice posted on Aug. 20:—*Held*:

ment of the first directors, was expressly excluded, but the arts. contained no provisions in substitution therefor. By the arts. seven days' notice of any meeting was necessary. The person so appointed as a director assigned to pltf. the fees alleged to be due to him as such:—*Held*: as seven days' notice of the meeting was not & could not have been given, the appointment of the director was invalid, & neither he nor his assignees could sue the co. for his fees, or upon a *quantum meruit* for services rendered.—*WOOLF v. EAST NIGEL GOLD MINING CO., LTD.* (1905), 21 T. L. R. 660.

3749. ——— Must be clear days.]—*Re PAVILION, NEWCASTLE-UPON-TYNE, LTD. & REDUCED*, [1911] W. N. 235.

(d) Contents of Notice.

i. In General.

3750. What directors may insert—Report.]—*MATABELELAND CO., LTD. v. BRITISH SOUTH AFRICA CO.* (1893), 10 T. L. R. 77.

3751. ——— Power to circulate at company's expense.]—*CAMPBELL v. AUSTRALIAN MUTUAL PROVIDENT SOCIETY*, No. 4085, *post*.

3752. Sufficiency of statement of purpose—Ratification of director's election.]—*BOSCHOEK PROPRIETARY CO., LTD. v. FUKU*, No. 3855, *post*.

——— Notice convening statutory meeting.]—*See* No. 3730, *ante*.

3753. Where special resolution to be passed—Pecuniary interest of director.]—(1) The notice of an extraordinary general meeting must disclose all facts necessary to enable the shareholder receiving it to determine in his own interest whether or not he ought to attend the meeting; & pecuniary interest of a director in the matter of a special resolution to be proposed at the meeting is a material fact for this purpose.

(2) A notice of two meetings to be held in immediate succession to consider *seriatim* two alternative resolutions, one at each meeting, is not rendered an invalid notice of the second meeting by an express provision that it will only be held in the event of the first resolution not being passed at the first meeting.—*TIESSEN v. HENDERSON*, [1899]

the earliest day upon which the meeting could properly have been convened under the co.'s regulations was the eighth day.—*Re DRURY COAL CO., LTD.* (No. 2), [1909] 28 N. Z. L. R. 107.—N.Z.

m. ———.]—A notice published in the morning of one Tuesday cannot be regarded as having been published "seven clear days" before a meeting held in the afternoon of the Tuesday in the following week.—*CALDECOTT v. BOTHA'S REEF GOLD MINING CO.* (1888), 5 H. C. 249.—S. AF.

n. Five days' notice—Must be clear days.]—The arts. of assocn. of a co. required that at least five days' notice of a meeting should be given to the shareholders:—*Held*: five clear days' notice must be given.—*MOUNT OXIDE MINES, LTD. v. GOULD* (1915), 15 S. R. N. S. W. 290.—AUS.

o. Three consecutive weeks.]—The Act of incorporation required the first meeting of the co. to be called by giving notice in one or more newspapers, "for not less than three consecutive weeks immediately before the day appointed":—*Held*: it was not necessary that three weeks should elapse between the publication of the first notice & the day of meeting; but that a publication in the newspaper for three consecutive weeks was sufficient.—*PORTLAND & LANCASTER STEAM FERRY CO. v. PRATT* (1850), 7 N. B. R. 17.—CAN.

1 Ch. 861; 68 L. J. Ch. 353; 80 L. T. 483; 47 W. R. 459; 6 Mans. 340.

Annotation:—As to (1) *Reid. Etheridge v. Central Uruguay Northern Extension Ry.*, [1918] 1 Ch. 425.

3754. ——— Notice need not state resolution to be proposed as extraordinary resolution.]—It is not necessary that the notice convening a meeting at which a special resolution is to be passed should state that such resolution is to be proposed as an extraordinary resolution—1908 Act, s. 69 (2) (a), only refers to the passing of the resolution, not to the calling together of the meeting for the purpose of passing it.—*Re PENARTH PONTOON SHIPWAY & SHIP REPAIRING CO., LTD.* (1911), 56 Sol. Jo. 124.

Annotation:—*Reid. MacConnell v. Prill*, [1916] 2 Ch. 57.

3755. Where extraordinary resolution to be passed—Notice must state resolution to be proposed as extraordinary resolution.]—Although, as decided in *Re Penarth Pontoon Shipway & Ship Repairing Co.*, No. 3754, *ante*, the notice of the first meeting to pass a special resolution need not state that the resolution proposed to be passed at that meeting is to be an extraordinary resolution, where an extraordinary resolution is proposed to be passed the notice of the general meeting must comply with 1908 Act, s. 69, by "specifying the intention to propose the resolution as an extraordinary resolution."—*MACCONNELL v. PRILL (E.) & CO., LTD.*, [1916] 2 Ch. 57; 85 L. J. Ch. 674; 115 L. T. 71; 32 T. L. R. 509; 60 Sol. Jo. 556.

3756. How far omission of contents from notice may be waived—Extraordinary resolution—Passed by all shareholders.]—A creditor obtained judgment against a co. in which two persons were the sole directors & shareholders. On the same day the two shareholders met & passed a resolution that it had been proved to the satisfaction of the co. that it could not by reason of its liabilities continue its business & that it was advisable to wind up the same, & accordingly that the co. be wound up voluntarily, & that a certain person be appointed liquidator for that purpose. No notice of intention to propose that resolution as an extraordinary resolution had been previously given to the shareholders, but the only two shareholders

PART III. SECT. 30, SUB-SECT. 3.—B. (d) i.

p. Sufficiency of statement.]—Shareholders in, & directors of, a co. entered into an agreement between themselves, the co. being a party. The co., in pursuance of the agreement, obtained a private Act whereby the agreement was "validated, ratified & confirmed, subject to the same being adopted by a resolution passed by 75 per cent. of the shareholders present, personally or by proxy, at any meeting of the shareholders called for that purpose." A resolution was passed by the required majority, but the notices convening the meeting did not state the effect of the agreement:—*Held*: the resolution was ineffective owing to the absence of notice of the contents of the agreement.—*PACIFIC COAST COAL MINES v. ARBUTHNOT*, [1917] A. C. 607.—CAN.

q. ———.]—The ct. refused to confirm a special resolution altering the constitution of a co. by substitution of a memorandum of arts. of assocn. for a contract of co-partners in respect that the notice calling the meeting, for the purpose of passing the resolution did not inform the shareholders of the terms of the proposed memorandum & arts. & state when these could be seen; & that notice calling the second meeting was thereby conditional, seeing that it bore that the meeting would be held only if the resolution was passed at first meeting.—*NORTH OF SCOTLAND*

& ORKNEY & SHETLAND STEAM NAVIGATION CO., LTD., [1920] S. C. 94, 633; 57 Sc. L. R. 689.—SCOT.

r. ——— Ratification of payment to directors.]—Where the only notice to shareholders of intention to move at an ordinary general meeting, a resolution to grant remuneration to directors was in the following terms: "That the action of directors in allocating the £500 passed by the meeting of the shareholders held on Aug. 20, 1917, for directors' fees, as to £300 thereof to G., as to £100 to T., & as to £100 to A., be confirmed":—*Held*: the notice was sufficient.—*COLHOUN v. GREEN*, [1919] V. L. R. 196.—AUS.

s. Where extraordinary resolution to be passed.]—The notice convening a meeting stated that a resolution would be considered, & if necessary, adopted as special, extraordinary, or otherwise, that the co. could not carry on its business, & that it was advisable to wind up the same:—*Held*: the form of notice was sufficient, as it intimated to the shareholders that the resolution might be adopted as extraordinary:—*Re NEW SOUTH WALES PROPERTY INVESTMENT CO.* (1889), 10 N. S. W. Eq. 214; 6 N. S. W. N. 103.—AUS.

t. ———.]—A lengthy & intricate agreement entered into by the promoters & directors of & the vendors to a co. was by a special Act validated, ratified & confirmed subject only to its approval by 75 per cent. of the co.'s

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of the co. signed the minute of the resolution. A meeting of the creditors of the co. was subsequently held, when the voluntary winding up of the co. was confirmed & a resolution passed for the appointment of a joint liquidator. An order confirming that appointment was made by the county ct. registrar. Subsequently the registrar, on the application of the judgment creditor, made an order, which was confirmed by the county ct. judge, setting aside the appointment of the two liquidators on the ground that a valid resolution to wind up the co. voluntarily had not been passed:—*Held*: it was competent for the shareholders of the co. acting together to waive the formalities required by 1908 Act, s. 69, as to notice of intention to propose a resolution as an extraordinary resolution, & as all the shareholders of the co. had met & passed the resolution to wind up the co., the resolution was valid as an extraordinary resolution within 1908 Act, s. 182, & it was not open to a creditor to impeach its validity.—*Re OXTED MOTOR CO.*, [1921] 3 K. B. 32; 90 L. J. K. B. 1145; 126 L. T. 56; 37 T. L. R. 757; [1921] B. & C. R. 155, D. C.

ii. Under Special Regulations.

3757. Where specific object to be stated—Object not stated—Meeting invalidated.]—By the deed of settlement of a joint-stock co., the directors were specifically authorised to purchase shares of members under certain circumstances, but the deed contained no express prohibition restricting the directors from buying up shares generally. The co., becoming embarrassed, summoned an extraordinary general meeting, at which a resolution was passed, authorising the directors to purchase & take a transfer of the shares of any member who would lend the co. a sum of money equal to the purchase-money of his shares. The notice calling the meeting did not state, as required by the deed, the specific object for which the meeting was called. At a subsequent general meeting, at which the resolution was read, the directors were authorised to give further time to the members who had not yet complied with the terms of the resolution. L. then sold his shares to a trustee for the co. upon the terms stated in the resolution, & died before the transfer was effected; & the directors, at the instance of his exor., completed the requisite formalities of the transfer:—*Held*: the resolution of the extra-

shareholders, at a meeting called for the purpose:—*Held*: the notice to be satisfactory must give with reasonably sufficient fullness the facts which the shareholder should know if he is to come to an intelligent judgment upon what is proposed.—*PACIFIC COAST COAL MINES v. ARBUTHNOT* (1916), 33 W. L. R. 487; 9 W. W. R. 1208; *reversd.* 31 D. L. R. 378.—**CAN.**

a. —.]—At the ordinary meeting of a co. which had been amalgamated with another & dissolved it was proposed to vote large sums to the chairman, secretary, & other officers, as compensation for loss of office & in acknowledgment for long & faithful services. No intimation of this proposal had been made in the advertisement calling the meeting:—*Held*: this was not ordinary business which could be transacted at the meeting without special notice.—*CLOUSTON v. EDINBURGH & GLASGOW RY. CO.* (1865), 4 Macph. (Ct. of Sess.), 207; 38 Sc. Jur. 115.—**SCOT.**

b. Different proposal from one noti-

fied.—A notice, convening a meeting, set forth a proposal for reconstruction for the consideration of the meeting "with or without amendment." At the meeting a different proposal for reconstruction was moved & adopted. This proposal differed essentially from the proposal set forth in the notice:—*Held*: the resolution should be set aside as not coming within the scope of the notice.—*LACE v. MODDERFONTEIN GOLD MINING CO.*, (1894), 1 O. R. 275.—**S. AF.**

c. —.]—At a meeting of shareholders of a co., convened by notice to consider an offer, the chairman laid before the meeting an offer differing from that contained in the notice. A shareholder made another offer, which the chairman refused to put to the meeting, & the offer submitted was carried:—*Held*: the chairman had acted *ultra vires* & should be restrained from carrying out the resolution.—*COHEN v. WITWATERSRAND GOLD MINING CO., LTD.* (1895), 2 O. R. 277.—**S. AF.**

ordinary meeting was invalid for want of due notice; & the subsequent ratification of the same was inoperative, as in excess of the powers of a general meeting; & the exor. of L. was properly retained on the list of contributories without qualification.—*Re VALE OF NEATH & SOUTH WALES BREWERY JOINT STOCK CO., LAWES'S CASE* (1852), 1 De G. M. & G. 421; 21 L. J. Ch. 688; 19 L. T. O. S. 14; 16 Jur. 343; 42 E. R. 614, L. C.

Annotation:—*Mentd. Re North of England Joint-Stock Banking Co., Ex p. Straffon's Exors.* (1852), 22 L. J. Ch. 194.

— Sufficiency of statement—Notice of resolution to wind up—Whether liquidator can be appointed.]—See Sect. 37, Sub-sect. 4, (a), post.

3758. Where general nature of business to be stated—Sufficiency of statement—Notice of meeting for appointment of named directors—Appointment of additional directors valid.]—(1) The arts. of assocn. of a co. provided that the notice of a general meeting should specify the general nature of the special business to be transacted. Notice was given of a meeting for the purpose of appointing three named directors. At the meeting a resolution was carried appointing two additional directors:—*Held*: the notice sufficiently indicated the business to be transacted & the additional directors were duly appointed.

(2) The fact that the proceedings at a meeting are entered in the minute book is not conclusive that the proceedings were regular, & does not preclude the ct. from inquiring into the validity of the notice convening the meeting.—*BETTS & CO., LTD. v. MACNAGHTEN*, [1910] 1 Ch. 430; 79 L. J. Ch. 207; 100 L. T. 922; 25 T. L. R. 552; 53 Sol. Jo. 521; 17 Mans. 71.

iii. Proposal of Resolutions for Particular Purposes.

Increase of capital.]—See No. 827, ante.

Alteration of articles.]—See Sub-sect. 2, C. (c), ii., ante.

3759. Ratifying agreement entered into by directors—Directors interested—Need not state why ratification necessary.]—The arts. of the T. Co. authorised the sale of part of its undertaking to any other co., & contained a provision prohibiting any director from voting in respect of any contract in which he was interested. The directors entered on behalf of the co. into a contract for sale of part of its undertaking to the U. Co., of which all the directors of the T. Co. except one were directors. A general meeting of the T. Co. was called by a notice stating that it was called to

PART III. SECT. 30, SUB-SECT. 3.—B. (d) ii.

3757 i. Where specific object to be stated—Object not stated—Meeting invalidated.]—Notice was sent in due time, to the shareholders, notifying them that the annual meeting would be held "to receive the report of the directors for the past year, elect directors for the ensuing year, & transact such other business as may be properly brought before the meeting." At the meeting, the draft of an agreement between the directors, T., a shareholder, the co., & a trust co., was considered & adopted. This agreement was in effect an agreement for the sale to T. of the stock & bonds & control of the co. It provided for the payment by the co. to M., the president, of \$10,000:—*Held*: the meeting, so far as it related to or dealt with the agreement, was not properly convened, & the agreement, in consequence, invalid.—*MCDUGALL v. BLACK LAKE ASBESTOS & CHROME CO., LTD.* (1920), 47 O. L. R. 328.—**CAN.**

consider a resolution for approving & adopting the agreement, but not stating any ground for a meeting being necessary. The resolution was passed as an ordinary resolution, but not as a special resolution:—*Held*: (1) though a resolution giving the directors powers to do certain acts in future which they were not authorised by the arts. to do, would be an alteration of the arts., & would require to be passed as a special resolution, the adoption of a contract which was within the objects of the co., but which the directors had entered into without authority, was not an alteration of the arts., & could be effected by ordinary resolution; (2) the resolution of the general meeting was not invalidated by the fact that the notice convening it did not suggest any reason why the contract could not be carried into effect without the sanction of a general meeting.

(3) A majority of a meeting called with due notice of the object for which it was called could make this a contract of this co., & it would be wrong for the ct. to interfere with the proceedings of a general meeting as to an act within the powers of the co. (COTTON, L.J.).—GRANT v. UNITED KINGDOM SWITCHBACK RAILWAYS CO. (1888), 40 Ch. D. 135; 60 L. T. 525; 5 T. L. R. 92; 1 Meg. 117; *sub nom.* GRANT v. THOMPSON'S PATENT GRAVITY SWITCHBACK RAILWAYS CO., 58 L. J. Ch. 211; 37 W. R. 312, C. A.

Increasing directors' remuneration.]—See No. 4488, *post*.

Amalgamation or reconstruction.]—See Sect. 37, sub-sect. 13, *post*.

Voluntary liquidation.]—See Sect. 37, *post*.

(e) Notice Convening more than One Meeting.

3760. Meetings summoned to pass & confirm special resolution—Confirmatory meeting summoned contingently—Notice invalid.]—The arts. of assocn. of a co. provided that "seven days' notice in writing specifying the place, the day, & the hour of meeting, & in case of special business the general nature of such business, shall be given to the members before every general meeting." Notice was given that an extraordinary general meeting would be held on July 12, at the hour & place therein mentioned for the purpose of considering, & if deemed advisable, of passing the resolutions set forth in the notice, & it concluded, "should such resolutions be duly passed the same will be submitted for confirmation as special resolutions to a subsequent extraordinary general meeting which will be held on July 29, at the same time & place":—*Held*: the meeting was invalid, for though it was possible to put on the notice the construction that a meeting would be held on July 29, whether the resolutions were passed on July 12 or not, the construction which an ordinary business man would put upon the notice would be that the meeting would be held only if the resolutions were passed at the first meeting; the notice of the second meeting was therefore con-

ditional, & being bad when sent, could not be made good by the shareholders acquiring information *aliunde* that the resolutions had been passed at the first meeting.—ALEXANDER v. SIMPSON (1889), 43 Ch. D. 139; 59 L. J. Ch. 137; 61 L. T. 708; 38 W. R. 161; 6 T. L. R. 72; 1 Meg. 457, C. A.

Annotations:—Distd. *Re* Jenner Institute of Preventive Medicine (1899), 15 T. L. R. 394; Tieszen v. Henderson, [1899] 1 Ch. 861; *Re* North of England S.S. Co., [1905] 2 Ch. 15.

3761. — Confirmatory meeting definitely summoned—Subject to not being held if resolution not passed at first meeting—Notice valid.]—The arts. of assocn. of a co. required thirty days' notice of every general meeting. On Feb. 19 the co. issued a notice of an extraordinary general meeting for Mar. 23, following, at which a resolution for reduction of capital was to be proposed. In the same document the co. also gave notice of an extraordinary general meeting for Apr. 7, at which the resolution, if passed at the first meeting, should be confirmed. The notice then continued: "Should the resolution not be passed by the requisite majority at the meeting to be held on Mar. 23, due notice will be given to the shareholders that the meeting on Apr. 7, of which notice is now given, will not be held":—*Held*: the notice convening the second meeting was valid.—*Re* ESPUELA LAND & CATTLE CO. (1900), 48 W. R. 684; 44 Sol. Jo. 573.

3762. — Form of notice.]—Form of notice to shareholders as to meetings to pass & confirm resolution to alter the memorandum of assocn. approved by the ct., one notice of both meetings being in the circumstances allowed.—*Re* JENNER INSTITUTE OF PREVENTIVE MEDICINE (1899), 15 T. L. R. 394.

3763. — Special provision in articles—Meetings may be summoned conditionally.]—A provision in the arts. of assocn. of a limited co. that whenever it is intended to pass a special resolution the two meetings may be convened by one & the same notice, & it shall be no objection that the notice only convenes the second meeting contingently on the resolution being passed by the requisite majority at the first meeting, is not *ultra vires* or inconsistent with the letter or the spirit of 1862 Act, s. 51; & a notice given in conformity with this provision would be a valid notice, & the second meeting summoned by it would be duly summoned.—*Re* NORTH OF ENGLAND S.S. CO., [1905] 2 Ch. 15; 74 L. J. Ch. 404; 93 L. T. 1; 53 W. R. 499; 21 T. L. R. 481; 49 Sol. Jo. 481; 12 Mans. 174, C. A.

3764. Meetings summoned to pass alternative resolutions—Second meeting & resolution conditional on failure of first—Notice valid.]—TIESSEN v. HENDERSON, No. 3753, *ante*.

(f) Validation and Waiver of Irregular Notice.

3765. When notice cannot be validated—Object of meeting *ultra vires* company.]—*Re* VALE OF

PART III. SECT. 30, SUB-SECT. 3.—
B. (a).

3761 i. Where meetings summoned to pass & confirm special resolution—Confirmatory meeting definitely summoned—Subject to not being held if resolution not passed at first meeting—Notice valid.]—The following notice was issued to the shareholders of a co. "Notice is hereby given that an extraordinary general meeting will be held at the registered office of the co. on Sept. 25, 1886, at 3 o'clock in the afternoon, when the subjoined resolution will be proposed, Should the resolution be passed by the required majority, it will be submitted for

confirmation, as a special resolution to a second extraordinary meeting, which, in the absence of further notice, will be held on Oct. 11, at the same time & place:—*Held*: the notice of the meeting of Oct. 11 was good although contained in the same document as the notice of the meeting of Sept. 25.—ISRAEL v. ATLAS ENGINEERING CO. (1889), 10 N. S. W. Eq. 277.—AUS.

3761 ii. — — — — —.]—The notice convening a meeting stated that if the resolutions were adopted, a confirmatory meeting would be held on Mar. 3. No further notice was given of the confirmatory meeting. Resp.

was present at the first meeting, when the resolutions were adopted, & was also present at & took part in the proceedings of the confirmatory meeting, & raised no objection till payment of a call was demanded in the winding up:—*Held*: he had sufficient notice of the confirmatory meeting.—*Re* KATOOMBA COAL & SHALE CO., LTD., NORTH'S CASE (1892), 13 N. S. W. Eq. 70.—AUS.

PART III. SECT. 30, SUB-SECT. 3.—
B. (f).

d. Waiver.]—At the hearing of a plaint by a co. against a shareholder for calls it was objected that the rules

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NEATH & SOUTH WALES BREWERY JOINT STOCK CO., LAWES'S CASE, No. 3757, *ante*.

3766. Waiver—Present at & taking part in meeting.]—(1) At an adjourned general meeting of the shareholders of a co., of which adjournment notice was given by circulars sent to the several shareholders, but not by advertisement, as required by the deed of settlement, a proposition for a call was carried. A shareholder, who was present & voted at the adjourned meeting:—*Held*: not entitled to take advantage of the irregularity of the notice.

(2) *Semble*: if the shareholders had, in effect, notice of the meeting, the want of compliance with the provisions of the deed by advertisement would not invalidate the proceedings at the meeting.

(3) The deed of settlement provided that in every notice convening a general meeting of the shareholders the object of the meeting should be specified. The transaction of the business at the meeting foreign to the objects specified in the notice will not make the whole meeting irregular.—*Re* BRITISH SUGAR REFINING CO. (1857), 3 K. & J. 408; 69 E. R. 1168; *sub nom. Re* BRITISH SUGAR REFINING CO., *Ex p. FARIS*, 26 L. J. Ch. 369; 5 W. R. 379.

Annotations:—Generally, Mentd. Re North British Australasian Co., *Ex p. Swan* (1860), 7 C. B. N. S. 400; *Re* Diamond Rock Boring Co., *Ex p. Shaw* (1877), 2 Q. B. D. 463.

3767. ———.]—HENDERSON v. BANK OF AUSTRALASIA, No. 3787, *post*.

3768. ——— Member failing to object at once.]—A meeting of directors passed a resolution to summon an extraordinary general meeting at which were to be proposed special resolutions for removing B. from the office of director, & for increasing the capital. The arts. gave power to remove directors by special resolution. The only notice B. had of the board meeting was a notice given less than ten minutes before the time of holding it, & not stating the nature of the business. The notices for the general meeting were issued, & four days before the time for the meeting B. who up to that time had made no complaint of the short notice, brought his action to restrain the co. from holding the meeting, on the ground that the board which summoned it was not duly constituted, as B. had not received proper notice & could not attend. The general meeting was held & passed the resolution:—*Held*: assuming the board meeting to be so far irregular that pltf. might have objected & required another to be summoned, the general meeting, having been summoned, in all other respects regularly, by directors acting as a board, was competent to act.

Qu.: whether, if pltf. had at once complained of the short notice & required a fresh board meeting to be called, the ct. would not have prevented the holding the general meeting till this had been done.—BROWNE v. LA TRINIDAD (1887), 37 Ch. D. 1; 57 L. J. Ch. 292; 58 L. T. 137; 36 W. R. 289; 4 T. L. R. 14, C. A.; *revsq. S. C. sub nom. LA TRINIDAD, LTD. v. BROWNE*, 36 W. R. 138.

Annotations:—Fold. Southern Counties Deposit Bank v. Rider & Kirkwood (1895), 73 L. T. 374. *Distd. Re* State of Wyoming Syndicate, [1901] 2 Ch. 431. *Apld. Boschoek Proprietary Co. v. Fuke*, [1906] 1 Ch. 148. *Mentd. Boston Deep Sea Fishing & Ice Co. v. Ansell* (1888), 59 L. T. 345;

Bainbridge v. Smith (1889), 60 L. T. 879; *Re* Dale & Plant (1889), 61 L. T. 206; *Re* Anglo-Austrian Printing & Publishing Union, Isaac's Case, [1892] 2 Ch. 158; *Baring-Gould v. Sharpington Pick & Shovel Syndicate* (1898), 67 L. J. Ch. 622; *Re* Olympia, [1898] 2 Ch. 153; *Automatic Self Cleansing Filter Syndicate Co. v. Cuninghame*, [1906] 2 Ch. 34; *Re* Famatina Development Corp., [1914] 2 Ch. 271; *Hickman v. Kent or Romney Marsh Sheep-Breeders' Assocn.*, [1915] 1 Ch. 881; *Plantations Trust v. Bila (Sumatra) Rubber Lands* (1916), 114 L. T. 676.

3769. ———.]—The notices convening the meeting at which a special resolution to wind up voluntarily was passed by the shareholders of a co. were issued under the authority of a resolution passed at a meeting of the board of directors at which a quorum was not present. Six months afterwards the shareholders sought to have the special resolution declared invalid:—*Held*: the doctrine upon which the ct. had acted since *Foss v. Harbottle*, No. 4100, *post*, as was explained in *Browne v. La Trinidad*, No. 3768, *ante*, was not to interfere for the purpose of forcing cos. to conduct their business according to the strictest rules, where the irregularity complained of could be set right at any moment; & therefore, in the present case, the ct. would not interfere, especially as no application to the ct. had been made until six months had elapsed after the passing of the resolution.—SOUTHERN COUNTIES DEPOSIT BANK, LTD. v. RIDER & KIRKWOOD (1895), 73 L. T. 374; 11 T. L. R. 563, C. A.

Annotations:—Distd. Re Haycraft Gold Reduction & Mining Co., [1900] 2 Ch. 230. *Apld. Boschoek Proprietary Co. v. Fuke*, [1906] 1 Ch. 148. *Refd. Transport v. Schonberg* (1905), 21 T. L. R. 305.

— By all members present at meeting.]—*See* No. 3756, *ante*.

(g) Service of Notice.

3770. After death of member—Apart from special provision in articles.]—Apart from special provisions in their arts. of assocn., a co. having notice of the death of a member cannot bind his estate by posting to him at his registered address a notice of an extraordinary general meeting to be held for the purpose of altering the arts. in such manner as to impose a fresh liability on his shares.—ALLEN v. GOLD REEFS OF WEST AFRICA, LTD., [1899] 2 Ch. 40; 68 L. J. Ch. 540; 80 L. T. 750; 47 W. R. 568; 43 Sol. Jo. 510; 6 Mans. 449; *on appeal*, [1900] 1 Ch. 656, C. A.

Annotations:—Refd. British Murac Syndicate v. Alperton Rubber Co., [1915] 2 Ch. 186; *Brown v. British Abrasive Wheel Co.*, [1919] 1 Ch. 290; *Dafen Tinsplate Co. v. Llanelly Steel Co.*, [1920] 2 Ch. 124; *Sidebottom v. Kershaw, Leese*, [1920] 1 Ch. 154. *Mentd. Punt v. Symons*, [1903] 2 Ch. 506; *Re* Artisans' Land & Mortgage Corp., [1904] 1 Ch. 796; *Ayre v. Skelsey's Adamant Cement Co.* (1904), 20 T. L. R. 587; *Baily v. British Equitable Asscn.*, [1904] 1 Ch. 374; *Re* Welsbach Incandescent Gas Light Co., [1904] 1 Ch. 87; *Phillips v. Manufacturers' Securities* (1917), 86 L. J. Ch. 305; *McEllistirm v. Ballymacelligott Co-op. Agricultural & Dairy Soc.*, [1919] A. C. 548.

3771. ——— Construction of articles.]—Where, under a co.'s arts., notice of general meetings is to be given to "members," & such notice may be served upon any "member" either personally or by sending it prepaid by post addressed to "such member" at his registered address, it is not necessary, in the case of a deceased member, either to send a notice addressed to him at his registered address, or to serve his legal personal representatives unless they have themselves

under which the calls had been made were passed at a meeting not duly convened. Deft. was himself present at the meeting which passed the rules, presided over it as chairman & as such chairman signed the minutes of its proceedings:—*Held*: deft. was estopped by his own conduct from

objecting to the mode of calling the meeting.—SOLOMON v. COLLINGWOOD QUARTZ MINING CO. (1867), 4 W. W. & A.B. 128.—AUS.

e. ———.]—A shareholder, who is present at a meeting of shareholders at which directors are appointed, & agrees to waive his right to due notice

of the meeting as required by the arts. of assocn. is estopped from raising the want of notice as an objection to the validity of the appointment of the directors.—*Re* NEOKRATINE SAFETY EXPLOSIVE CO. OF NEW SOUTH WALES, LTD. (1891), 12 N. S. W. Eq. 269.—AUS.

become "members" by formal registration.—**ALLEN v. GOLD REEFS OF WEST AFRICA, LTD.**, [1900] 1 Ch. 656; 69 L. J. Ch. 266; 82 L. T. 210; 16 T. L. R. 213; 44 Sol. Jo. 261; 48 W. R. 452; 7 Mans. 417, C. A.; *varying*, [1899] 2 Ch. 40.

Annotations:—**Refd.** *British Murac Syndicate v. Alpertons Rubber Co.*, [1915] 2 Ch. 186; *Dafen Tinplate Co. v. Llanelli Steel Co.*, [1920] 2 Ch. 124; *Sidebottom v. Kershaw, Leese*, [1920] 1 Ch. 154. **Mentd.** *Punt v. Symons*, [1903] 2 Ch. 506; *Re Artisans' Land & Mortgage Corp.*, [1904] 1 Ch. 796; *Ayre v. Skelsey's Adamant Cement Co.* (1904), 20 T. L. R. 587; *Baily v. British Equitable Assce.*, [1904] 1 Ch. 374; *Re Welsbach Incandescent Gas Light Co.*, [1904] 1 Ch. 87; *Phillips v. Manufacturers' Securities* (1917), 86 L. J. Ch. 305; *Brown v. British Abrasive Wheel Co.*, [1919] 1 Ch. 290; *McEllistrim v. Ballynacelligott Co-op. Agricultural & Dairy Soc.*, [1919] A. C. 548.

C. Postponement of Meetings.

3772. Power of directors to postpone—Meeting properly convened.—**SMITH v. PARINGA MINES, LTD., PARINGA MINES, LTD. v. BLAIR, PARINGA MINES, LTD. v. BOYLE**, No. 3736, *ante*.

D. Proceedings at Meetings.

(a) In General.

3773. How conducted—In compliance with Acts & articles.—The 1862 Act is not intended to & does not abrogate the arts. of assocn. of any co. properly incorporated under its provisions. Where, therefore, the arts. of assocn. of a co. require a certain quorum before business can be proceeded with, & a certain qualification in members for voting, & the Act requires certain formalities to be observed & a certain majority of votes to be obtained to give validity to certain resolutions, the requirements both of the Act & of the arts. must be strictly observed, otherwise no binding resolutions can be passed.—**Re CAMBRIAN PEAT, FUEL, & CHARCOAL CO., LTD., DE LA MOTT'S & TURNER'S CASE** (1875), 31 L. T. 773; 23 W. R. 405.

3774. How far business limited by terms of notice—Outside business discussed—Whole meeting not irregular.—**Re BRITISH SUGAR REFINING CO.**, No. 3766, *ante*.

3775. — Resolutions mentioned in notice—Whether amendment may be moved.—(1) There is no very precise meaning in law to be given to the word "amalgamate" in the memorandum of assocn. of a co., but *Seemle*: the sale by one co. to another, in consideration of shares in the purchasing co., of all the vendor co.'s assets, except certain shares in the purchasing co. held by the vendor co., is authorised by a clause in the memorandum of assocn. of the vendor co. allowing the co. to "amalgamate" with another co.

(2) At a general meeting of a co. the chairman by the vote of the majority can stop the debate after the resolutions have been reasonably discussed.

(3) An amendment altering the terms of a resolution cannot be moved at a second meeting which has been called simply for the purpose of confirming or rejecting the resolution.—**WALL v. LONDON & NORTHERN ASSETS CORPN.**, [1898] 2 Ch. 469; 67 L. J. Ch. 596; 79 L. T. 249; 47 W. R. 219; 14 T. L. R. 547, C. A.

Annotations:—*As to (1)* **Refd.** *Disgood v. Henderson's Transvaal Estates* (1908), 77 L. J. Ch. 486. *As to (3)* **Refd.** *Torbock v. Westbury*, [1902] 2 Ch. 871.

3776. — — — — ——In passing a special resolution under 1862 Act, s. 51, the resolution

confirmed at the second meeting must be in the same form as that passed at the first meeting, but it is not necessary that the resolution passed at the first meeting should be in the identical terms of the resolution specified in the notice of such meeting. If, therefore, a proper & sufficient notice of the intention to propose a special resolution at a general meeting has been given, the resolution will not be invalidated if, owing to an amendment at the first meeting, the resolution then passed & afterwards confirmed at the subsequent general meeting, of which notice specifying the amended resolution has been duly given, is not identical with the proposed resolution specified in the earlier notice.—**TORBOCK v. WESTBURY (LORD)**, [1902] 2 Ch. 871; 71 L. J. Ch. 845; 87 L. T. 165; 51 W. R. 133.

3777. — — — — ——In the case of a voluntary winding up by special resolution, where the notice of the confirmatory meeting includes notice of a resolution for the confirmation of the appointment of a named person as liquidator, & that resolution is dropped, a resolution for the appointment of another person may be proposed & carried without further notice.—**Re TRENCH TUBELESS TYRE CO., BETHELL v. TRENCH TUBELESS TYRE CO.**, [1900] 1 Ch. 408; 69 L. J. Ch. 213; 82 L. T. 247; 48 W. R. 310; 16 T. L. R. 207; 44 Sol. Jo. 260; 8 Mans. 85, C. A.

3778. — — — — ——Notice was given of an extraordinary meeting of shareholders in a co. for the purpose of considering, & if thought fit, passing resolutions for a voluntary winding up, with the appointment of a liquidator at a fixed remuneration, for the purpose of reconstruction in accordance with the terms of a draft agreement. At the meeting the only resolution put was for the voluntary winding up of the co., with the appointment of a liquidator. On the petition of a creditor:—**Held**: a compulsory order must be made, on the ground that the resolution put to the meeting was not in accordance with the resolutions of which notice had been given, & therefore no valid resolutions for a voluntary winding up had ever been passed.—**Re TEEDE & BISHOP, LTD.** (1901), 70 L. J. Ch. 409; 84 L. T. 561; 17 T. L. R. 282; 45 Sol. Jo. 343; 8 Mans. 217.

Annotation:—**Expld.** *Thomson v. Henderson's Transvaal Estates*, [1908] 1 Ch. 765.

3779. Meeting summoned as directors' meeting—Directors only members—Validity as general meeting.—A syndicate of five persons formed a private co., in which they were the sole shareholders, & sold to it for £15,000 in debentures of the co., property which they had, a few days before, acquired for £7000. The contract for the sale & the issue of the debentures was carried out at a meeting of the five who there & then appointed themselves directors. This meeting was described in the minutes as a board meeting. At a subsequent meeting the seal of the co. was affixed to the debentures. The arts. of the co. provided that no director should vote in respect of any contract or arrangement, in which he might be interested. In the winding up of the co. the liquidator claimed a declaration that the issue of the debentures was invalid & should not be set aside:—**Held**: there being no suggestion of fraud, the co. was bound in a matter *intra vires*

PART III. SECT. 30, SUB-SECT. 3.— D. (a).

1. Appointment of scrutineers—Conflicting interests.—At a meeting of the shareholders of a co., a chairman was elected by a majority of the votes

of those present. Two shareholders who were also provisional directors, & who were candidates for re-election, were appointed scrutineers in the same manner, & directors were then elected, excluding pltf. It was the duty of the scrutineers to decide as to what votes

were valid, & they also interpreted an instrument under which pltf. had advanced money to start the co., & which provided for the future disposition of the shares of the co., held by pltf. as security for his advances, & allowed persons to vote as being

Sect. 30.—Regulation and management: Sub-sect. 3, D. (a), (b), (c) & (d) i.]

by the unanimous agreement of its members; although the meeting was styled a directors' meeting, all the five shareholders were present, & they might well have turned it into a general meeting, & transacted the same business; in these circumstances the issue of the debentures was not invalid.—*Re EXPRESS ENGINEERING WORKS, LTD.*, [1920] 1 Ch. 466; 89 L. J. Ch. 379; 122 L. T. 790; 36 T. L. R. 275, C. A.

Annotation:—Distd. Re Oxted Motor Co., [1921] 3 K. B. 32.

(b) Constitution of Meeting.

3780. How general meeting constituted—One present—No meeting.]—*Re SANITARY CARBON CO.*, [1877] W. N. 223.

Annotation:—Consd. East v. Bennett, [1911] 1 Ch. 163.

Compare Part VIII., Sect. 2, sub-sect. 3, post.

3781. — Who are included for computation—Proxy for company shareholder.]—A person appointed to represent a limited co. shareholder under 1908 Act, s. 68, can be taken into account in considering whether or not there is a quorum of shareholders present.—*Re KELANTAN COCONUT ESTATES, LTD. & REDUCED* (1920), 64 Sol. Jo. 700.

3782. How class meeting constituted—Under article for modification of class rights—One present—Sole member of class.]—Where the memorandum & arts. of a co. provided that no new shares should be issued so as to rank equally with 10,000 original preference shares unless such issue was sanctioned by an extraordinary resolution of the holders, & all the preference shares passed at a separate "meeting" of such holders, & that a modification or variation of the rights of any class of shares might be effected when sanctioned by an extraordinary resolution of the holders of the shares of such class passed at a separate "meeting" of such holders, & all the preference shares were held by one person:—*Held*: on the true construction of the memorandum & arts. the sole preference shareholder could constitute a "meeting" to consent to a modification of the rights of preference shareholders.—*EAST v. BENNETT BROTHERS LTD.*, [1911] 1 Ch. 163; 80 L. J. Ch. 123; 103 L. T. 826; 27 T. L. R. 103; 55 Sol. Jo. 92; 18 Mans. 145.

Annotation:—Refd. Re Fireproof Doors, Umney v. Fireproof Doors (1916), 60 Sol. Jo. 513.

3783. — Provisions for quorum.]—The arts. of a limited co. whose capital was divided into different classes of shares provided—art. 13—that any agreement modifying the rights attached to each class must be confirmed by an extra-

ordinary resolution passed at a separate general meeting of the holders of shares of that class, & "all the provisions hereinafter contained as to general meetings shall, *mutatis mutandis*, apply to every such meeting, but so that the quorum thereof shall be members holding or representing three-fourths of the nominal amount of the issued shares of the class." The subsequent provisions as to general meetings provided, *inter alia*, that the quorum thereat should be members personally present, not being less than three in number, holding or representing one-tenth of the issued capital of the co.; & that if at an adjourned meeting a quorum was not present those members who were present should be a quorum. These arts. were said to be in the common form:—*Held*: although the provisions as to general meetings were to apply, *mutatis mutandis*, to class meetings, they must be so applied subject to the provision above quoted, which was inserted in art. 13 for the purpose of protecting the rights of the privileged class of shareholders; & accordingly at all class meetings, whether adjourned or not, the quorum must be three-fourths of the members of the class required by art. 13.—*HEMANS v. HOTCHKISS ORDNANCE CO.*, [1899] 1 Ch. 115; 68 L. J. Ch. 99; 79 L. T. 681; 47 W. R. 276; 43 Sol. Jo. 151; 6 Mans. 52, C. A.

(c) Chairman.

3784. Functions—To conduct meeting regularly—Cannot adjourn or dissolve till business completed.]—It is the duty of a chairman to preserve order, conduct proceedings regularly, & take care that the sense of the meeting is properly ascertained with regard to any question before it; but he has no power to stop or adjourn a meeting at his own will; & if he purports to do so, it is competent for the meeting to resolve to go on with the business for which it has been convened, & to appoint another chairman for that object.—*NATIONAL DWELLINGS SOCIETY v. SYKES*, [1894] 3 Ch. 159; 63 L. J. Ch. 906; 42 W. R. 696; 10 T. L. R. 563; 38 Sol. Jo. 601; 1 Mans. 457; 8 R. 758.

3785. Powers—To decide questions arising at meetings.]—*Re INDIAN ZOEDONE CO.*, No. 3887, post.

3786. — To stop debate after reasonable discussion.]—*WALL v. LONDON & NORTHERN ASSETS CORPN.*, No. 3775, ante.

3787. — Where ruling given—Right of shareholder to challenge—How lost.]—At a meeting convened for the purpose of making certain alterations in the rules of a co. a resolution was proposed giving each proprietor one vote for every share, subject to a proviso requiring him

cestuis que trust of a portion of such shares:—*Held*: the duty of the scrutineers was in conflict with their interest as candidates for the directorate, & the election was set aside.—*DICKSON v. McMURRAY* (1881), 28 Gr. 533.—CAN.

PART III. SECT. 30, SUB-SECT. 3.—D. (b).

g. How general meeting constituted.]—Art. 37 of 1862 Act, Table A, enacts: "No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business":—*Held*: "members" means members entitled to vote; & a quorum must not only be present at the commencement of the meeting but also at the time when the business is transacted.—*HENDERSON v. LOUITT & CO.*, LTD. (1894), 21 R. (Ct. of Sess.) 674; 31 Sc. L. R. 555.—SCOT.

h. —.]—The arts. of assocn. of a co. provided that no business should be transacted at any general meeting unless there were personally present at the commencement of the business "ten or more members":—*Held*: at a meeting for the passing of a special resolution for the winding up of the co., there must be at least ten members personally present.—*HOWLING'S TRUSTEES v. SMITH* (1905), 7 F. (Ct. of Sess.) 390.—SCOT.

k. —.]—The arts. of assocn. of a co. provided that if, at any general meeting, a quorum of five members be not present at the time when the meeting proceeded to business, it should be adjourned *sine die*. Only four members attended the general meeting on Dec. 6, & the meeting was adjourned. There was no quorum present at the adjourned meeting, & this meeting was adjourned *sine die*:—*Held*: the general meeting

had been duly held upon Dec. 6.—*FLETCHER v. NEW ZEALAND GLUE CO., LTD.* (1911), 31 N. Z. L. R. 129.—N.Z.

PART III. SECT. 30, SUB-SECT. 3.—D. (c).

3785 i. Powers—To decide questions arising at meetings.]—A meeting of shareholders of a co. was convened for the purpose of considering the sale of the assets of the co. to X., & to pass the necessary resolutions to authorise sale & transfer. At the meeting a shareholder announced that Y. was willing to give a larger sum for such assets, & produced a cheque signed by Y., but initialled for one day only. The chairman refused to put such announcement to the meeting:—*Held*: the chairman's ruling was correct.—*MOSETHAL v. NOOITGEDAcht GOLD MINING CO., LTD.'S LIQUIDATORS* (1895), 2 O. R. 55.—S. AF.

to have been on the register for six months. Pltf., a proprietor, having moved to omit the proviso, the chairman, after consulting his legal adviser, ruled, erroneously, that the resolution must be accepted or rejected in its entirety, & declined to put the amendment. Pltf. then moved the rejection of the resolution. The resolution was passed, & was subsequently confirmed:—*Held*: there was no waiver by pltf. & he was entitled to a declaration that the resolution was invalid.—*HENDERSON v. BANK OF AUSTRALASIA* (1890), 45 Ch. D. 330; 59 L. J. Ch. 794; 63 L. T. 597; 6 T. L. R. 424; 2 Meg. 301, C. A.

3788. ——— When court will interfere—*Refusal to put resolution.*—*DAVENIERE v. DEBENHAM* (1895), 39 Sol. Jo. 782.

3789. ——— ——— ———.] — *BREAY v. BROWNE* (1896), 41 Sol. Jo. 159, D. C.

3790. Liabilities—Defamatory statements in speech—Legal proceedings pending—Contempt of court.]—*WATT v. MAXIM-WESTON ELECTRIC CO.*, *MAXIM-WESTON ELECTRIC CO. v. WATT* (1888), 5 T. L. R. 170.

3791. ——— How far privileged.]—*PONS-FORD v. "FINANCIAL TIMES," LTD. & HART* (1900), 16 T. L. R. 248.

———.]—*See, further, LIBEL & SLANDER.*

3792. Effect of chairman's declaration—Whether conclusive evidence.]—*YOUNG v. SOUTH AFRICAN & AUSTRALIAN EXPLORATION & DEVELOPMENT SYNDICATE*, No. 3721, *ante*.

3793. ——— Not challenged.]—*OPPERT v. BROWNHILL GREAT SOUTHERN, LTD.*, *BROWNHILL GREAT SOUTHERN, LTD. v. COPELAND* (1898), 14 T. L. R. 249, C. A.

3794. ——— In absence of fraud.]—Apart from fraud, the declaration of the chairman of a meeting that a special resolution has been passed is conclusive.

At a meeting of a co. duly convened to pass an extraordinary resolution to wind up voluntarily, the chairman declared the resolution carried on a show of hands; a poll was not demanded by five members. On a petition by a holder of paid-up shares to wind the co. up compulsorily, the ct. refused to entertain the question whether the resolution was carried by the requisite majority.—*Re HADLEIGH CASTLE GOLD MINES, LTD.*, [1900] 2 Ch. 419; 69 L. J. Ch. 631; 83 L. T. 400; 16 T. L. R. 468; 44 Sol. Jo. 575; 8 Mans. 419.

Annotations:—*Distd. Re Caratal (New) Mines*, [1902] 2 Ch. 498. *Reid. Arnot v. United African Lands*, [1901] 1 Ch. 518.

3795. ——— ———.]—By virtue of 1862 Act, s. 51, the declaration of the chairman of a meeting of the shareholders of a co. that a special resolution has been carried on a show of hands—a poll not having been demanded—is, at any rate in the absence of fraud, absolutely, & not merely *prima facie*, conclusive of the fact that the resolution has been carried.—*ARNOT v. UNITED AFRICAN LANDS, LTD.*, [1901] 1 Ch. 518; 70

L. J. Ch. 306; 84 L. T. 309; 49 W. R. 322; 17 T. L. R. 245; 45 Sol. Jo. 275; 8 Mans. 179, C. A. *Annotation*:—*Distd. Re Caratal (New) Mines*, [1902] 2 Ch. 498.

3796. ——— Irregularity appearing *ex facie*.]—The declaration of the chairman of a meeting called to pass a resolution under 1862 Act, s. 51, is not conclusive where the declaration shows on the face of it that the statutory majority has not voted in favour of the resolution.—*Re CARATAL (NEW) MINES, LTD.*, [1902] 2 Ch. 498; 71 L. J. Ch. 883; 87 L. T. 437; 50 W. R. 572; 18 T. L. R. 640; 9 Mans. 414.

Annotation:—*Folld. Allison v. Johnson* (1902), 46 Sol. Jo. 686.

3797. ——— ———.]—*ALLISON v. JOHNSON* (1902), 46 Sol. Jo. 686.

(d) Voting.

i. In General.

3798. Method of voting—No provision in articles.]—In ascertaining the majority on a special resolution put to a general meeting of a co. the chairman is not entitled, unless a poll is demanded, to take account of the number of votes which each member has, but the voting will go by the mere numerical majority of those members present in person or by proxy; & *semble*: if a poll is demanded, then it must be a poll not merely of the members present in person or by proxy at the meeting, but of all the members of the co.

The common law of all meetings is that votes are taken by a show of hands, & that common law must prevail unless the arts. of assocn. of a co. contain any provision to the contrary.—*Re HORBURY BRIDGE COAL, IRON, & WAGGON CO.* (1879), 11 Ch. D. 109; 48 L. J. Ch. 341; 40 L. T. 353; 27 W. R. 433, C. A.

Annotations:—*Consd. Re Chillington Iron Co.* (1885), 29 Ch. D. 159. *Distd. Re Bidwell*, [1893] 1 Ch. 603. *Consd. Ernest v. Loma Gold Mines*, [1897] 1 Ch. 1. *Expld. Arnot v. United African Lands*, [1901] 1 Ch. 518. *Mentd. Young v. South African & Australian Exploration & Development Syndicate*, [1896] 2 Ch. 268.

3799. Who entitled to vote—Registered member—To prevent action against himself.]—(1) At a meeting of shareholders, held to consider whether the co. should adopt a suit instituted in the name of the co., there would have been a majority in favour of adopting the suit, but for the votes of a shareholder, whose title to his shares depended upon the validity of the transaction which the suit sought to set aside:—*Held*: the shareholder was entitled to vote, & the bill must be taken off the file.

(2) *Semble*: under such circumstances, an individual shareholder might, notwithstanding *Foss v. Harbottle*, No. 4100, *post*, institute a suit in his own name, to set aside a transaction, which the co. was competent to confirm.

(3) A provision in the arts. of assocn. of a co. that a director shall not vote in respect of a contract in which he is interested, does not preclude

3796 i. Effect of chairman's declaration—Whether conclusive evidence—Irregularity appearing *ex facie*.]—*Re CLARK & Co., LTD.* (1911), 48 Sc. L. R. 154.—*SCOT.*

PART III. SECT. 30, SUB-SECT. 3.—D. (d) i.

1. Who entitled to vote—Registered member.]—By the Act of incorporation of a co. it was provided that every shareholder should be entitled to one vote for every share held by him on which all calls should have been paid:—*Held*: a holder of shares, who had given the co. his promissory note for the amount of a

call, was not in default in respect of that call, his note being current at the time of the holding of a meeting of shareholders; & he was entitled to vote at that meeting. *Secus*: as to a holder whose note for the amount of the call was overdue & unpaid at the time of the meeting.—*COLONIAL ASSURANCE CO. v. SMITH* (1912), 21 W. L. R. 815; 22 Man. L. R. 441.—*CAN.*

m. ———.]—A person whose name stands without qualification on the share register as a holder of shares of a co. has the right to vote at a meeting of the co.—*TOUGH OAKES GOLD MINES, LTD. v. FOSTER* (1917),

39 O. L. R. 144.—*CAN.*

n. ———.]—An art. of assocn. of a co. provided that in case any share should be held in the name of a co. only one individual partner of that co. should be entitled to attend & vote at the general meeting, whose name should be entered in the books of the co. as the ostensible holder:—*Held*: the art. did not apply to the case of persons registered as individual shareholders, although they held in trust for a co.—*GALLOWAY SALOON STEAM PACKER CO. v. WALLACE* (1891), 19 R. (Ct. of Sess.) 330; 29 Sc. L. R. 264.—*SCOT.*

Sect. 30.—Regulation and management: Sub-sect. 3, D. (d) i., ii. & iii.]

him from voting thereon as a shareholder in a general meeting.—**EAST PANT DU UNITED LEAD MINING CO., LTD. v. MERRYWEATHER** (1864), 2 Hem. & M. 254; 5 New Rep. 166; 10 Jur. N. S. 1231; 13 W. R. 216; 71 E. R. 460.

Annotations:—As to (1) Consd. Phillips v. Manufacturers' Securities (1917), 86 L. J. Ch. 305. *Refd. Mason v. Harris* (1879), 48 L. J. Ch. 589. *As to (3) Refd. Phillips v. Manufacturers' Securities* (1917), 86 L. J. Ch. 305.

3800. ——— Motives & beneficial interest in shares immaterial.]—(1) The arts. of assocn. of a limited co. provided that every member holding at least ten shares, should have one vote for every complete number of ten shares, with this limit, that no shareholder should be entitled to more than 100 votes in all; & that the co. should not be affected by notice of any trust. At a meeting of the co. a poll took place upon an amendment to a resolution, & the chairman declared the amendment carried, but it would have been lost if the chairman had not ruled out 649 votes, on the ground that—as the fact was—they were given by nominees of P. & other large shareholders, who had executed duly registered transfers of some other shares, for the sole purpose of increasing their voting powers:—*Held*: the votes ought to have been counted in; the right of voting being the legal right of a registered shareholder, & the directors having no right to enquire into his motives, or his beneficial interest in his shares.

(2) In an action by P. on behalf of himself & all other the shareholders in the co. who voted against the amendment, & by the co. against the directors, for an injunction to restrain them from ruling out the shares in question, a summons was taken out by the directors to strike out the name of the co., which had been used without the authority of the directors or of a general meeting:—*Held*: on the presumption that P. & the shareholders who voted against the amendment were the majority of the co., a meeting ought to be called for determining whether the name of the co. ought to be used, & its name ought not to be struck out unless the meeting so decided.

Semble: an action may be maintained by an individual shareholder to compel the directors to receive his vote.—**PENDER v. LUSHINGTON** (1877), 6 Ch. D. 70; 46 L. J. Ch. 317.

Annotations:—As to (1) Consd. Moffatt v. Farquhar (1878), 7 Ch. D. 591; *Mutter v. Eastern & Midlands Ry.* (1888), 38 Ch. D. 92. *Refd. Harben v. Phillips* (1883), 23 Ch. D. 14; *Re Bell, Ex p. Hodgson* (1891), 65 L. T. 245; *Wall v. London & Northern Assets Corp.* (1898), 67 L. J. Ch. 596; *Davies v. Gas Light & Coke Co.*, [1909] 1 Ch. 248. *As to (2) Refd. Harben v. Phillips* (1883), 23 Ch. D. 14; *Breay v. Browne* (1896), 41 Sol. Jo. 159; *Marshall's Valve Gear Co. v. Manning, Wardle*, [1909] 1 Ch. 267. *Generally, Mentd. Osborne v. Amalgamated Soc. of Ry. Servants*, [1911] 1 Ch. 540; *Hickman v. Kent or Romney Marsh Sheep-Breeders' Assocn.*, [1915] 1 Ch. 881.

3800 i. ——— Motives & beneficial interest in shares immaterial.]—Unless otherwise provided by the regulations of the co., a shareholder is not debarred from voting by having a particular interest in the subject-matter of the vote.—**MACDONALD BROTHERS v. GONSON**, [1917] 1 W. R. 233; 23 B. C. R. 166.—**CAN.**

o. ——— Manager — Trustee of forfeited shares.]—The manager of a co. is not entitled to attend a general meeting of the shareholders & vote in respect of forfeited shares registered in his name as manager in trust for the co.—**Re MELBOURNE BANKING CORPN., LTD., Re COMPANIES STATUTE**, 1864 (1885), 11 V. L. R. 610.—**AUS.**

p. ——— Bondholders.]—By [the Act of incorporation of a co., every

shareholder was entitled to one vote for every share held by him. It was provided that if the interest on the bonds issued by the co. should be in arrear, all holders of bonds should have the same right of voting & qualification for directors as were attached to shareholders:—*Held*: the bondholders were not entitled to more than one vote on each bond.—**BUNTING v. LAIDLAW** (1881), 8 P. R. 538.—**CAN.**

q. ———.]—Under a statute which enacted that, in the event of the interest upon the bonds of a co. remaining unpaid, then, at the next general meeting of the co. all holders of registered bonds should have & possess the same rights & privileges, & qualifications for directors, & for voting, as are attached to shareholders:

3801. ——— Interested director.]—**EAST PANT DU UNITED LEAD MINING CO., LTD. v. MERRYWEATHER**, No. 3799, *ante*.

3802. ———.]—Where a voidable contract, fair in its terms & within the powers of the co., had been entered into by its directors with one of their number as sole vendor:—*Held*: such vendor was entitled to exercise his voting power as a shareholder in general meeting to ratify such contract; his doing so could not be deemed oppressive by reason of his individually possessing a majority of votes, acquired in a manner authorised by the constitution of the co.—**NORTH-WEST TRANSPORTATION CO. v. BEATTY** (1887), 12 App. Cas. 589; 56 L. J. P. C. 102; 57 L. T. 426; 36 W. R. 647; 3 T. L. R. 789, P. C.

Annotations:—Consd. Castello v. London General Omnibus Co. (1912), 107 L. T. 575. *Distd. Cook v. Deeks*, [1916] 1 A. C. 554. *Refd. Salomon v. Salomon, Salomon v. Salomon* [1897] A. C. 22; *Burland v. Earle*, [1902] A. C. 83; *Bath v. Standard Land Co.*, [1911] 1 Ch. 618; *Dominion Cotton Mills Co. v. Amyot*, [1912] A. C. 546; *Transvaal Lands Co. v. New Belgium (Transvaal) Land & Development Co.*, [1914] 2 Ch. 488; *Phillips v. Manufacturers' Securities* (1917), 86 L. J. Ch. 305. *Mentd. Ving v. Robertson & Woodcock* (1912), 56 Sol. Jo. 412.

3803. ———.]—Directors of a co. are not at liberty to divert in their own individual favour business which should properly belong to the co., of which they are directors; but must be regarded as holding the benefit of such contract on behalf of the co.

The position cannot be made regular by a resolution of the co. controlled by the votes of the directors themselves, ratifying & approving of their action.—**COOK v. DEEKS**, [1916] 1 A. C. 554; 85 L. J. P. C. 161; 114 L. T. 636, P. C.

——— **Present only by proxy.]**—*See* Subsect. 3, D. (e), v., *post*.

——— **Mortgagee—Compelled to vote in accordance with mortgagor's wishes.]**—*See* No. 2664, *ante*.

3804. ——— Representative of company—On production of copy of resolution of appointment.]—

(1) Arts. of assocn. provided that no person should be appointed a proxy who was not a member of the co., & that no objection should be made to the validity of any vote except at the meeting or poll at which such vote should be tendered, & every vote not disallowed at such meeting or poll, & whether given personally or by proxy, should be deemed valid for all purposes whatsoever. Proxies had been given to A., who was not a member of the co., & failing him to B., who was not a member. A. voted under these proxies & no objection was taken at the time:—*Held*: the validity of these votes could not be afterwards disputed.

(2) A vote given by the representative of a co. under a resolution passed pursuant to 1908 Act, s. 68, can be properly admitted by the chair-

—*Held*: the words "at the next general meeting" were merely indicative of the earliest period at which the bondholders might vote, & the statute did not require a new registration in order to entitle the bondholders to vote at any subsequent meeting, so long as the interest remained unpaid; the bondholders' right to vote was not limited to the right of voting for directors, but that they had the right to vote on all subjects properly coming before a general annual meeting upon which shareholders might vote.

Where a subsequent statute extended the bondholders' right of voting to "special meetings":—*Held*: the bondholders had the like right to vote on all subjects coming before "special meetings."—**HENDRIE v. GRAND TRUNK RY. CO. OF CANADA, GRAND**

man on the evidence afforded by the copy of such resolution.

(3) Arts. of assocn. of an English co. provided that "the instrument appointing a proxy shall be in writing under the hand of the appointer or his attorney duly authorised in that behalf, or, if such appointer is a corp., under its common seal." A South African co. having no common seal & not required to have one was a shareholder in the English co., & by writing under the hands of two directors appointed an attorney in England to vote on its behalf, with power of substitution. Acting under this power the attorney appointed himself proxy in the form prescribed by the arts. & claimed to vote either under the power of attorney or under the proxy. The chairman rejected this vote:—*Held*: the requirement of a common seal only applied to corps. having a common seal according to English law, & the attorney of the South African co. was entitled to vote at any rate under the proxy if not under the power of attorney itself.—*COLONIAL GOLD REEF, LTD. v. FREE STATE RAND, LTD.*, [1914] 1 Ch. 382; 83 L. J. Ch. 303; 110 L. T. 63; 30 T. L. R. 88; 58 Sol. Jo. 173; 21 Mans. 42.

3805. — Trustees—Shares held by way of security.—(1) Where a co. makes an issue of debenture stock which it secures by a debenture trust deed, & as part of the specifically mortgaged property causes shares in another co. to be registered in the names of the trustees of the deed, the trustees are, in the absence of any contract restricting their rights, entitled, as the legal owners of the shares, to exercise the voting rights in respect of them in such manner as in their judgment they may deem best, irrespective of any directions of the mtgor. co. as to how the voting rights should be exercised, & this, notwithstanding that the security is not yet enforceable.

(2) Where arts. of assocn. give a right to demand a poll to "members holding" at least a specified number of shares, joint holders of the specified number of shares may demand a poll without the support of any other member.—*SIEMENS BROTHERS & Co. v. BURNS, BURNS v. SIEMENS BROTHERS DYNAMO WORKS*, [1918] 2 Ch. 324; 87 L. J. Ch. 572; 119 L. T. 352, C. A.

3806. — Executor.—A co. having common form arts. of assocn., including a "transaction clause" dealing with persons becoming entitled to shares in consequence of death, admitted the right of an exor. of a deceased member to vote in respect of that member's shares, but did not expressly confine the admission to the right to vote at that particular meeting:—*Held*: the exor. had the right to vote in respect of those shares at a subsequent meeting.—*MARKS v. FINANCIAL NEWS, LTD.* (1919), 35 T. L. R. 681; 64 Sol. Jo. 69.

3807. How right to vote enforced—Action against company.—*PENDER v. LUSHINGTON*, No. 3800, *ante*.

3808. How right to vote lost—Money due on shares—Forfeited & reissued—New holder unable to vote till arrears paid.—By the arts. of assocn. of a co. it was provided that after the forfeiture of shares the directors of the co. should be entitled to recover from the shareholder calls & other sums due in respect of the forfeited shares, & that no member should be entitled to vote whilst any calls or other sums should be due & payable to the co. in respect of the shares of such member.

Shares were forfeited for non-payment of calls, & resold by the co. to a purchaser, to whom a certificate was issued stating that he was to be deemed to be the holder of the shares discharged from all calls due:—*Held*: the purchaser of the shares was not entitled to vote whilst any calls or other sums remained due & payable to the co. from the original holder of the shares.—*RANDT GOLD MINING CO., LTD. v. WAINWRIGHT*, [1901] 1 Ch. 184; 70 L. J. Ch. 90; 84 L. T. 348; 17 T. L. R. 29; 45 Sol. Jo. 60; 8 Mans. 61.

3809. How votes recorded—Member holding proxies—Signature of voting paper "for self & proxies."—*FOERSTER v. NEWLANDS (WEST GRIQUALAND) DIAMOND MINES, LTD.* (1902), 18 T. L. R. 497; 46 Sol. Jo. 409.

3810. How votes calculated—Where no poll.—*Re HORBURY BRIDGE COAL, IRON & WAGGON CO.*, No. 3798, *ante*.

3811. When votes disallowed—Special provision in articles—That vote valid unless disallowed at meeting—Cannot be impeached in absence of fraud.—An art. provided that votes tendered at a meeting & not disallowed at the meeting or an adjournment thereof should be valid for all purposes:—*Held*: in the absence of fraud or *mala fides* a resolution for voluntary winding up could not be impeached upon the ground that votes had been improperly received.—*WALL v. LONDON & NORTHERN ASSETS CORPN.*, [1899] 1 Ch. 550; 68 L. J. Ch. 248; 80 L. T. 70; 6 Mans. 312.

— — — — —.]—*See, also*, No. 3804, *ante*.

ii. By Proxy.

See Sub-sect. 3, D. (e), *post*.

iii. By Poll.

3812. How demanded—Demand by members holding specified number of shares—Shares for which proxies held not included.—Where by the arts. of assocn. of a registered co. it was provided, that at every meeting all questions should be decided by the result of a show of hands, unless immediately upon such show of hands a poll be duly demanded by shareholders qualified to vote, & holding in the aggregate 2,000 shares or more:—*Held*: the shareholders demanding a poll must themselves hold the requisite number of shares, & it is not enough that by the possession of proxies they represent that number.—*R. v. GOVERNMENT STOCK INVESTMENT CO.* (1878), 3

TRUNK RY. CO. OF CANADA v. TORONTO, GREY & BRUCE RY. CO. (1883), 2 O. R. 441.—CAN.

r. How right to vote lost—Money due on shares.—A shareholder, who is in arrear for unpaid calls, is absolutely debarred from voting at a shareholders' meeting.—*CHRISTOPHER v. NOXON* (1883), 4 O. R. 672.—CAN.

s. Increase of votes—By purchase of shares in market—Valid.—The committee of management of H. Co. on behalf of the co. entered into an agreement with G. Co. for the compromise of a suit pending between the two cos. Shareholders in H. Co. filed a bill against the committee & trustees

of H. Co. alleging that persons holding shares in the G. Co. had bought up shares in H. Co. with the view of obtaining votes to carry the agreement into effect:—*Held*: it is competent to any persons desirous of carrying a point lawfully within the functions of a co. to purchase shares in the market in order to increase their number of votes.—*LEE v. ROBERTSON* (1862), 1 W. & W. 374.—AUS.

t. How votes computed.—Votes of "two-thirds in value of the shareholders," who may vote for a bye-law authorising the borrowing of money, etc., on the property of a co., are, where there has been no default after

a call, to be computed upon the face value of the number of the shares held, & not upon the amount paid upon such shares.—*PURDOM v. ONTARIO LOAN & DEBENTURE CO.* (1892), 22 O. R. 597.—CAN.

PART III. SECT. 30, SUB-SECT. 3.—D. (d) iii.

a. How taken—Members abroad—Extension of time.—In contemplation of an election to fill a vacancy upon the board of directors of a society, the secretary sent out to members notices in the form prescribed by Act 6 of 1888, s. 44, with an intimation that unless the votes were received by a

Sect. 30.—Regulation and management: Sub-sect. 3, D. (d) iii. & (e) i.]

Q. B. D. 442; 47 L. J. Q. B. 478; *sub nom. Re GOVERNMENT STOCK INVESTMENT CO., LTD., Ex p. FOWLER*, 39 L. T. 230.

Annotations:—Reid. Re Bidwell, [1893] 1 Ch. 603; *Wall v. London & Northern Assets Corpn.* (1898), 79 L. T. 249.

3813. ——— *Shares held jointly.*—*SIEMENS BROTHERS & CO. v. BURNS, BURNS v. SIEMENS BROTHERS DYNAMO WORKS*, No. 3805, *ante*.

3814. ——— *Demand by specified number of members—Whether public demand necessary.*—At a general meeting held under 1862 Act, s. 51, for the purpose of considering a special resolution, it is not necessary for the validity of a demand for a poll that the five members demanding it should then & there openly & publicly make the demand; it being sufficient if the demand is made by them informally & privately, & the bare fact of the demand stated to the meeting by the chairman.

A general meeting was called for the purpose of considering a proposal to wind up a limited co. voluntarily. Upon a show of hands being taken with reference to an amendment to a resolution to that effect, the chairman, after stating that the result was in favour of the amendment, said "a poll is demanded," & at once proceeded to cause a poll to be taken accordingly; announcing subsequently that the amendment was lost; whereupon, the poll not being challenged, the original resolution was duly carried, & afterwards confirmed. A petition by two shareholders having been presented before the general meeting, praying that the co. might be ordered to be wound up by the ct., the petitioners pressed their demand, on the ground, among others, that the poll had been improperly directed, inasmuch as the requisite five members had not openly & publicly demanded it. It appeared, however, at the hearing of the petition that five members, including the chairman, supporting the proposal to wind up voluntarily, had privately agreed that, if the show of hands should be against them, a poll should be demanded:—*Held*: the chairman was justified in the course he took; the poll was not improperly demanded: & the resolutions could not be impeached successfully on that ground.—*Re PHOENIX ELECTRIC LIGHT & POWER CO., LTD.* (1883), 48 L. T. 260; 31 W. R. 398.

3815. ——— *Shares held jointly.*—A co.'s arts. provided that at general meetings resolutions were to be decided by a numerical majority of votes, unless a poll was demanded by three members, & that when two or more persons were entitled to a share the one whose name stood first on the register should be the only one entitled to vote. Pltfs., who numbered more than three, held a majority of shares & they opposed certain resolutions, which were, however, carried on a show of hands. Owing to some of pltfs.' shares being jointly held they only counted as two persons & so did not amount to the three persons necessary for the demand of a poll. Pltfs. brought an action to restrain the carrying out of the resolutions & asked for an injunction until the trial:—*Held*: without prejudice to the question whether pltfs. would be entitled to an injunction

at the trial, they should have an interlocutory injunction.—*CORY v. REINDEER STEAMSHIP, LTD.* (1915), 31 T. L. R. 530; 59 Sol. Jo. 629.

Annotation:—Consd. Siemens v. Burns, Burns v. Siemens Dynamo Works (1918), 119 L. T. 352.

3816. *Who may vote—Whether limited to persons present at meeting.*—A poll must *prima facie* mean a poll of all entitled to vote, i.e. those who are or may be present during the poll (*LORD DENMAN, C.J.*).—*R. v. SOUTHAMPTON WATERWORKS COMRS.* (1845), 5 L. T. O. S. 216; 9 J. P. Jo. 387.

3817. ———.—*Re HORBURY BRIDGE COAL IRON & WAGGON CO.*, No. 3798, *ante*.

3818. ——— *Proxies—Not unless available for original meeting.*—*SHAW v. TATI CONCESSIONS, LTD.*, No. 3881, *post*.

3819. *How taken—Chairman empowered to direct method—Poll directed to be taken then & there.*—The arts. of assocn. of a co. provided—in the terms of 1862 Act, Table A, art. 43—that if at any general meeting of the co. a poll should be demanded it should be taken "in such manner as the chairman shall direct."

A poll having been demanded at a meeting summoned to consider a resolution for a voluntary winding up, the chairman directed the poll be taken then & there. It was so taken, & the resolution was carried:—*Held*: the poll had been rightly taken.—*Re CHILLINGTON IRON CO.* (1885), 29 Ch. D. 159; 54 L. J. Ch. 624; 33 W. R. 442; *sub nom. Re CHILLINGTON IRON CO., LTD., Ex p. MANSELL*, 52 L. T. 504; 1 T. L. R. 250.

Annotation:—Distd. Re British Flax Producers' Co. (1889), 60 L. T. 215.

3820. ———.—*By one of the arts. of assocn. of a co. it was provided "All questions at general meetings shall be decided by a show of hands unless a poll be demanded, in which case such poll shall be held at a time & place to be fixed by the directors, within seven days from the date of the meeting."* At a meeting of the co., where a poll was demanded, the chairman directed it to be taken then & there, the directors having privately arranged that this should be done:—*Held*: the taking of the poll then & there was a violation of the arts. of assocn., & illegal.—*Re BRITISH FLAX PRODUCERS' CO., LTD.* (1889), 60 L. T. 215; 5 T. L. R. 197; 1 Meg. 133.

3821. ——— *Signed voting papers to be delivered at office.*—The arts. of a co. provided in the ordinary way for votes being given either personally or by proxy, the appointment of proxies, etc., but that if a poll was demanded it should be taken "in such a manner & at such time & place as the chairman of the meeting directs." At a general meeting of the co., a resolution having been lost upon a show of hands, the chairman demanded a poll & directed that it should be taken by means of polling papers signed by the members & delivered at the offices of the co. on or before a fixed day & hour:—*Held*: having regard to the terms of the arts., such a mode of taking the poll was unauthorised & invalid.—*McMILLAN v. LE ROI MINING CO., LTD.*, [1906] 1 Ch. 331; 75 L. J. Ch. 174; 94 L. T. 160; 54 W. R. 281; 22 T. L. R. 186; 13 Mans. 65.

certain fixed date they would not be counted. Owing to delay in the mail service the date fixed did not allow members resident in England time to return their votes. Thereupon one of the candidates obtained a rule calling on the society & the other candidates to show cause why the declaration of the election should not be postponed until after the receipt of the voting

papers from England, & why such voting papers should not count in the election. The ct. discharged the rule on the ground that the terms of the Act had been strictly followed & there had been no irregularity.—*LANCE v. SOUTH AFRICAN MUTUAL LIFE ASSURANCE SOCIETY* (1914), 5 C. P. D. 1004.—S. AF.

b. ——— *Object of poll.*—At com-

mon law, & where the taking of a poll is not governed by statute or special rule, the chairman of a meeting is the proper authority to fix the time & place for the taking of a poll; & a poll is properly & correctly taken immediately after the termination of the meeting. The same rule applies to meetings of registered cos. unless their arts. prescribe some other pro-

3822. — Where more than one resolution — Poll taken en bloc.]—PATENT WOOD KEG SYNDICATE, LTD. *v.* PEARSE (1906), 50 Sol. Jo. 650.

3823. — — Separate poll must be taken.]—The arts. of assocn. of an English co. in which an American co. held a majority of shares provided that casual vacancies in the office of director might be filled up by the board, & that the directors might appoint additional directors up to the prescribed maximum, which was seven. The arts. also provided for votes being given either personally or by proxy appointed in writing or under the common seal of a corp'n. Only persons entitled to vote at any general meeting were to act as proxies, except that a co. which was a member might by proxy authorise a representative to act at meetings for them. H., vice-president of the American co. who held a power of attorney from that co., issued a requisition & notice for an extraordinary general meeting of the shareholders of the English co., at which he was chairman & voted as proxy, & which meeting, on a poll, purported to pass two resolutions, increasing the number of directors to sixteen & electing additional directors:—*Held*: (1) the express power vested in the board of appointing additional directors excluded any implied concurrent power to the same effect in the co. which had by its constitution delegated to the members of the board for the time being the sole right of appointing additional directors; an interim injunction was granted against defts. restraining them from acting as directors of the English co.; (2) the questions of H.'s right to act as chairman & to vote stood on the same footing, & the exception in the arts. practically reproducing sect. 68 of 1908 Act, the word "company," had the meaning assigned to it by sect. 285 of the same Act & was limited to a co. within the meaning of the latter sect. The words "corporation" & "company" were not interchangeable, & H. was not qualified to attend the meeting.

(3) When two resolutions before a meeting have been separately voted upon & a poll has been demanded, a separate poll must be directed to be taken on each resolution.—BLAIR OPEN HEARTH FURNACE CO., LTD. *v.* REIGART (1913), 108 L. T. 665; 29 T. L. R. 449; 57 Sol. Jo. 500.

Annotation:—As to (1) *Distd.* Barron *v.* Potter, Potter *v.* Berry, [1914] 1 Ch. 895.

3824. Declaration of poll—Good until impeached in proper tribunal.]—At a board meeting of a co., under the regulations of which three directors made a quorum, two directors & two other gentlemen who claimed to be directors on the ground that at the election of directors the poll which went against them had been unfairly taken, passed resolutions under the advice of a solr. that he should take legal proceedings to restrain one of the gentlemen in whose favour the poll had been declared—the other being dead—from acting, & they affixed the seal of the co. to a retainer for that purpose. The solr. accordingly filed the bill in Chancery in the name of the co. against the three

directors who supported the validity of the poll to restrain the gentleman who had been declared elected from acting. A meeting of shareholders was subsequently held, at which resolutions were passed repudiating the Chancery proceedings:—*Held*: the return of the poll was to be considered good until it was brought into question before a proper tribunal, in a proper manner; & therefore the solr. having accepted a retainer from persons not authorised to pledge the credit of the co., the bill must be taken off the file, & the costs paid by the solr.—WANDSWORTH & PUTNEY GAS LIGHT & COKE CO. *v.* WRIGHT (1870), 22 L. T. 404; 18 W. R. 728.

Annotations:—*Refd.* Harben *v.* Phillips (1883), 23 Ch. D. 14. *Mentd.* Duckett *v.* Gover (1877), 25 W. R. 554.

Effect of taking—Not adjournment of meeting.]—See No. 3881, *post*.

(c) Proxies.

i. In General.

3825. Right to vote by proxy—No provision in articles.]—HARBEN *v.* PHILLIPS, No. 4487, *post*.

3826. — Provision in articles—Proxies to be lodged two clear days before meeting—Lodgment two days before adjourned meeting.]—Where the arts. of a co. provide that "the instrument appointing a proxy shall be deposited at the registered office of the co., not less than two clear days before the day for holding the meeting at which the person named in such instrument proposes to vote," proxies lodged after the date of an original meeting, but more than two days before the day fixed for an adjournment thereof, cannot be used for the purpose of voting at the adjourned meeting.—MCLAREN *v.* THOMSON, [1917] 2 Ch. 201; 86 L. J. Ch. 713; 117 L. T. 417; 33 T. L. R. 463; 61 Sol. Jo. 576, C. A.

3827. — Corporation holding shares.]—Re INDIAN ZOEEDONE CO., No. 3887, *post*.

3828. How proxy given—Proxy for company—When seal required—Foreign company.]—COLONIAL GOLD REEF, LTD. *v.* FREE STATE RAND, LTD., No. 3804, *ante*.

3829. Proxies sent from abroad—Particulars telegraphed—Whether production of proxies at meeting necessary.]—(1) By an order directing a meeting of creditors to be held in London to consider a scheme for the reconstruction of a bank under Joint-Stock Companies Arrangement Act, 1870 (c. 104), s. 2, the Australian creditors, who were the most numerous class of creditors, were empowered to give proxies to duly qualified persons to vote at the London meeting, provided that such proxies were deposited at one of the head offices of the bank in Australia three days before the meeting, & that the particulars of such proxies were telegraphed to the liquidator in London for use at the meeting:—*Held*: the ct. had power, by virtue of 1862 Act, s. 91, & Joint-Stock Companies Arrangement Act, 1870 (c. 104), s. 2, to make an order in this form, & the production of the proxy papers at the meeting was not essential.

cedure. The object of a poll in the case of a meeting of members of a registered co. is to ascertain the true sense of the meeting, & is not to give absent members a further opportunity of voting, unless a contrary intention is expressly or impliedly to be gathered from the arts. of the co.—LILADHAR SHAMJI *v.* REHMUBHOY ALLANA (1890), 1 L. R. 15 Bom. 164.—IND.

PART III. SECT. 30, SUB-SECT. 3.— D. (e) i.

3825 i. Right to vote by proxy—No

*provision in articles.]—*The arts. of assocn. of a co. provided that at any general meeting, unless a poll was demanded by at least five members, a declaration by the chairman that a resolution had been carried, & an entry to that effect in the book of proceedings of the co., should be sufficient evidence of the fact. A member of the co., claiming to hold proxies to vote for at least four members, demanded a poll. There was no express provision allowing proxies to demand a poll:—*Held*: in determining whether a poll had been

demanded by at least five members, proxies could not be counted. The members demanding the poll must be present at the meeting.—MCCURDY *v.* GORRIE (1913), 32 N. Z. L. R. 769.—N.Z.

*c. Bye-laws regulating — Whether shareholders may pass—Requirements for valid proxy.]—*Under Ontario Cos. Act, R. S. O. 1897, c. 191, s. 47, bye-laws regulating the requirements as to proxies are to be made by directors. The shareholders themselves have no power to initiate & pass such a bye-law

Sect. 30.—Regulation and management: Sub-sect. 3, D. (c) i., ii., iii., iv., v. & vi.]

(2) The proxy papers were not stamped at the date of execution:—*Held*: under Stamp Act, 1891 (c. 39), s. 15 & Sched. I, they could be stamped with a 10s. stamp at any time within thirty days of their arrival in the United Kingdom, & the requirements of sect. 80 as to proxies bearing a stamp of 1d. had no application; (3) the proxy papers were not irregular on account of the agent being named on the form.—*Re ENGLISH, SCOTTISH & AUSTRALIAN CHARTERED BANK*, [1893] 3 Ch. 385; 62 L. J. Ch. 825; 69 L. T. 268; 42 W. R. 4; 9 T. L. R. 581; 37 Sol. Jo. 648; 2 R. 574, C. A.

Annotations:—As to (1) *Reid. Re Queensland National Bank* (1893), 37 Sol. Jo. 632. *Generally, Mentd. Re London Chartered Bank of Australia*, [1893] 3 Ch. 540; *Re Canning Jarrah Timber Co.* (1900), 69 L. J. Ch. 416; *Re Syria Ottoman Ry.* (1904), 20 T. L. R. 217; *Re Tea Corp'n., Sorsbie v. Tea Corp'n.*, [1904] 1 Ch. 12; *Re A Debtor, Ex p. Peak Hill Goldfield*, [1909] 1 K. B. 430.

ii. Issue.

3830. Right of directors to issue at expense of company.]—(1) The funds of a co. ought not to be used for printing or sending out proxy papers which tend in any way to influence the votes of the shareholders receiving them—*e.g.*, proxy papers with the names of the proposed proxies therein—or for stamping or paying the return postage on proxy papers of any kind.

Seem: it is within the powers of a co. to print & send out proper proxy papers, that is, such as will not tend to influence the votes of the shareholders.

(2) The costs of actions for libel affecting the private characters of directors, & only incidentally injuring a co., ought not to be paid out of the funds of the co.; but the costs of proceedings for libel directly affecting the co. may be rightly paid out of the co.'s funds.—*STUDDERT v. GROSVENOR* (1886), 33 Ch. D. 528; 55 L. J. Ch. 689; 55 L. T. 171; 50 J. P. 710; 34 W. R. 754; 2 T. L. R. 811.

Annotations:—As to (1) *Overd. Peel v. L. & N. W. Ry.*, [1907] 1 Ch. 5. *Generally, Mentd. Re Faure Electric Accumulator Co.* (1888), 40 Ch. D. 141; *Cullerne v. London & Suburban General Permanent Bldg. Soc.* (1890), 25 Q. B. D. 485; *Re Liverpool Household Stores Assocn.* (1890), 59 L. J. Ch. 616; *Re Kingsbury Collieries & Moore's Contract*, [1907] 2 Ch. 259.

3831. —.—A controversy had been going on for some years between the directors of a railway co. & a body of shareholders with reference to questions of policy affecting the management of the co.: previously to the half-yearly general meetings called for Feb. & Aug., 1895, the directors sent to each shareholder a circular setting out the facts & the views of the directors & asking the support of the shareholders at the meeting; with this was enclosed a stamped proxy paper containing the names of three of the directors as proxies, with a stamped cover for return. The expenses of printing, posting, & stamping these documents were paid for out of the funds of the co. Officers & servants of the co. had also been directed to call upon some of the shareholders with a view to obtaining their votes for the directors. In

an action by the shareholders to restrain the co. & the directors from using the funds of the co. in paying expenses thus incurred:—*Held*: it was the duty of the directors to inform the shareholders of the facts, of their policy, & the reasons why they considered that this policy should be maintained & supported by the shareholders, & they were justified in trying to influence & secure votes for this purpose, & accordingly, expenses which had been *bonâ fide* incurred in the interest of the co. were properly payable out of the funds of the co.—*PEEL v. LONDON & NORTH WESTERN Ry. Co.*, [1907] 1 Ch. 5; 76 L. J. Ch. 152; 95 L. T. 897; 23 T. L. R. 85; 14 Mans. 30, C. A.

iii. Who may hold.

3832. Where class meeting held—Only member of class.]—*Re MADRAS IRRIGATION & CANAL CO.*, [1881] W. N. 120.

Annotation:—*Folld. Re Central Bahia Ry.* (1902), 18 T. L. R. 503.

3833. —.—For the purposes of a meeting of any particular class of persons, proxies can only be given to, & held by, members of that class.—*Re CENTRAL BAHIA Ry. Co., LTD.* (1902), 18 T. L. R. 503.

3834. Where special provision in articles—"Shareholder"—Proxy not shareholder when appointed.]—*BOMBAY-BURMAH TRADING CORPN. v. DORABJI CURSETJI SHROFF*, No. 3837, *post*.

iv. Form.

3835. Proxy unattested—Invalid.]—*HARBEN v. PHILLIPS*, No. 4487, *post*.

3836. Particular person named as proxy—Validity.]—*Re ENGLISH, SCOTTISH & AUSTRALIAN CHARTERED BANK*, No. 3829, *ante*.

—Proxies issued at expense of company.]—*See Sub-sect. 3, D. (c) ii., ante*.

3837. Proxy not actually named—Sufficiently described for business purposes.]—(1) Although by one of the arts. of assocn. of a co. no person is to be allowed to vote as a proxy unless the instrument appointing him is deposited as therein prescribed before "the meeting at which the person named in such instrument proposes to vote," it is not necessary that the proposed proxy should actually be "named" if he is sufficiently described for all business purposes.

(2) An art. requiring that no person shall be appointed as proxy "who is not a shareholder in the co." is sufficiently complied with if he is a shareholder at the time when he is called upon to act as a proxy, though he was not a shareholder at the date of the appointment.—*BOMBAY-BURMAH TRADING CORPN. v. DORABJI CURSETJI SHROFF*, [1905] A. C. 213; 74 L. J. P. C. 41; 91 L. T. 812; 21 T. L. R. 148; 12 Mans. 169; P. C.

3838. Filling in blanks—Date—Proxy sent out by secretary for general meeting—Power of secretary to fill in.]—*ERNEST v. LOMA GOLD MINES, LTD.*, No. 3846, *post*.

3839. —.—Blank may be filled in by duly authorised person—Though meeting not fixed when proxy given.]—Provided a proxy be stamped with a penny stamp on execution, the date of execution

at a general meeting; &, in the absence of any valid bye-law regulating the matter, nothing more is necessary to a proxy than valid execution by the shareholder.—*KELLY v. ELECTRICAL CONSTRUCTION CO.* (1907), 16 O. L. R. 232; 10 O. W. R. 704.—CAN.

PART III. SECT. 30, SUB-SECT. 3.—D. (c) iii.

d. Shareholder.]—Arts. of assocn.

of a co. provided that no person should be appointed or have authority to act as a proxy who was not a shareholder in the co.:—*Held*: the proxy should be a shareholder at the date of his appointment & also at the date when he acted.—*Re BOMBAY-BURMAH TRADING CORPN., LTD.* (1902), 1 L. R. 27 Bom. 113.—IND.

e. Proxy not shareholder when appointed.]—By the Act incorporating

a co., it was provided that votes might be given by proxy if the voter were not present; & the directors might from time to time make bye-laws regulating the right & manner of voting by proxy:—*Held*: in the absence of a valid bye-law preventing a shareholder being represented by a proxy who was not a shareholder, such proxy was entitled to vote.—*COLONIAL ASSURANCE CO. v. SMITH* (1912), 21 W. L. R. 815; 22 Man. L. R. 441.—CAN.

& the date of the meeting at which it is to be used may be filled in afterwards by any person duly authorised by the giver of the proxy to do so; even though at the time of execution the date of the meeting has not been fixed.—*SADGROVE v. BRYDEN*, [1907] 1 Ch. 318; 76 L. J. Ch. 184; 96 L. T. 361; 23 T. L. R. 255; 51 Sol. Jo. 210; 14 Mans. 47.

3840. Compliance with form prescribed in articles—Prescribed form applicable to particular meeting—Proxies for voting at any meeting.—Art. 60 of the arts. of assocn. of a co. provided that “any instrument appointing a proxy shall as nearly as circumstances will admit be in the following form,” & then followed a form applicable to voting at one particular meeting. Art. 101 provided that if any difference should arise between the co. & any member in regard to rights under the arts. it should be referred to arbitration.

At an extraordinary meeting of the co. a resolution that the directors, of whom there were three, should be not more than five & that two named persons should be appointed directors, received a majority of votes on a poll but the chairman declared it lost on the ground that the proxies for certain votes which were recorded in favour of the resolution & without which it would not have received a majority, were for voting at any meeting & not at the particular meeting only. The three previous directors then held a directors’ meeting & two of them appointed a fourth director, & thereupon the co. & the third of the previous directors & the two persons named as directors in the resolution brought an action against the other directors for a declaration that the appointment contained in the resolution was valid. Defts. moved for a stay under Arbitration Act, 1889 (c. 49), & pl’tfs. asked for an interlocutory injunction to restrain the exclusion of the directors named in the resolution from acting as such:—*Held*: art. 101 referred to differences between the co. & a member in his capacity as such & as the real difference in the case was between rival sets of directors the stay must be refused; art. 60 was merely directory & therefore the proxies were valid & pl’tfs. should have an injunction until trial.—*ISAACS v. CHAPMAN* (1915), 32 T. L. R. 183; *affd.* on other grounds (1916), 32 T. L. R. 237, C. A.

v. Voting.

3841. When proxies available—Only on poll.—*Re CALORIC ENGINE & SIREN FOG SIGNALS CO., LTD.*, No. 3844, *post*.

3842. How votes recorded—Signature of voting papers “for self & proxy.”—*FOERSTER v. NEWLANDS (WEST GRIQUALAND) DIAMOND MINES, LTD.*, No. 3809, *ante*.

3843. How votes counted—Where no poll demanded.—*Re HORBURY BRIDGE COAL, IRON, & WAGGON CO.*, No. 3798, *ante*.

3844. ———.—At a general meeting of a co., where by its arts. of assocn. voting by proxy is allowed, proxies cannot be used upon a show of hands, but a poll must first be taken.—*Re*

CALORIC ENGINE & SIREN FOG SIGNALS CO., LTD. (1885), 52 L. T. 846; 1 T. L. R. 414.

Annotations:—*N.F. Re Bidwell*, [1893] 1 Ch. 603. *Folld. Ernest v. Loma Gold Mines*, [1897] 1 Ch. 1.

3845. ———.—At a meeting of shareholders of a co. the arts. of which allow voting by proxy, although no poll is demanded the chairman, in ascertaining the number of votes given, must count the vote of each person who has appointed a proxy, not according to the number of shares held by him, but as one vote.—*Re BIDWELL BROTHERS*, [1893] 1 Ch. 603; 62 L. J. Ch. 549; 68 L. T. 342; 41 W. R. 363; 37 Sol. Jo. 286; 3 R. 377.

Annotations:—*Overd. Ernest v. Loma Gold Mines*, [1897] 1 Ch. 1. *Mentd. Re Hadleigh Castle Gold Mines*, [1900] 2 Ch. 419.

3846. ———.—(1) At a meeting of the shareholders of a co. the arts. of which allow voting by proxy, the chairman, in ascertaining the number of votes given on a show of hands, must count the vote of each person who holds proxies as a single vote, & not count a vote for each of the members whose proxies he holds.

(2) A notice convening an extraordinary general meeting to confirm a special resolution was accompanied by a circular from the secretary & directors with a proxy attached, asking for the return of the proxy in support of the resolution; by a printer’s error the date of the meeting was left blank in the proxy. Several of the members executed & returned their proxies—which were duly stamped—without filling up the blanks, which were filled up by the secretary before the proxies were lodged with the co.:—*Held*: these proxies were valid within the provisions of Stamp Act, 1891 (c. 39), s. 80.—*ERNEST v. LOMA GOLD MINES, LTD.*, [1897] 1 Ch. 1; 66 L. J. Ch. 17; 75 L. T. 317; 45 W. R. 86; 13 T. L. R. 31; 41 Sol. Jo. 47, C. A.

Annotations:—*As to (1) Rejd. Re Caratal (New) Mines* (1902), 50 W. R. 572. *As to (2) Folld. Sadgrove v. Bryden*, [1907] 1 Ch. 318. *Generally, Mentd. Re Hadleigh Castle Gold Mines*, [1900] 2 Ch. 419.

3847. When votes disallowed—Special provision in articles—No vote invalid unless disallowed at poll.—*COLONIAL GOLD REEF, LTD. v. FREE STATE RAND, LTD.*, No. 3804, *ante*.

vi. Stamps.

3848. When stamp must be affixed—Ten shilling stamp—Proxy executed abroad—Within thirty days of reaching England.—*Re ENGLISH, SCOTTISH, & AUSTRALIAN CHARTERED BANK*, No. 3829, *ante*.

3849. How adhesive stamp cancelled.—An adhesive stamp used on a letter or power of attorney for appointing a proxy to vote at a meeting is sufficiently cancelled within Stamp Act, 1891 (c. 39), s. 8 (1), by the writing across it of part of the name of the person cancelling it, or the date of cancellation alone, or other marks of a defacing nature.—*M’MULLEN v. SIR ALFRED HICKMAN STEAMSHIP, LTD.* (1902), 71 L. J. Ch. 766; 18 T. L. R. 650; 10 Mans. 106.

PART III. SECT. 30, SUB-SECT. 3.— D. (e) v.

1. Special provision in articles.—At a general meeting of shareholders of the co. a resolution in favour of voluntary winding up was declared carried by the votes of preferent shareholders of 2,020 shares, against the holder of 1,250 ordinary shares. A holder of 2,000 preferent shares voted by proxy. The arts. of assocn. pro-

vided that “the quorum necessary for a general meeting shall be members present in person or by proxy representing & holding not less than one-half of the issued shares”; & that the holder of a preferent share should have three votes, & the holder of an ordinary share one vote:—*Held*: the provisions of the arts. of assocn. as to voting by proxy must apply; & effect must be given to the resolution.—*WILLIAMS v. WILLIAMS & CO., LTD.*,

[1914] E. D. L. 129.—S. AF.

g. Conditions governing vote.—To give a person the right to vote for another by virtue of a proxy, he must distinctly put forward his claim to do so, & must explicitly vote in the name & on behalf of the stockholder whose proxy he holds.—*SPURR v. ALBERT MINING CO.* (1874), 2 Pug. 260.—*CAN.*

the arts. of assocn. till Nov. 1872, when the co. passed special resolutions which altered the priorities & payments of the net revenue as between the preference & ordinary shareholders, & which provided for the redemption of shares out of the surplus profits, & they were acted upon without any objection being raised to them by any of the members of the co. till July, 1883, when the co. passed a special resolution by which the original appropriation of the revenue as provided by the memorandum of assocn. was restored:—*Held*: (1) the resolutions of 1872 were not valid, as they altered a condition in the memorandum of assocn. in contravention of 1862 Act, s. 12; (2) even if the resolutions of 1872 would be valid if ratified by every member of the co., there was no evidence on which the ct., acting as a jury, ought to infer that every member of the co. had ratified such resolutions with full knowledge of what had been done.—*ASHBURY v. WATSON* (1885), 30 Ch. D. 376; 54 L. J. Ch. 985; 54 L. T. 27; 33 W. R. 882; 1 T. L. R. 639, C. A.

Annotations:—As to (1) *Distd. Re South Durham Brewery Co.* (1885), 31 Ch. D. 261; *Re Hyderabad (Deccan) Co.* (1896), 75 L. T. 23. *Consd. Andrews v. Gas Meter Co.*, [1897] 1 Ch. 361. *Distd. Re Welsbach Incandescent Gas Light Co.*, [1904] 1 Ch. 87. *Refd. Re Garden Village (Hull)*, [1923] 1 Ch. 230. *Generally, Refd. Re Bridgewater Navigation Co.* (1888), 39 Ch. D. 1.

3857. — Resolution contrary to articles—Passed as special resolution—Resolution amounting to rescission of article.—*TAYLOR v. PILSEN JOEL & GENERAL ELECTRIC LIGHT CO.*, No. 3716, *ante*.

3858. — — — — ——*QUIN & AXTENS, LTD. v. SALMON*, No. 4106, *post*.

Amendment—At meeting to confirm & reject—Whether allowed.—*See* Nos. 3775, 3776, *ante*.

3859. Proof of resolution—Apart from entry in minute book.—*Re GREAT NORTHERN SALT & CHEMICAL WORKS, Ex p. KENNEDY*, No. 3854, *ante*.

3860. — For voluntary winding up—Whether certified copy sufficient.—*BOALER v. SOUTHERN DISCOUNT CO.* (1894), 58 J. P. Jo. 164, D. C.

3861. — Whether declaration of chairman conclusive.—*ARNOT v. UNITED AFRICAN LANDS, LTD.*, No. 3795, *ante*.

— — — — —*See, also*, Nos. 3721, 3793–3794, 3796–3797, *ante*.

3862. Interference by court—Jurisdiction.—At a meeting of a co. regularly convened, resolutions were passed removing certain directors for misconduct, the deed of settlement of the co. providing that such a meeting might remove any director “for negligence, misconduct in office, or any other reasonable cause.” Other directors were subsequently elected in their place. A bill was then filed by the removed directors to set aside the proceedings of the meeting & the election of the new directors:—*Held*: on a motion for an injunction to restrain the new directors from acting, the expression “reasonable cause” in the co.’s deed did not refer to such a cause as in a ct. would be held reasonable, but only to such a cause as should

be deemed reasonable by the shareholders assembled at a meeting duly convened, & therefore, the ct. had no jurisdiction to interfere; nor, where no case of direct fraud was proved, to determine whether the decision of the meeting had or had not been unduly influenced by unfounded statements made by persons taking an active part in the proceedings.—*INDERWICK v. SNELL* (1850), 2 Mac. & G. 216; 2 H. & Tw. 412; 19 L. J. Ch. 542; 14 Jur. 727; 42 E. R. 83.

Annotations:—*Consd. Dawkins v. Antrobus* (1881), 17 Ch. D. 615. *Refd. Re Gresham Life Assce. Soc., Penney’s Case* (1872), 42 L. J. Ch. 183; *Cannon v. Trask* (1875), L. R. 20 Eq. 669; *Re Langham Skating Rink Co.* (1877), 5 Ch. D. 669; *Kelly v. National Soc. of Operative Printers* (1915), 113 L. T. 1055.

ii. Extraordinary Resolutions.

See, now, 1908 Act, s. 69 (1).

3863. Sufficiency of notice—Notice that resolution to be passed as extraordinary resolution.—*MACCONNELL v. PRILL (E.) & CO., LTD.*, No. 3755, *ante*.

3864. Waiver of insufficient notice—Notice may be waived by all members present at meeting.—*Re OXTED MOTOR CO.*, No. 3756, *ante*.

Effect of chairman’s declaration that resolution carried.—*See* No. 3794, *ante*.

iii. Special Resolutions.

See, now, 1908 Act, s. 69 (2).

3865. Notice of first meeting—Sufficiency—Statement that resolution to be passed as extraordinary resolution.—*Re PENARTH PONTOON SHIPWAY & SHIP REPAIRING CO., LTD.*, No. 3754, *ante*.

3866. — — — — ——*TIESSEN v. HENDERSON*, No. 3753, *ante*.

3867. How majority calculated—Where no poll demanded.—*Re HORBURY BRIDGE COAL, IRON, & WAGGON CO.*, No. 3798, *ante*.

3868. — — — — — Effect of special provision in articles.—A co. which has power under its memorandum of assocn. to sell all or any part of its business or property to another co. in consideration of shares in that co., & also power to distribute such shares among its own members, does not fulfil the requirements of 1908 Act, s. 192 (1), by passing merely an ordinary resolution sanctioning such a sale & special resolutions providing for voluntary liquidation & the mode of distribution of the compensation shares. To comply with sect. 192 (1) of the Act, there must at least be a special resolution authorising the liquidator to accept shares as the consideration for the sale. In the absence of such a special resolution there would be no special resolution to which the provision relating to dissentients in sect. 192 (3) could apply.

Semble: a special resolution passed on a show of hands—no poll being demanded—by a three-fourths majority, as provided by sect. 69 of the Act, & subsequently confirmed, is sufficient to

attached to any class of shares, the consent of the shareholders affected must be obtained by a resolution passed by a majority of the shareholders of that class holding three-fourths of the share capital of that class:—*Held*: a resolution passed by six out of the twelve holders of preference shares in a co. was not in compliance with the sect., even though the six shareholders were the only shareholders present or represented at the meeting, & though they held more than three-fourths of the preference shares.—*Re ARDEN COAL CO.*, [1922] S. C. 500.—*SCOT*.

n. Ambiguity—Oral evidence admissible to explain.—Where at an extraordinary meeting of shareholders a resolution was passed authorising the directors to dispose of surplus moneys of the co. in a special but ambiguous manner:—*Held*: oral evidence is admissible to show under what circumstances the latter resolution was passed, in order to explain the latent ambiguity, although the arts. of assocn. provided that the minutes of the meeting should be conclusive evidence of the proceedings at such meeting.—*WESTRALIA PROPRIETARY GOLD MINING CO. v. LONG* (1897), 23

V. L. R. 36.—*AUS*.

PART III. SECT. 30, SUB-SECT. 3.—D. (f) iii.

o. Misnomer in notice—Effect of.—In a notice of meeting of a co. a resolution to be put to the meeting was referred to as an “extraordinary” resolution. In point of fact the resolution intended to be put was a “special” resolution, & at the meeting it was put & passed as a “special resolution”:—*Held*: the mere fact that it was called an “extraordinary resolution” in the notice did not destroy its character of a special resolution so

Sect. 30.—Regulation and management: Sub-sect. 3, D. (f) iii., (g) & E.]

satisfy the requirements of sect. 192 & validate the sale, notwithstanding a provision in the co.'s arts. of assocn. that every special resolution should, unless resolved on without a dissentient, be decided by poll.—*ETHERIDGE v. CENTRAL URUGUAY NORTHERN EXTENSION RY. CO.*, [1913] 1 Ch. 425; 82 L. J. Ch. 333; 108 L. T. 362; 29 T. L. R. 328; 57 Sol. Jo. 341; 20 Mans. 172.

3869. Amendment—At first meeting—Resolution as passed not identical with notice.]—*TORBOCK v. WESTBURY (LORD)*, No. 3776, *ante*.

3870. — At second meeting—Whether valid.]—*WALL v. LONDON & NORTHERN ASSETS CORPN.*, No. 3775, *ante*.

3871. — — — — —.]—*TORBOCK v. WESTBURY (LORD)*, No. 3776, *ante*.

3872. Interval between meetings—How reckoned—Exclusive of days of holding.]—The interval of not less than fourteen days required by 1862 Act, s. 51, to elapse between the holding of an extraordinary general meeting passing a special resolution & the general meeting confirming such resolution must be reckoned exclusively of the days of the holding of the two meetings.—*Re RAILWAY SLEEPERS SUPPLY CO.* (1885), 29 Ch. D. 204; 54 L. J. Ch. 720; 52 L. T. 731; 33 W. R. 595; 1 T. L. R. 399.

Annotations:—Distd. Re Miller's Dale, etc. Co. (1885), 34 W. R. 192; *Ladies' Dress Assocn. v. Pulbrook* (1899), 68 L. J. Q. B. 871. *Refd. Briton Medical, General, & Life Assce. Assocn. v. Jones* (2) (1889), 61 L. T. 384. *Mentd. Re North, Ex p. Hasluck*, [1895] 2 Q. B. 264; *R. v. Turner*, [1910] 1 K. B. 346.

3873. — — — — —.]—Under 1862 Act, s. 51, there must be an interval of not less than fourteen clear days between the meeting at which a special resolution—as for instance, for an increase of capital—is passed & the meeting confirming the resolution. If the interval is less than fourteen clear days the statutory defect in the resolution only affects the position of the co. & its shareholders *inter se*, & does not concern the creditors. Thus, where a director of a co. took shares in new capital raised under a resolution passed & confirmed at meetings the interval between which was thirteen days only, & the co. afterwards went into liquidation:—*Held*: he was precluded from objecting to the validity of the resolution as a ground for his removal from the list of contributories.—*Re MILLER'S DALE & ASHWOOD DALE LIME CO.* (1885), 31 Ch. D. 211; 55 L. J. Ch. 203; 53 L. T. 692; 34 W. R. 192; 2 T. L. R. 173, C. A.

3874. — — — — —.]—Where the resolution confirming a resolution by a co. to reduce its capital did not comply with the terms of 1862 Act, s. 51, because there was not an interval of fourteen days between the passing of the two resolutions, but an order of the ct. had been made in accordance with the resolutions under 1867 Act, s. 11, & the registrar of joint-stock cos. had certified the registration of the order, together with a minute approved by the ct., in conformity with s. 15 of that Act:—*Held*: the certificate of the registrar was conclusive evidence that a special resolution to reduce the capital of the co. had been duly passed in accordance with 1862 Act, s. 51, & 1867 Act, s. 9.—*LADIES' DRESS ASSOCN. v.*

PULBROOK, [1900] 2 Q. B. 376; 69 L. J. Q. B. 705; 49 W. R. 6; 7 Mans. 465, C. A.
Annotation:—Consd. Re Walker & Smith (1903), 72 L. J. Ch. 572.

3875. — Effect of non-compliance with requirements—Creditors not affected.]—*Re MILLER'S DALE & ASHWOOD DALE LIME CO.*, No. 3873, *ante*.

3876. — Resolution approved by court.]—*LADIES' DRESS ASSOCN. v. PULBROOK*, No. 3874, *ante*.

3877. Confirmation by court—Confined to resolution validly passed—Company without validly constituted members.]—A burial society which subsequently conducted life assurance business up to a limited amount was registered under Friendly Society Act, 1896 (c. 25), & attained to a membership of 373,000, with an income of £149,000 a year. In 1913 a special resolution was passed for the conversion of the society into a co. limited by shares pursuant to Friendly Society Act, 1896 (c. 25), s. 71. The objects of the co. under its memorandum were restricted to the objects of the society immediately prior to the conversion. There were no signatories to the memorandum of assocn., & no register of shareholders of the co.; nor had any shares been in fact allotted. It was estimated that two years might elapse before the allotment of shares could be made. In 1914 a special resolution of the co. was passed altering & extending the object clauses of the memorandum. Upon a petition being presented by the co. for the confirmation by the ct. of this special resolution:—*Held*: the conversion of the society into a limited co. under Friendly Society Act, 1896 (c. 25), s. 71, did not involve the simultaneous conversion of the members of the society into members of the co., & inasmuch as there were no members of the co. in existence within the definition of 1908 Act, s. 24, there was no special resolution properly passed which the ct. could confirm, & no such order as was asked could be made on the petition.—*Re BLACKBURN PHILANTHROPIC ASSURANCE CO., LTD.*, [1914] 2 Ch. 430; 84 L. J. Ch. 145; 58 Sol. Jo. 798; 21 Mans. 342.

Effect of chairman's declaration that resolution carried.]—*See* No. 3794, *ante*.

(g) Adjournment.

3878. What are chairman's powers.]—*NATIONAL DWELLINGS SOCIETY v. SYKES*, No. 3784, *ante*.

3879. — Where authorised by articles—Cannot be compelled to adjourn.]—An art. of assocn. provided that "the chairman may with the consent of the members present at any meeting adjourn the same, etc.":—*Held*: upon the true construction thereof, the chairman is not bound to adjourn a meeting, even though a majority of those present desire the adjournment: & he can, after rejecting a motion for adjournment, declare a provisional agreement specified in the circular convening the meeting to be confirmed.

Semble: such confirmation is not affected by any statement of the chairman as to its effect even if incorrect.—*SALISBURY GOLD MINING CO. v. HATHORN*, [1897] A. C. 268; 66 L. J. P. C. 62; 76 L. T. 212; 45 W. R. 591; 13 T. L. R. 272, P. C.

3880. — Whether poll can be demanded on adjournment—How votes on motion taken.]—

long as the statutory provisions as to special resolutions were complied with.—*MCCURDY v. GORRIE* (1913), 32 N. Z. L. R. 769.—N.Z.

*p. Irregularly passed—Effect of acquiescence.]—*A resolution, which made an alteration in the arts. of

assocn. of the co., was confirmed at a meeting held less than fourteen days from the date of the meeting at which such resolution was first passed. The resolution was passed in 1895, & since that date had been acted upon:—*Held*: although the resolution was

irregularly enacted the alteration of the arts. made by it had been rendered valid by the acquiescence & agreement of the shareholders shown by the long course of acting under it.—*ATHERTON v. PLAIN CREEK CENTRAL MILL CO., LTD.*, [1914] S. R. Q. 73.—AUS.

(1) The arts. of assocn. of a co. gave power to the chairman at any general meeting of the co., with the consent of the meeting, to adjourn the meeting, & also provided for taking a poll if demanded by five shareholders. At a general meeting of the co. the adjournment of the meeting was moved, & on being put, was declared by the chairman, who was one of the directors, to be carried. A poll was duly demanded, but the chairman ruled that there could not be a poll on the question of adjournment, & left the room. One of the shareholders filed a bill on behalf of himself & all other shareholders except the directors, against the directors & the co., stating these facts, & alleging that the course taken at the meeting was taken in collusion with the directors, with a view of stifling discussion, & that the directors were intending to carry out certain measures injurious to the co. without submitting the terms to a general meeting; & praying for a declaration that the conduct of the chairman was illegal & improper, & for an injunction to restrain the directors from carrying out the proposed arrangements without submitting them to the shareholders for their approval:—*Held*: on demurrer, the bill could not be sustained, inasmuch as it violated the rule laid down in *Mozley v. Alston*, No. 4436, *post*, & *Foss v. Harbottle*, No. 4100, *post*, & asked the interference of the ct. in the internal management of the co.

Qu.: whether on a motion for the adjournment of a meeting of shareholders, the votes ought to be taken according to the number of shareholders or of the shares they represent.—*MACDOUGALL v. GARDINER* (1875), 1 Ch. D. 13; 45 L. J. Ch. 27; 33 L. T. 521; 24 W. R. 118, C. A.

Annotations:—As to (1) *Consd.* *Pender v. Lushington* (1877), 6 Ch. D. 70; *Mason v. Harris* (1879), 11 Ch. D. 97; *Spokes v. Grosvenor Hotel Co.*, [1897] 2 Q. B. 124; *Wall v. London & Northern Assets Corpn* (1898), 79 L. T. 249. *Apprvd.* *Burland v. Earle*, [1902] A. C. 83. *Apld.* *Steele v. South Wales Miners' Federation*, [1907] 1 K. B. 361. *Refd.* *Duckett v. Gover* (1877), 25 W. R. 554; *Pulbrook v. Richmond Consolidated Mining Co.* (1878), 48 L. J. Ch. 65; *Harbon v. Phillips* (1883), 23 Ch. D. 14; *Willing v. Met. Dist. Ry.* (1888), 4 T. L. R. 723; *Alexander v. Automatic Telephone Co.* (1899), 68 L. J. Ch. 514; *Dominion Cotton Mills Co. v. Amyot*, [1912] A. C. 546; *Hickman v. Kent or Romney Marsh Sheep-Breeders' Asscn.*, [1915] 1 Ch. 881; *Foster v. Foster*, [1916] 1 Ch. 532.

Chairman's powers generally.—See Sub-sect. 3, D. (c), *ante*.

3881. What amounts to an adjournment—Whether postponement of poll.—A poll demanded at a co. meeting was directed to be taken at a future date, but the meeting itself was not adjourned:—*Held*: the mere postponement of the poll was not an adjournment *ad hoc* of the meeting within the meaning of an art. allowing the lodgment of proxies 48 hours before a meeting "or adjourned meeting," but the original meeting continued for the purpose of the poll, & no fresh proxies could be lodged.—*SHAW v. TATI CONCESSIONS, LTD.*, [1913] 1 Ch. 292; 82 L. J. Ch. 159; 108 L. T. 487; 29 T. L. R. 261; 57 Sol. Jo. 322; 20 Mans. 104.

3882. Effect of adjournment—Unfinished business—Date of completion—Date of adjourned meeting.—One of the arts. of assocn. of a limited co. provided that a member should not be qualified to be elected a director unless written notice of the intention in that behalf were given to the co. not less than fourteen clear days before the "day of election" of directors. The ordinary general

meeting of the co. was held on Dec. 10, 1915, at which meeting, according to the arts., the two deft. directors retired by rotation. The report of the directors was not adopted; there was no election of directors, but a committee of shareholders was appointed to investigate the affairs of the co. & report to a general meeting, & the meeting stood adjourned to receive this report. On Feb. 21, 1916, written notice was given to the co. by a shareholder stating that at the adjourned meeting he proposed to move the election of four named members as directors. The adjourned meeting was held on Mar. 10, 1916, to consider the committee's report & to transact the unfinished business. The chairman ruled the notice of Feb. 21, 1916, to be out of order, & after declaring the election of auditors said there was no further business & left the chair. Subsequently the shareholders appointed a chairman & elected the four new directors. On motion by the shareholders for an interlocutory injunction to restrain the two former directors from acting:—*Held*: the day of election of directors within the meaning of the art. was the date of the adjourned meeting on Mar. 10, 1916; the notice of Feb. 21, 1916, was in compliance with that art.; & the first two persons elected as directors in lieu of the two who retired were duly elected.—*CATESBY v. BURNETT*, [1916] 2 Ch. 325; 85 L. J. Ch. 745; 114 L. T. 1022; 32 T. L. R. 380.

E. Minutes.

3883. Duty to keep—Assumptions where default.]—*Re BRITISH PROVIDENT LIFE & FIRE ASSURANCE SOCIETY, LANE'S CASE*, No. 4157, *post*.

3884. Signature by chairman—After proceedings to wind up—Evidence.]—The arts. of assocn. provided that a minute signed by any person purporting to be the chairman of any meeting of directors was to be receivable in evidence without any further proof. An entry was made in the minute book stating the names of parties & the number of shares subscribed for, the name of the chairman, who signed the minute, being set down for 100 shares. The minute was signed, not at the next meeting, but after the proceedings to wind up the co.:—*Held*: the minute was *prima facie* evidence against all who were present at the meeting, & in the absence of counter evidence showing the incorrectness of the minute, the chairman was liable as a contributory for 100 shares.—*Re LLANHARRY HEMATITE IRON ORE CO., LTD., RONEY'S CASE, STOCK'S CASE* (1864), 4 De G. J. & Sm. 426; 4 New Rep. 389; 33 L. J. Ch. 731; 10 L. T. 770; 10 Jur. N. S. 812; 12 W. R. 994; 46 E. R. 983, L. J.J.

Annotations:—*Mentd.* *Anglo Moravian Hungarian Junction Ry., Dent's Case, Forbes' Case* (1873), 8 Ch. App. 768; *Re Mancha Irrigation & Land Co., Hamilton's Case* (1873), 8 Ch. App. 548; *Re Esparto Trading Co.* (1879), 12 Ch. D. 191.

Compare Part IX., Sect. 9, sub-sect. 6, *post*.

3885. Effect of—Minute of resolution appointing servant—Not agreement requiring stamp.]—*MILLS v. BRITISH PROVIDENT LIFE & FIRE ASSURANCE SOCIETY* (1859), 1 F. & F. 607.

3886. As evidence—Prima facie evidence—Signature out of time.]—*Re LLANHARRY HEMATITE IRON ORE CO., LTD., RONEY'S CASE, STOCK'S CASE*, No. 3884, *ante*.

3887. ——— Of regularity of meeting &

PART III. SECT. 30, SUB-SECT. 3.—E.

q. How prepared.]—*Re JENNINGS, Ex p. BELFAST & COUNTY DOWN RY. CO.* (1851), 1 I. Ch. R. 236.—*IR.*

r. As evidence—Re-transcribed notes

—Whether admissible.]—Minutes of a directors' meeting were taken down in shorthand by the solr. for the co. & afterwards transcribed & handed to the secretary & re-transcribed into the minute book. They were not con-

firmed at any subsequent meeting. The solr. died before the action came to trial:—*Held*: such minutes or re-transcribed notes were not admissible to prove what transpired at the meeting in question.—*CLAUDET*

Sect. 30.—Regulation and management: Sub-sect. 3, E., F. & G.; sub-sects. 4 & 5.]

resolutions passed—Onus of proof where entry impeached.]—(1) The chairman of a general meeting has *prima facie* authority to decide all incidental questions which arise at such meeting, & necessarily require decision at the time, & the entry by him in the minute book of the result of a poll, or of his decision of all such questions, although not conclusive, is *prima facie* evidence of that result, or of the correctness of that decision, & the *onus* of displacing that evidence is thrown on those who impeach the entry.

(2) A corp'n. legally holding shares in another co. may give a proxy in respect of such shares.—*Re INDIAN ZOEDONE CO.* (1884), 26 Ch. D. 70; 53 L. J. Ch. 468; 50 L. T. 547; 32 W. R. 481, C. A.

3888. ———. ———.]—*Re LEICESTER MORTGAGE CO., LTD.* (1894), 38 Sol. Jo. 531, 564.

Annotation:—Refd. Re Omnium Investment Co., [1895] 2 Ch. 127.

3889. ——— **How far conclusive—Jurisdiction of court to consider regularity of notice.]**—*BETTS & CO., LTD. v. MACNAUGHTEN*, No. 3758, *ante*.

3890. ——— **Whether exclusive—Proof of unrecorded resolution.]**—(1) A co. was registered without arts. of assocn. prior to 1908 Act, but arts 76, 88, & 91 of Table A of that Act were identical with those applicable. At the time material there were two directors, & one only being resident in England, it was agreed between them that he should carry on the business there as sole manager, though no minute was entered of a resolution to that effect. The English director subsequently, acting alone, authorised the sealing & issue of debentures to pltf. who purchased them *bonâ fide*. These debentures were sealed in the presence of the English director & of the secretary only, art. 76 of Table A requiring the presence of two directors & the secretary & they were duly registered as a series in accordance with 1908 Act, s. 93 (3):—*Held*: evidence was admissible that the two directors had agreed that one should act as a quorum, & though there was no minute of any resolution as to that the ct. would presume that a resolution to that effect was passed.

(2) The minutes of a meeting are not exclusive evidence of what takes place there. An unrecorded resolution may be proved *aliunde*.—*Re FIREPROOF DOORS, LTD., UMNEY v. FIREPROOF DOORS, LTD.*, [1916] 2 Ch. 142; 85 L. J. Ch. 444; 114 L. T. 994; 60 Sol. Jo. 513.

Compare No. 3397, ante.

3891. Proof of—Minute confirming previous minutes.]—A pltf., who puts in & reads a minute of a board, which confirms certain other minutes of a preceding day, is not bound to put in the minutes so confirmed.—*BURCHALL v. SPOTTISWOODE* (1853), 3 Car. & Kir. 302.

See, generally, EVIDENCE; PRACTICE & PROCEDURE.

3892. ——— **When secondary evidence admis-**

sible.]—In an action against the directors of an intended co., it was proved, in order to let in secondary evidence of their minute books, called for under a notice to produce, that four months before the trial, the late secretary had the books in a desk at the office of the co., & that he then gave up the key of the desk to the manager of the co., who acted for the directors:—*Held*: sufficient.—*BELL v. FRANCIS* (1839), 9 C. & P. 66.

See, generally, EVIDENCE.

3893. Effect of non-production—Presumption as to events at meeting.]—*Re BRITISH PROVIDENT LIFE & FIRE ASSURANCE SOCIETY, LANE'S CASE*, No. 4157, *post*.

3894. ———. ———.]—*Re FIREPROOF DOORS, LTD., UMNEY v. FIREPROOF DOORS, LTD.*, No. 3890, *ante*.

3895. Right of members to inspect—Under provision in constitution of company—Construction.]—The deed of settlement of a joint-stock co., formed under 1844 Act, & completely registered under that Act, & afterwards, under 1856 Act, contained the following clause: "the books wherein the proceedings of the co. are recorded shall be kept at the principal offices of the co., & shall be open to the inspection of the shareholders every day of the year," etc., "except on Sundays & holidays." The deed provided that separate books should be kept of the minutes of the proceedings at the general meetings of the shareholders, & of the minutes of the proceedings of the directors. A rule *nisi* having been obtained for a *mandamus* to the co. to grant to a shareholder "inspection of the books of the minutes of the proceedings of the said co.":—*Held*: on showing cause, the clause gave shareholders only power to inspect the book of minutes of the proceedings at the general meetings, not the book of minutes of the proceedings of the directors.—*R. v. MARQUITA & NEW GRANADA MINING CO.* (1858), 1 E. & E. 289; 28 L. J. Q. B. 67; 5 Jur. N. S. 725; 7 W. R. 98; 120 E. R. 917; *sub nom. R. v. MARQUITA & NEW GRANADA MINING CO.*, 32 L. T. O. S. 195.

F. Evidence as to Meetings.

3896. Attendance book—Prima facie evidence of attendance.]—In an action against the directors of a co.:—*Held*: a book containing the names of members present at the meetings, which showed that defts. were present at some of the meetings, at one of which a particular thing was done, was *prima facie* evidence that they were present at that particular meeting.—*BEETHAM v. COOKE* (1841), 5 J. P. 464.

Minutes.]—*See Sub-sect. 3, E., ante.*

G. Interference by Court.

3897. When court will interfere—To summon meeting—Shareholders empowered.]—Where, by the arts. of assocn. of a co., the directors, & in the alternative a certain portion of the shareholders, can summon a meeting of the co., the ct. will not

v. GOLDEN GIANT MINES, LTD. (1909), 15 B. C. R. 13.—**CAN.**

a. ——— Whether exclusive.]—Sect. 121 of Cos. Clauses Consolidation (Scotland) Act, 1845 (c. 17), which makes the entries of minutes of meetings signed by the chairman thereof evidence, does not exclude other evidence of the fact. It is competent for the co. to prove what was done at those meetings by other evidence.—*INGLIS v. GREAT NORTHERN RY. CO.* (1852), 24 Sc. Jur. 434; 1 Stu. M. & P. 749.—**SCOT.**

3892 i. Proof of—When secondary evidence admissible.]—The only evidence of certain calls having been made was contained in a minute book which could not be produced though search had been made for it in the office of the co. & in certain cts. where it had been produced:—*Held*: secondary evidence of the contents of the minute book was improperly rejected.—*ROSS v. MACHAR* (1885), 8 O. R. 417.—**CAN.**

t. Impeachment of—Burden of proof.]—The burden of showing that

minutes do not correctly record the proceedings of directors lies exceedingly strongly on those who assert that they do not.—*Re MYSTERY FLAT GOLD-DREDGING CO., LTD.* (1900), 19 N. Z. L. R. 839.—**N.Z.**

PART III. SECT. 30, SUB-SECT. 3.—G.

a. When court will interfere—On interlocutory motion.]—A circular was issued convening an extraordinary general meeting of the co. at which resolutions were to be proposed altering the arts. of assocn. An action having

order the directors to summon a meeting for the general purposes of the co.—*MACDOUGALL v. GARDINER* (1875), 10 Ch. App. 606; 32 L. T. 653; 23 W. R. 846, L. JJ.

Annotation:—*Refd.* *Channel Collieries Trust v. Dover, St. Margarets & Martin Mill Light Ry.*, [1914] 2 Ch. 506.

3898. — To prevent circulation of reports with notices.]—*MATABELELAND CO., LTD. v. BRITISH SOUTH AFRICA CO.* (1893), 10 T. L. R. 77.

3899. — To prevent meeting being held—On interlocutory motion.]—A case must be a very strong one to induce the ct. to stop a meeting of shareholders, especially on an interlocutory motion (*SARGANT, J.*).—*LAST v. BULLER & CO., LTD.* (1919), 36 T. L. R. 35.

3900. — On particular day—To prevent use of voting powers—Annual general meeting.]—Although the ct. will not interfere with the powers & duties of directors in their management of the internal affairs of a co., directors will be restrained from fixing a particular date for holding the annual general meeting of the co. for the purpose of preventing shareholders from exercising their voting powers.—*CANNON v. TRASK* (1875), L. R. 20 Eq. 669; 44 L. J. Ch. 772.

3901. — To exercise voting powers improperly acquired.]—*PUNT v. SYMONS & CO., LTD.*, No. 3697, *ante*.

3902. — Meeting summoned by irregular resolution of directors—Delay in application.]—*BROWNE v. LA TRINIDAD*, No. 3768, *ante*.

3903. — Meeting incapable of binding company.]—*HARPER v. PAGET* (1876), cited 44 Ch. D. 329.

Annotation:—*Apld.* *Farrar v. Cooper* (1890), 44 Ch. D. 323.

— To interfere with chairman's ruling.]—*See* Sub-sect. 3, D. (c), *ante*.

3904. Who may apply—Application by single shareholder on behalf of all—Application not in name of company.]—*MACDOUGALL v. GARDINER*, No. 3880, *ante*.

SUB-SECT. 4.—COMMENCEMENT OF BUSINESS.

See, now, 1908 Act, s. 87.

3905. When entitled to commence—Where no special provision in articles—Two-thirds of capital subscribed.]—*MACDOUGALL v. JERSEY IMPERIAL HOTEL CO., LTD.*, No. 3945, *post*.

been commenced by shareholders the ct. granted an interlocutory injunction against proposing the resolutions objected to at the extraordinary general meeting.—*JACKSON v. MUNSTER BANK* (1884), 13 L. R. Ir. 118.—*IR.*

PART III. SECT. 30, SUB-SECT. 4.

b. When entitled to commence — Where special provision of articles—Formal resolution unnecessary.]—*BELFAST & ULSTER BREWING CO. v. TRIMBLE* (1872), 9 Sc. L. R. 604.—*SCOT.*

c. — Discretion of directors.]—The arts. of assocn. of a co. provided: "the co. notwithstanding that the whole number of shares in the capital may not be subscribed for or issued, may commence & carry on business when, in the judgment of the directors, a sufficient number of shares shall have been subscribed for to justify them in so doing." After publication of the first balance-sheet, which showed a loss on the year's working, an action was raised by a shareholder, whose shares had been allotted to him after the incorporation of the co. to have A., & other persons, who were directors of the co. at the date of allotment, ordained to accept a transfer of these shares & to repay

him the amount of his subscription. He averred that at the date of allotment no sufficient capital had been subscribed to justify defenders proceeding to allotment or commencing business; that they had done so recklessly & negligently, & without exercising any judgment in the matter, & that they had acted *ultra vires* & in breach of their duty to pursuer.—*Held*: the action was irrelevant.—*BROWN v. STEWART* (1898), 1 F. (Ct. of Sess.) 316; 36 Sc. L. R. 221.—*SCOT.*

d. — Where no statutory provision—Fifty per cent. of capital subscribed.]—The Act of incorporation of a co. provided for the issue of letters patent on half the capital of the co. being subscribed, though no express provision was made as to when the co. should commence business; but plffs. had commenced business with deft.'s full knowledge, & he was, in fact, elected & acted as a director & never resigned his position as such.—*Held*: the directors were warranted by the Act in commencing business, one-half the stock being subscribed, & in making the necessary calls therefor.—*LAKE SUPERIOR NAVIGATION CO. v. MORRISON* (1872), 22 C. P. 217.—*CAN.*

e. — Construction of charter.] —

3906. Where special provision of articles—Shares to be allotted — Condition precedent.]—*PEIRCE v. JERSEY WATERWORKS CO.*, No. 4161, *post*.

3907. — Representation in prospectus — Amount of issue—Small proportion of issue subscribed.]—The Z. co. issued their prospectus stating their proposed capital as £500,000 in 25,000 shares, the first issue to be £250,000. Pltf. applied for 200 shares & paid the deposit, but afterwards discovered that not more than 900 shares, including those allotted to him, had been applied for & allotted, with which capital the directors proposed to commence business on a more limited scale. Pltf. applied to the co. to have his name removed from the register, & to have his deposit returned, which was refused:—*Held*: on demurrer to a bill filed by pltf. against the co., the co. was not justified in commencing business, & pltf. was entitled to a return of his deposit, & to have his name removed from the co.'s register.—*ELDER v. NEW ZEALAND LAND IMPROVEMENT CO., LTD.* (1874), 30 L. T. 285.

Annotation:—*Mentd.* *Re Liverpool Household Stores Assocn.* (1890), 59 L. J. Ch. 616.

3908. — Of minimum subscription—No offer of shares to public.]—*McMULLON v. NORTH KALGURI CO., LTD.* (1901), 45 Sol. Jo. 787.

Contracts entered into before company entitled to commence business.]—*See* Nos. 4207, 4208, *post*.

Non-commencement of business as ground for winding up.]—*See* Sect. 36, sub-sect. 2, B., *post*.

Grounds for winding up generally.]—*See* Sect. 36, sub-sect. 2, *post*.

SUB-SECT. 5.—RETURNS TO REGISTRAR.

See 1908 Act, ss. 26, 88, 281.

3909. Effect of signature—Notice of contents—List of members.]—A., a shareholder in a co., having held 500 shares, & as he alleged, forfeited 490, brought an action against the co. for service for a given sum. The co. pleaded, but did not plead any set-off, & afterwards withdrew the pleas. A. entered up judgment & took out execution against B., one of the directors, who obtained time on giving a promissory note. He alleged that at the time he gave it he did not know that A. was a shareholder, or had forfeited shares, &

Sect. 18 of the co.'s charter read: "This co. shall not commence operations until 50 per cent. of its capital stock is subscribed, & 25 per cent. of such subscription paid up":—*Held*: the words "commence operations" were not intended to prevent calls being made on stock subscribed for, nor to prevent the board of provisional directors created by the Act from doing any acts for & in the name of the co. within their powers so long as such acts fell short of what might properly be termed "commencing operations"; & the subscription & payment called for by the sect. were not made a condition precedent to the creation of a body corporate, but were intended as a limitation upon the power of the co. to commence operations until the pre-requisite was complied with.—*NORTH SYDNEY MINING & TRANSPORTATION CO. v. GREENER* (1898), 31 N. S. R. 41.—*CAN.*

PART III. SECT. 30, SUB-SECT. 5.

f. Duty to make — Annual return of members—No quorum at ordinary general meeting.]—Deft. co. was a co. limited by shares, & incorporated & registered at A. under Cos. Act, 1882. There were eight shareholders in the co., & the secretary duly notified the

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he alleged that A. was indebted on his 500 shares in more than the sum claimed; but he had signed a return under 1844 Act stating, among other things, that A. had held 500 shares, but had forfeited 490:—*Held*: he had no equity to restrain an action brought by A. on the promissory note.—*HAMMOND v. WARD* (1855), 3 Drew. 103; 3 W. R. 185; 61 E. R. 842.

3910. Sufficiency of—Shareholder's name misspelt.]—The name of a shareholder in a joint-stock co. was Robert Easton Yelland; he was returned & registered at the joint-stock cos. registry office by the name of Robert Eastern Yelland:—*Held*: the misnomer was immaterial.—*Re MERCHANT TRADERS' SHIP, LOAN, & INSURANCE CO., YELLAND'S CASE* (1852), 5 De G. & Sm. 395; 19 L. T. O. S. 30; 64 E. R. 1169; *on appeal sub nom. Re PORT OF LONDON SHIP OWNERS LOAN & ASSURANCE CO., Ex p. YELLAND*, 21 L. J. Ch. 852, L. J.

Annotations:—Mentd. Re Great Cambrian Mining & Quarrying Co., Hawkins' Case (1856), 2 K. & J. 253; *Re Great Cambrian Mining & Quarrying Co., Richardson's Case* (1856), 4 W. R. 670; *Re Electric Telegraph Co. of Ireland, Cookney's Case* (1858), 26 Beav. 6; *New Brunswick & Canada Land & Ry. v. Muggeridge* (1859), 4 H. & N. 580; *New Theatre Co., Bloxam's Case* (1864), 33 Beav. 529.

3911. — Shares issued credited as paid up—Return misleading though not fraudulent.]—The G. co. bought the business of another co., taking over all the assets, the agreement stating that 10,000 shares, the nominal capital of the old co., were to be treated as paid up. In the return to the registrar the summary stated that there were 10,635 shares, a call of 10s. made on each share; total calls paid, £4,481; calls unpaid, £836, etc. On a summons under 1862 Act, s. 27, for default in not forwarding a summary:—*Held*: the co. were rightly convicted, though the misrepresentation was not fraudulent, as the return was misleading, & purported that calls had been made on each of 10,000 shares, etc.—*GROSVENOR BANK CO. v. BOALER* (1885), 49 J. P. 774.

Annotation:—Consd. Re Briton Medical & General Life Assocn. (1888), 39 Ch. D. 61.

3912. — Substantial accuracy.]—According to the true construction of 1862 Act, s. 26, the forwarding to the registrar of joint-stock cos. of a list of members & summary which upon the face of them purport to satisfy the requirements of the Act, is not a sufficient compliance with that sect. unless such list & summary are in accordance with the facts; & a metropolitan police magistrate has jurisdiction upon a summons for penalties under sect. 27 to inquire into the truth or falsehood of the statements contained in the list & summary so forwarded, & is not precluded from hearing evidence on the complaint brought before him merely by the circumstance that the list and s

shareholders, in writing, that the ordinary general meeting of the co. would be held on Dec. 6, 1910. Only four members attended at the time & place appointed &, as the quorum of five members required by the arts. of assocn. was not present, the meeting was adjourned to the following day. There was no quorum present at the adjourned meeting, & this meeting was accordingly adjourned *sine die*, under art. 42. The secretary of the co. prepared a list of the persons who were members of the co. on the fourteenth day after Dec. 6, 1910, giving such particulars as are required by Cos. Act, 1908, s. 101, & forwarded the list to registrar within seven days thereafter. The registrar refused to accept the list, on the ground that no ordinary general meeting of the co. had been

held, & that therefore the list was not the list of persons who were members of the co. on the fourteenth day after the ordinary general meeting of the co.:—*Held*: the annual ordinary general meeting of the co. had been duly held upon Dec. 6, 1910, & the returns required by sect. 101 of the Act had been duly made.—*FLETCHER v. NEW ZEALAND GLUE CO., LTD.* (1911), 31 N. Z. L. R. 129.—N.Z.

g. Extra-provincial company — Failure to render statutory returns—Whether validity of company's contracts within the province affected by the default.]—*Pltfs.*, a co. incorporated under the laws of Illinois, & having their head office in Chicago, sought to recover damages against deft. for breach of a contract made at Halifax,

mary are in accordance with the co.'s register. Such register is only *prima facie* evidence of certain matters, & upon evidence that it contained fictitious entries the magistrate would be justified in disregarding such entries, & in treating a summary based upon them as false & misleading. But questions of nicety as to the title to shares & the right to be on the register cannot properly be determined by a magistrate upon such a summons, & with reference to such questions he ought to accept the co.'s register as practically conclusive.—*Re BRITON MEDICAL & GENERAL LIFE ASSOCN.* (1888), 39 Ch. D. 61; 57 L. J. Ch. 874; 59 L. T. 134; 37 W. R. 52; 4 T. L. R. 531.

3913. — Balance-sheet—Valuation of assets.]—*Resps.*, a public co., forwarded to the registrar a balance-sheet, purporting to be in compliance with 1908 Act, s. 26, which, in the statement of assets, set out the following particulars: "Goodwill, trade marks, machinery, furniture, & fixtures: £100,000. Goodwill & trade marks at the sum at which they were taken over by the co. Machinery, furniture, & fixtures at cost, less depreciation":—*Held*: this balance-sheet did not comply with the requirements of 1908 Act, s. 26 (4); (1) because it stated that different parts of the fixed assets had been valued in different ways & did not state the separate values of those parts; (2) because it ought to state the separate values of the tangible & intangible fixed assets.—*GALLOWAY v. SCHILL, SEEBOHM & Co., LTD.*, [1912] 2 K. B. 354; 81 L. J. K. B. 752; 106 L. T. 875; 76 J. P. 298; 28 T. L. R. 400; 19 Mans. 199.

See, 1908 Act, s. 26.

3914. Duty to make—Annual return of members—Where no general meeting held.]—*Applt.* was convicted upon an information alleging that he being a director of a co. subject to 1862 Act, which made default in complying with the provisions of that Act with respect to forwarding such list of members & summary as are mentioned in sect. 26 of that Act to the registrar of joint-stock cos., & continued such default for the space of 160 days up to & including Feb. 25, 1875, knowingly & wilfully did authorise & permit such default. At the hearing it was proved that *applt.* was one of the directors when the co. was formed in 1851, & that he continued to be a director in 1856. He was the holder of a large amount of shares, & the number of shareholders was only seven. The solr. for *applt.* declined to produce the minute book, although notice to produce it had been served directed to the co. & its secretary. No evidence was given that the co. had ever held any general ordinary meeting. No list of members or summary, as required by 1862 Act, s. 26, was forwarded in 1874:—*Held*: *applt.* was rightly convicted; for (1) the primary object of sect. 26

Nova Scotia. By R. S. N. S. 1900, c. 127, s. 18, it is provided that every co. not incorporated in the province, shall appoint a resident manager or agent, & that such co., before beginning business in the province, shall transmit to the provincial secretary a statement under oath giving certain particulars:—*Held*: non-compliance with the provisions of the statute did not render invalid contracts entered into by the co. within the province, or prevent the co. from recovering thereon.—*AMERICAN HOTEL & SUPPLY CO. v. FAIRBANKS* (1906), 2 E. L. R. 345; (1907) 3 E. L. R. 104; 41 N. S. R. 444.—CAN.

h. Cancellation of charter — For failing to make statutory return—Procedure.]—An order in council purport-

was to secure the sending in of the list & summary once a year, & the enactment as to the time of sending in the same was merely directory; (2) there was evidence that applt. continued to be director; & (3) there was evidence that applt. knowingly & wilfully permitted the co.'s default.

In my judgment, there is *prima facie* evidence that he "knowingly & wilfully" permitted the default upon the part of the co., for a director is one "who directs" the proceedings of the co. No step can be taken & no omission can occur in its management without his having the power to raise an objection. He is therefore *prima facie* responsible for any default on the part of the co., & the burden of proof lies upon him to show that the failure to do what was required of the co. happened without any blame attaching to him (LORD COLERIDGE, C.J.).—EDMONDS v. FOSTER (1875), 45 L. J. M. C. 41; 33 L. T. 690; 40 J. P. 151; *sub nom.* EDMUNDS v. FOSTER, 24 W. R. 368.

Annotations:—As to (1) *Dtd. R. v. Newton* (1879), 48 L. J. M. C. 77. As to (2) *Refd. R. v. Lawson*, [1905] 1 K. B. 541. As to (3) *Refd. Park v. Lawton*, [1911] 1 K. B. 588.

3915. ———.]—By 1867 Act, s. 39, every co. formed under 1862 Act must hold, under a penalty, a general meeting within four months after its memorandum of assocn. is registered. By 1862 Act, s. 26, every co. under that Act must, within fourteen days after the first ordinary general meeting, make out a list of its members, & forward the same to the registrar of joint-stock cos. within a further period of seven days, subject to a penalty of £5 *per diem* in default. On a summons taken out against a co. for not having forwarded a list of members as aforesaid, the magistrate decided that it was necessary for complainant to prove that the first ordinary general meeting had been held, & on failure of such proof, dismissed the summons:—*Held*: the magistrate was right; for the date of the general meeting formed a *tempus a quo* from which the period of fourteen & seven days was to run; & it could not be presumed against the co. that a general meeting had been duly held.—*R. v. Newton* (1879), 48 L. J. M. C. 77; 43 J. P. 351, D. C.

Annotation:—*Refd. Park v. Lawton*, [1911] 1 K. B. 588.

3916. Liability for default—Director—Onus of proof.—EDMONDS v. FOSTER, No. 3914, *ante*.

3917. ——— **Secretary—Manager de facto.**—(1) By 1862 Act, s. 49, a general meeting of every co. under this Act shall be held once at least in every year:—*Held*: the word "year" means the period of time commencing on Jan. 1, & ending Dec. 31, & not the period of twelve months commencing from the day of registration of a co.

(2) Applt. was the secretary of a co. registered under 1862 Act. The arts. of assocn. did not provide for the appointment of a manager, & none had been appointed. At a meeting of directors in 1872, applt. reported that he had called a general meeting of the shareholders; & in 1874 he had, in a letter to the directors, stated that

unless certain contracts were carried out he should feel it his duty to summon a general meeting of shareholders. No ordinary general meeting of shareholders had been held in 1873, & no list of shareholders had been forwarded to the registrar in compliance with 1862 Act, s. 26, & applt. had not taken any steps to cause a meeting to be held in 1873. He was convicted on an information charging him, as manager, with authorising a default in forwarding a copy of the list of shareholders to the registrar in 1873:—*Held*: the conviction ought to be affirmed: for there was evidence that applt. was manager *de facto*, & therefore a manager within sect. 26; & as he took no steps in 1873 to call a meeting, & thereby made it impossible for him to forward to the registrar a list of the members, there was evidence that he had knowingly & wilfully authorised a default within sect. 27.—GIBSON v. BARTON (1875), L. R. 10 Q. B. 329; 44 L. J. M. C. 81; 32 L. T. 396; 39 J. P. 628; 23 W. R. 858, D. C.

Annotations:—As to (2) *Consd. R. v. Lawson*, [1905] 1 K. B. 541. *Refd. Edmonds v. Foster* (1875), 45 L. J. M. C. 41; *Re Canadian Land Reclaiming & Colonising Co., Coventry & Dixon's Case* (1880), 14 Ch. D. 660; *Re Western Counties Steam Bakeries & Milling Co.*, [1897] 1 Ch. 617; *Park v. Lawton*, [1911] 1 K. B. 588.

3918. Default—Wilful continued neglect.—DORTÉ v. SOUTH AFRICAN SUPER-AERATION, LTD. (1904), 20 T. L. R. 425, D. C.

Annotation:—*Refd. Park v. Lawton*, [1911] 1 K. B. 588.

3919. Knowingly & wilfully authorises default—Neglect to call annual general meeting.—EDMONDS v. FOSTER, No. 3914, *ante*.

3920. ———.]—GIBSON v. BARTON, No. 3917, *ante*.

3921. ——— **Return filed early in following year.**—DORTÉ v. SOUTH AFRICAN SUPER-AERATION, LTD. (1904), 20 T. L. R. 425, D. C.

3922. ———.]—The direction in 1908 Act, s. 26 (1), to every co. to make out & forward to the registrar of cos. "a list of all persons who, on the fourteenth day after the first or ordinary general meeting in the year, are members of the co.," & also a summary as to the capital & shares of the co., is mandatory; & the obligation to forward the list every year is independent of whether or not the ordinary general meeting of the co. is held in the year. Therefore, where the directors of a co. are summoned under 1908 Act, s. 26 (5), for knowingly & wilfully permitting default to be made by the co. in complying with the requirements of sect. 26, it is no defence for them to set up that the holding of the ordinary general meeting of the co. is a condition precedent to the obligation to send in the list arising, & that as the meeting had not been held the list of members could not be sent in, when they were themselves parties to the meeting not being held.—PARK v. LAWTON, [1911] 1 K. B. 588; 80 L. J. K. B. 396; 104 L. T. 184; 70 J. P. 163; 27 T. L. R. 192; 18 Mans. 151, D. C.

Annotation:—*Refd. Re Consolidated Nickel Mines*, [1914] 1 Ch. 883.

ing to revoke the charter of a co., which is not a land co., on the ground that it had failed to comply with Cos. Act, R. S. M. c. 35, s. 80, which requires a co. to make out annually a summary of its affairs, is a nullity, as the only power conferred by the Act to cancel a co.'s charter is to be found in sects. 77 & 78. Sect. 78 provides for cancellation of the co.'s charter upon the application of the co., & sect. 77 applies only to land cos.—*Re STANLEY MINERAL SPRINGS CO.* (1916), 10 W. W. R. 1368.—CAN.

k. Remission of penalties — On

terms.—In an action against an incorporated co. & its secretary to recover \$12,760 as penalties incurred under Cos. Act, R. S. O. 1914, c. 178, s. 135, for not making returns to the Govt., it appeared that pltf. had been induced by force & fraudulent statements of a broker acting for the co., to pay \$3,000 for shares in the co. On the returns being rendered, application was made by deft. to the A.-G. to remit the penalties; this was refused. Defts. then applied to a judge in ct., & an order was made, under sect. 6 of the Act, remitting the penalties,

upon terms that defts. should repay to pltf. the money received from her for the shares, with interest at 6 per cent., & her costs as between solr. & client of both actions & the proceedings before the A.-G.—SEAGRAM v. PNEUMA TUBES, LTD. (1917), 40 O. L. R. 301.—CAN.

l. Returns to provincial secretary — Liability for default.—The secretary of a co., as well as the co. itself, which was incorporated under Ontario Cos. Act, 2 Geo. V. c. 31, by letters patent issued in 1913:—*Held*: liable for penalties incurred under sect. 134 (6

Sect. 30.—Regulation and management: Sub-sects. 5 & 6, A. & B.; sub-sect. 7, A.]

3923. Omission to make return—Whether continuing offence.]—A co. made default under 1862 Act, s. 26, in the years 1877, 1879, 1880, 1881, & 1882:—*Held*: it was a continuing offence, & penalties under sect. 27 could be recovered for default made in each year for a period not extending over more than six months.—*R. v. CATHOLIC LIFE & FIRE ASSURANCE & ANNUITY INSTITUTION, LTD.* (1883), 48 L. T. 675; 47 J. P. 503, D. C.

3924. Proceedings on default—Jurisdiction of magistrate—Return forwarded *prima facie* complying with statutory requirements.]—*Re BRITON MEDICAL & GENERAL LIFE ASSOCN.*, No. 3912, *ante*.

3925. — “Criminal cause or matter”—Discharge of mandamus to magistrate—Appeal.]—A magistrate having refused to issue a summons under 1862 Act, s. 27, against a co., to recover penalties for default in forwarding a list of its members as required by sect. 26 of the Act, the Q.B. Div. granted a rule *nisi* for a *mandamus* directing him to hear & determine the application for a summons. The rule was by a subsequent order of the ct. discharged. On appeal against this order:—*Held*: the application to the magistrate for a summons against the co. was a criminal proceeding, & therefore the judgment of the Q. B. Div. was a judgment in a “criminal cause or matter” within Jud. Act, 1873, s. 47, & no appeal would lie.—*R. v. TYLER & INTERNATIONAL COMMERCIAL CO.*, [1891] 2 Q. B. 588; 61 L. J. M. C. 38; 65 L. T. 662; 56 J. P. 118; 7 T. L. R. 720, C. A.

Annotations:—Refd. Park v. Royalties Syndicate, [1912] 1 K. B. 330; *R. v. Garrett, Ex p. Sharf*, [1917] 2 K. B. 99. *Mentd. R. v. Young, etc.*, London J.J. (1891), 61 L. J. M. C. 42; *Rayson v. South London Tram Co.* (1893), 69 L. T. 491; *Southport Corpn. v. Birkdale U. D. C.* (1897), 76 L. T. 318; *Moussell v. L. & N. W. Ry.*, [1917] 2 K. B. 836; *Griffiths v. Studebakers* (1923), 87 J. P. 199.

See, generally, CROWN PRACTICE, Vol. XVI., pp. 346, 347.

SUB-SECT. 6.—ACCOUNTS AND INSPECTION.

A. Accounts.

3926. On what principles to be kept—Trading company.]—(1) A banking co. which had a nominal capital of £1,000,000 divided into 100,000 shares of £10 each, had issued all its shares, the sum of £5 having been paid on each share, which thus constituted a paid-up capital of £500,000. The co. sold a part of its business for £875,000, realising thereby a net profit of £205,000 after bringing the £500,000 into account, & after making certain payments to the purchasers:—*Held*: the co. was justified in carrying the £205,000 to the profit & loss account, & applying the same as dividends, the capital of the co., being intact.

(2) Principles on which the accounts of a trading co. should be kept stated.—*LUBBOCK v. BRITISH BANK OF SOUTH AMERICA*, [1892] 2 Ch. 198; 61 L. J. Ch. 498; 67 L. T. 74; 41 W. R. 103; 8 T. L. R. 472.

Annotations:—As to (1) Folld. Foster v. New Trinidad Lake Asphalt Co., [1901] 1 Ch. 208. *Apld. Cross v. Imperial Continental Gas Asscn.*, [1923] 2 Ch. 553. *Refd. Verner v. General & Commercial Investment Trust*, [1894] 2 Ch. 239; *Re National Bank of Wales*, [1899] 2 Ch. 629; *Re Tedlie, Holt v. Croker* (1922), 91 L. J. Ch. 346. *As to (2) Refd. Verner v. General & Commercial Investment Trust*, [1894] 2 Ch. 239.

of the Act by reason of default in making out & transmitting to the provincial secretary, on or before Feb. 8, in the years 1915 & 1916, the summary

statement prescribed by sect. 124 (1-5) of the Act.—*SEAGRAM v. PNEUMA TUBES, LTD.* (1918), 43 O. L. R. 513.—**CAN.**

Right of inspection — By members.]—*See* No. 1209, *ante*.

— **By auditors.]**—*See* No. 3662, *ante*.

3927. Failure to comply with regulations—Effect on transferors of shares.]—By the terms of a deed of settlement of a joint-stock co., it was provided that whenever any shares should be transferred to a new holder, the responsibility of the previous holder in respect of such shares should cease, but that he should not be released from his proportion of losses, if any, sustained by the co. up to the period of his ceasing to be such shareholder. It was also provided that the directors should at every half-yearly meeting produce a balance-sheet of the affairs of the co., which they never did. Upon the winding up of the co.:—*Held*: a transfer of shares was liable in respect of losses that accrued prior to the date of the transfer.—*Re PORTSMOUTH BANKING CO., HELBY'S, STOKES', & HORSEY'S CASES* (1866), L. R. 2 Eq. 167; *sub nom. Re PORTSMOUTH, PORTSEA & GOSPORT BANKING CO., HORSEY'S CASE, STOKES'S CASE, HELBY'S CASE*, 14 L. T. 47; 14 W. R. 417.

3928. Interference by court—Account regularly stated & approved by shareholders.]—(1) In Feb. 1845, pltf. took shares in a co., at a public meeting of all the shareholders, duly convened in Jan. 1846, when the co.'s accounts were stated & adopted it was resolved that the co. should be dissolved, & that a dividend should be returned. Pltf. did not attend the meeting, but he received due notice of the dividend by letter in Feb. 1846, & refused to accept it. Some of the shareholders who received the dividend gave receipts & others executed a deed of release. In Feb. 1849, pltf. filed a bill on behalf of himself & all others the subscribers & shareholders, except defts. & all others, if any, of the subscribers & shareholders who had received payment, against the directors & one other shareholder, who was sued as representing all those who had received payment, praying for a general account, & for specific relief as to certain sums charged to have been improperly applied by the directors:—*Held*: inasmuch as pltf. had failed upon the evidence to show improper conduct, had received full notice of the dividend, & had acquiesced for three years he was not entitled to the relief prayed, the bill was dismissed with costs.

Semble: (2) the principle of allowing an individual to represent a class cannot be applied to the case of a suit which seeks to disturb a settlement & release, executed by the great majority of members of an assocn. upon the footing of a stated account; (3) where an account has been regularly stated & approved by a majority of shareholders in an assocn., the ct. will not on light grounds, unless the statement of the account be withheld, or fraud or error can be shown, permit the account to be disturbed at the instance of an individual member.—*STUPART v. ARROWSMITH* (1856), 3 Sm. & G. 176; 25 L. J. Ch. 153; 26 L. T. O. S. 290; 2 Jur. N. S. 153; 4 W. R. 219; 65 E. R. 613.

3929. False or fraudulent accounts—What amounts to fraud—Erroneous method of keeping—No evidence of fraud.]—In an action against the secretary, the solr., & several of the directors of a joint-stock co. for false & fraudulent representations, by which, as pltf. alleged, he had been induced to take shares, the representations being in the prospectus & balance-sheet as to profit

PART III. SECT. 30, SUB-SECT. 6.—A' m. Entries in account-book — *Prima facie* presumption.]—The account-books of a co. are the accounts

"deduced from actual working," & a dividend declared as arising out of such profit so derived; & the two fundamental facts on which the representations of profit were based, the supply of the raw material, & the cost of it, being falsified, & the accounts being altered so as to conceal the falsification, & also so as to bring into the year's account only a portion of the preliminary expenses:—*Held*: though the latter alone, or any error in the mere mode of keeping the accounts, would not be evidence of fraudulent representation, the falsification of facts & figures was so, as against any of defts. who were aware of the issue of the prospectus, but *semble*: not against those who merely had the means of knowledge.—*BALE v. CLELAND* (1864), 4 F. & F. 117.

3930. — Misleading balance-sheet.]—

In an action against directors of a joint-stock co. for fraudulent representations, the question being whether the "capital" & the "balance" stated in a balance-sheet meant "capital paid-up & balance of profit," it appeared that the books were kept, & the balance-sheet prepared, in the usual way, & that the balance-sheet tallied with figures in the books, & that persons acquainted with business would not understand the balance-sheet in the sense imputed—in which, it was admitted, it was not true, but in another sense in which it would be proved by the books, which pltf., who was a man of business, might have inspected:—*Held*: assuming this to be so, there was no ground to sustain the action.—*SMITH v. CLENCI* (1865), 4 F. & F. 578.

3931. — Loss of goodwill—Not attributed to revenue.]—(1) Where the value of the assets of a solvent co. has fallen below the nominal amount of the share capital, the co., in the absence of any special provisions in its arts. or of a contract binding the co., is under no obligation to make good such depreciation in the value of the assets, before declaring a dividend out of the profits.

(2) Depreciation in the value of the leases & goodwill of a co., is a loss of "fixed" as distinguished from "floating" capital. The balance-sheet of a co. cannot, therefore, be impeached on the ground that it does not charge anything against revenue in respect of depreciation of goodwill.—*WILMER v. McNAMARA & Co., LTD.*, [1895] 2 Ch. 245; 64 L. J. Ch. 516; 72 L. T. 552; 43 W. R. 519; 11 T. L. R. 371; 39 Sol. Jo. 450; 13 R. 513.

Annotation:—As to (1) *Refd.* *Bishop v. Smyrna & Cassaba Ry.*, [1895] 2 Ch. 265.

— **Liability for—Directors.]—**See Sect. 28, sub-sect. 4, C., sub-sect. 6, B. (*d*), *ante*.

— **Officers.]—**See No. 3525, *ante*.

3932. Accounts kept by company for others—Right to charge.]—By an agreement of [Apr. 1893, a co. arranged with pltf. to manage, develop & realise his estates on certain terms as to remuneration, & in the course of such management employed one of its directors, who was a solr., to act professionally for the estates & paid his bill of costs, which included profit items; another director, who was an estate agent, to manage at a salary a business connected with the estates; another director, who was an auctioneer, to act as auctioneer on all sales of the estates at the usual commission; & gave its secretary, who was a chartered accountant, an additional salary for

keeping the books of the estates, which were of a complex nature:—*Held*: (1) on the construction of the agreement the co. were not entitled to make any charge for or in respect of the keeping of the accounts required to be kept by the co.; (2) the directors stood in a fiduciary relation to the co. but not to pltf., & the profit costs, salary & commission paid to the directors in their professional capacity might be allowed in taking the accounts between pltf. & the co. under the agreement.—*BATH v. STANDARD LAND Co., LTD.*, [1911] 1 Ch. 618; 80 L. J. Ch. 426; 104 L. T. 867; 27 T. L. R. 393; 55 Sol. Jo. 482; 18 Mans. 258, C. A.

Compare No. 7765, *post*.

Audit of accounts.]—See Sect. 29, sub-sect. 5, *ante*.

B. Inspection.

3933. By Board of Trade inspector—Nature of—Whether prohibition lies.]—An examination into the affairs of a joint-stock co. by an inspector appointed by the Board of Trade under 1862 Act, s. 56, is not a proceeding of such a nature that prohibition can lie in respect of it either to the Board of Trade or to the inspector.—*Re GROSVENOR & WEST-END RAILWAY TERMINUS HOTEL Co., LTD.* (1897), 76 L. T. 337; 13 T. L. R. 309; 41 Sol. Jo. 365, C. A.

Annotation:—*Refd.* *R. v. Electricity Comrs., Ex p. London Electricity Joint Committee* (1923), 39 T. L. R. 715.

See, generally, CROWN PRACTICE, Vol. XVI., p. 316, No. 1285, pp. 372 *et seq.*

SUB-SECT. 7.—DIVIDENDS.

A. Nature of Dividends.

3934. Distinguished from interest.]—(1) The question whether a co. has profits available for distribution must be answered according to the circumstances of each particular case, the nature of the co., & the evidence of competent witnesses.

(2) Although in some cases, fixed capital may be sunk & lost, without precluding the payment of a dividend, circulating capital must be kept up.

Semble: there is no distinction in this respect between a realised loss & an estimated loss.

(3) The common art. requiring dividends to be declared by the directors applies to fixed cumulative dividends on preference shares, & the ct. will not readily override the directors' discretion in relation thereto.

(4) "Interest" is not an apt word to express the return to which a shareholder is entitled in respect of shares paid up in due course & not by way of advance. Interest is compensation for delay in payment & is not accurately applied to the share of profits of trading, although it may be used as an inaccurate mode of expressing the measure of the share of those profits (*FARWELL, J.*).

The real question for determination, is whether there are profits available for distribution & this is to be answered according to the circumstances of each particular case, the nature of the co., & the evidence of competent witnesses. There is no single definition of the word "profits" which will fit all cases (*FARWELL, J.*).—*BOND v. BARROW HÆMATITE STEEL Co.*, [1902] 1 Ch. 353;

of the directors, & in the absence of evidence to the contrary, entries made therein must be taken to have been made by the directors or by the authority of the directors.—*Re NEW ZEALAND PINE Co., LTD.*, *Ex p.*

OFFICIAL LIQUIDATOR, *GUTHRIE'S CASE* (1898), 17 N. Z. L. R. 257.—N.Z.

PART III. SECT. 30, SUB-SECT. 7.—A.

*n. Profits on mining shares.]—*The

profit of mining shares as between a person successively entitled, or tenderer & tenderer, goes to the person entitled when the dividend is payable not when the gold is raised. The profits of such shares are dividends not

Sect. 30.—Regulation and management: Sub-sect. 7, A., B., C. & D. (a) & (b).]

71 L. J. Ch. 246; 86 L. T. 10; 50 W. R. 295; 18 T. L. R. 249; 46 Sol. Jo. 280; 9 Mans. 69.

Annotations:—As to (2) Refd. Re Spanish Prospecting Co., [1911] 1 Ch. 92; Ammonia Soda Co. v. Chamberlain, [1918] 1 Ch. 266. As to (3) Consd. Re Accrington Corp'n. Steam Tram. Co., [1909] 2 Ch. 40. Refd. Evling v. Israel & Oppenheimer, [1918] 1 Ch. 101.

B. Sanctioning.

3935. How sanctioned—Regulations of company—At annual general meeting.]—The arts. of a co. provided for the submission of accounts up to a date within three months & reports thereon, the sanction of a dividend, & the transaction of the ordinary business at the annual general meeting:—*Held*: a final dividend could not be sanctioned except at an annual general meeting at which accounts up to the prescribed date & reports thereon, were submitted.—*NICHOLSON v. RHODESIA TRADING CO.*, [1897] 1 Ch. 434; 66 L. J. Ch. 251; 76 L. T. 147; 41 Sol. Jo. 274.

C. When Payable.

No profits earned—Payment out of capital.]—*See Nos. 3945–3947, post.*

Compare Nos. 8201, 8203, post.

3936. Where capital lost—General rule.]—A co. is not prohibited either by statute or general law from paying dividends because its available property at the time of declaring the dividend is of less value than its nominal or share capital.—*LEE v. NEUCHATEL ASPHALTE CO.* (1889), 41 Ch. D. 1; 58 L. J. Ch. 408; 61 L. T. 11; 37 W. R. 321; 5 T. L. R. 260; 1 Meg. 140, C. A.

Annotations:—Folld. Bolton v. Natal Land & Colonization Co., [1892] 2 Ch. 124. Consd. Verner v. General & Commercial Investment Trust, [1894] 2 Ch. 239. Apld. Wilmer v. McNamara, [1895] 2 Ch. 245; Re Kingston Cotton Mill Co., (No. 2) [1896] 1 Ch. 331. Consd. Bond v. Barrow Haematite Steel Co., [1902] 1 Ch. 353; Ammonia Soda Co. v. Chamberlain, [1918] 1 Ch. 266. Refd. Wood v. Odessa Waterworks Co. (1889), 42 Ch. D. 636; Lubbock v. British Bank of South America, [1892] 2 Ch. 198; Re London & General Bank (1894), 72 L. T. 227; Re National Bank of Wales, [1899] 2 Ch. 629; Re Barrow Haematite Steel Co., [1900] 2 Ch. 846; Re Welsbach Incandescent Gas Light Co., [1904] 1 Ch. 87; Alianza Co. v. Bell, [1905] 1 K. B. 184; Re Spanish Prospecting Co., [1911] 1 Ch. 92. Mentd. Re Mersina, Tarsus & Adana Ry. Construction Co. (1889), 1 Meg. 341; Re Wragg, [1897] 1 Ch. 796.

Dividend payable out of profits—How profits ascertained—Duty to make good capital lost.]—*See Sect. 10, sub-sect. 6, B., ante.*

3937. On ordinary shares—After preference & further preference dividends paid—Construction of articles.]—*ANGLO-FRENCH MUSIC CO. v. NICOLL*, No. 3993, *post*.

3938. — In priority to deferred shares—Construction of articles.]—*ADDISON v. NESS* (1893), 9 T. L. R. 607, H. L.

D. Out of What Funds Payable.

(a) In General.

Net profits—How ascertained.]—*See Sub-sect. 8, post.*

Where capital depreciated.]—*See Sect. 10, sub-sect. 6, B., ante.*

gold raised.—*SHAW v. WRIGHT* (1863), 2 W. & W. 57.—*AUS.*

PART III. SECT. 30, SUB-SECT. 7.—B.

3935 i. How sanctioned—Regulations of company—By shareholders at general meeting.]—The effect of the arts. of assocn. of a co. was, that a dividend could be declared only by the shareholders of the co. at a general meeting:—*Held*: a resolution adopted at what was called in the minute-book "a meeting of the co." was not a resolution of the shareholders, but of the

directors; & as the minute of that resolution was the only record of a dividend having been declared, no dividend had been legally declared.—*Re CARDIFF COAL CO.* (1911), 18 W. L. R. 165.—*CAN.*

o. — By shareholders — Under statute.]—*SHYMKA v. SMOKY LAKE UNITED FARMERS CO.* (1922), 66 D. L. R. 729.—*CAN.*

PART III. SECT. 30, SUB-SECT. 7.—C.

p. Where capital lost—General rule.]

3939. Income of special dividend fund—Fund ultra vires.]—The nominal capital of a co. formed for land & financial business was stated in the memorandum of assocn. to be divided into A shares & B shares. The arts. of assocn. provided that the capital & income of the B shares were to be formed into a trust fund for paying a preferential dividend on the A shares, were not to be used in any sense as working capital, & in the event of a winding up were, so far as unapplied, to be returned to the B shareholders. There was no suggestion of fraud or want of *bona fides*:—*Held*: as the memorandum of assocn. did not disclose the proposed application of the B capital, the arts. of assocn. must be held to be *ultra vires*.—*GUINNESS v. LAND CORPN. OF IRELAND, LTD.* (1882), 22 Ch. D. 349; 52 L. J. Ch. 177; 47 L. T. 517; 31 W. R. 341, C. A.

Annotations:—Consd. Re South Durham Brewery Co. (1885), 31 Ch. D. 261; *Trevor v. Whitworth* (1887), 12 App. Cas. 409. *Refd. Re Barrow Haematite Steel Co.* (1888), 39 Ch. D. 582; *Re Bridgewater Navigation Co.* (1888), 39 Ch. D. 1; *Lee v. Neuchatel Asphalte Co.* (1889), 41 Ch. D. 1; *Re Pyle Works* (1890), 44 Ch. D. 534; *British & American Trustee & Finance Corp'n. v. Cooper*, [1894] A. C. 399; *Verner v. General & Commercial Investment Trust*, [1894] 2 Ch. 239; *Mellquham v. Taylor*, [1895] 1 Ch. 53; *Andrews v. Gas Meter Co.* [1897] 1 Ch. 361.

3940. Capital profit—Profit on sale of business.]—*LUBBOCK v. BRITISH BANK OF SOUTH AMERICA*, No. 3926, *ante*.

3941. — How calculated—Profit on item of assets.]—(1) The question of what is profit available for dividend depends upon the result of the whole accounts fairly taken for the year, capital, as well as profit & loss, & though dividends may be paid out of earned profits in proper cases, notwithstanding a depreciation of capital, a realised accretion to the estimated value of one item of the capital assets cannot be deemed to be profit divisible amongst the shareholders without reference to the result of the whole accounts fairly taken.

(2) Among the assets taken over by a new co. in 1897, on the purchase of the undertaking of an old co., were promissory notes for \$100,000 given in 1894 to the old co. by the B. Co.; these notes, which had never been considered of any value, & had never appeared as assets in the balance-sheets of the new co., had recently been paid off with arrears of interest, & the directors proposed to treat the whole sum as a windfall in the nature of an unexpected profit & divisible as dividends:—*Held*: the \$100,000 ought not to be distributed as dividend without reference to the other business or assets of the co.—*FOSTER v. NEW TRINIDAD LAKE ASPHALT CO., LTD.*, [1901] 1 Ch. 208; 70 L. J. Ch. 123; 49 W. R. 119; 17 T. L. R. 89; 45 Sol. Jo. 100; 8 Mans. 47.

Annotations:—As to (2) Consd. Cross v. Imperial Continental Gas Assocn., [1923] 2 Ch. 553. Generally, Refd. Burrows v. Matabele Gold Reefs & Estates Co. (1901), 49 W. R. 428; Re Tedlie, Holt v. Croker (1922), 91 L. J. Ch. 346.

3942. Money other than profits—Penalties recovered from contractors.]—By a contract for making the line of pltf. railway co., it was to be

—It is only a matter of prudence, & not of law, whether or not dividends shall be paid when the assets of the co. are of less value than the original capital. So long as a co. pays its creditors there is no reason why, in an apparently flourishing concern, it should not go on & divide profits though every shilling of the capital may be lost. This is entirely a question for the shareholders themselves to determine.—*PHILLIPS v. MELBOURNE & CASTLEMAINE SOAP & CANDLE CO., LTD.* (1890), 16 V. L. R. 111.—*AUS.*

completed to the satisfaction of the engineer of the co. in two years from the commencement of the works. The contract price was to be paid in debentures & shares of the co., which were to be issued at the request of the contractors to their nominees, or offered for public subscription. The contractors having requested the debentures & shares to be offered for public subscription entered into an agreement to pay to the co. interest on the debenture & preference stock issued by the co. until the railway was completed. The works were not completed for more than a year after the first time fixed. Interest on the debentures & preference stock in the meantime became due which was not paid by the contractors, & was therefore paid by the co.:—*Held*: it was not *ultra vires* the co. to apply penalties due from the contractors in payment of interest on shares as such penalties were not capital, & dividends can be paid out of other money besides profits.—*ALCOY & GANDIA RAILWAY & HARBOUR CO., LTD. v. GREENHILL* (1898), 79 L. T. 257, C. A.

3943. — Discount—Debentures redeemed below par.—An investment trust co. by its constitution kept its capital & revenue accounts distinct, & could not apply any increase in the value of its investments as revenue, but could pay dividends out of the excess of current receipts over expenditure without regard to any depreciation in the value of its assets. The co. issued debenture stock at par, & subsequently by agreement redeemed part of such stock at a discount. In its accounts the co. carried the amount of the discount to a revenue reserve account, & the directors proposed to apply this amount from time to time in payment of dividends on its ordinary stock:—*Held*: the discount was in no sense net profit of the co., & could not be applied in payment of dividends.—*WALL v. LONDON & PROVINCIAL TRUST, LTD.*, [1920] 1 Ch. 45; 88 L. J. Ch. 448; 121 L. T. 411; 35 T. L. R. 597; 63 Sol. Jo. 705; *subsequent proceedings*, [1920] 2 Ch. 582; 90 L. J. Ch. 43; 125 L. T. 57; 36 T. L. R. 729; 64 Sol. Jo. 635.

3944. Reserve fund—Construction of articles.—The arts. of assocn. of a steamship co. provided that the directors should from time to time set aside part of the profits for a reserve fund. The directors had a discretionary power to expend the moneys so set apart in the purchase of additional vessels or otherwise in extending the co.'s trade. By the beginning of 1883 they had accumulated a reserve fund of £50,000. In May, 1883, the directors issued a circular to the shareholders, stating that they intended building two or three new steamers, & for that purpose to complete the issue of the shares of the co. in the manner following: "By dividing the reserve fund on June 30 next amongst existing shareholders, allotting to each, one share of £10 fully paid, for every share at present held," & by issuing 10,000 additional shares of £10 each. The directors, anticipating that this proposal would be accepted, had in fact, before the resolution hereinafter stated, applied the reserve fund in improving the fleet. On May 16, 1883, the co. duly passed a resolution: "That out of the reserve fund as it stands on June 30, next, there shall be allotted to each shareholder £10 in the form of one fully paid-up share for every share at present held by him in the co." The shares so created were issued &

credited as fully paid, & a part of the proposed 10,000 new shares were taken up & fully paid for in cash. In Oct. & Nov. 1892, a special resolution was passed by the co. for reducing its capital by cancelling capital which had been lost to the extent of £5 a share, & reducing the nominal amount of each share from £10 to £5. This was a petition for the confirmation of this reduction:—*Held*: (1) it did not appear that the directors had power to distribute the reserve fund as dividend without altering the arts.; (2) even if they had such a power, it did not appear that they had exercised it, for under the resolution the shareholders had no option to take their shares of the reserve fund in cash.—*Re EASTERN & AUSTRALIAN S.S. CO., LTD. & REDUCED* (1893), 68 L. T. 321; 41 W. R. 373; 37 Sol. Jo. 304; 3 R. 370.

Right to set aside reserve fund.—*See Subsect. 8, B., post.*

(b) *Payment out of Capital.*

3945. Whether permissible—After resolution by shareholders.—(1) The ct. will not restrain a co. constituted under 1862 Act from making calls & commencing business on the ground that only two thirds of the capital has been subscribed.

(2) A limited co. constituted under the above Act cannot, by special resolution, sanction the payment of interest upon the paid-up capital before any profits have been earned.—*MACDOUGALL v. JERSEY IMPERIAL HOTEL CO., LTD.* (1861), 2 Hem. & M. 528; 4 New Rep. 497; 34 L. J. Ch. 28; 10 L. T. 843; 28 J. P. 708; 10 Jur. N. S. 1043; 12 W. R. 1142; 71 E. R. 568.

Annotations:—As to (1) *Distd.* *Elder v. New Zealand Land Improvement Co.* (1874), 30 L. T. 285. As to (2) *Consd.* *Re Alexandra Palace Co.* (1882), 21 Ch. D. 149. *Refd.* *Lambert v. Northern Ry. of Buenos Ayres Co.* (1869), 18 W. R. 180; *Guinness v. Land Corpn. of Ireland* (1882), 22 Ch. D. 349.

3946. — Power under articles to pay dividends on paid-up capital—No profits earned.—The arts. of assocn. of a limited co. empowered the directors, with the sanction of a general meeting, to pay a dividend of 5 per cent. on the paid-up capital. No profits were made, but the directors paid sums by way of interest to the shareholders out of the capital. The co. was ordered to be wound up:—*Held*: the directors acted *ultra vires*, & must pay to the liquidator the sums so paid by them to the shareholders.—*Re NATIONAL FUNDS ASSURANCE CO.* (1878), 10 Ch. D. 118; 48 L. J. Ch. 163; 39 L. T. 420; 27 W. R. 302.

Annotations:—*Apprvd.* *Re Exchange Banking Co., Flitcroft's Case* 1882, 21 Ch. D. 519. *Consd.* *Guinness v. Land Corpn. of Ireland* (1882), 22 Ch. D. 349; *Re Oxford Benefit Bldg. & Investment Soc.* (1886), 35 Ch. D. 502. *Refd.* *Re British Guardian Life Assoc.* (1880), 14 Ch. D. 335; *Wye Valley Ry. v. Hawes* (1880), 29 W. R. 177; *Re Denham* (1883), 25 Ch. D. 752; *Leeds Estate Bldg. & Investment Co. v. Shepherd* (1887), 36 Ch. D. 787; *Re Kingston Cotton Mill Co. (No. 2)*, [1896] 1 Ch. 331; *Moxham v. Grant* (1899), 68 L. J. Q. B. 283; *Ammonia Soda Co. v. Chamberlain*, [1918] 1 Ch. 266.

3947. — — — — —.—Payment of interest out of capital where there are no profits is *ultra vires*, notwithstanding a clause in the arts. that interest shall be paid on all moneys paid up on shares. Where directors paid interest out of capital, they were held liable to make good the payments made during the period of their directorships, with interest at 4 per cent.—*Re SHARPE, Re BENNETT, MASONIC & GENERAL LIFE ASSURANCE CO. v. SHARPE*, [1892] 1 Ch. 154; 61 L. J. Ch.

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D. (b).

q. Whether permissible.—Payment by directors of a co. of a dividend to shareholders out of capital is illegal

& *ultra vires*.—*KEHOE v. WATERFORD & LIMERICK RY. CO.* (1888), 21 L. R. Ir. 221.—*IR.*

r. What amounts to — Payments when company insolvent.—The declara-

tion of a dividend when the co. is insolvent, & the application of such dividend in payment of shares in full cannot be allowed to stand, & in the winding up, the shareholders are

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193; 65 L. T. 806; 40 W. R. 241; 8 T. L. R. 194; 36 Sol. Jo. 151, C. A.

Annotations:—*Consd.* *Re* National Bank of Wales, [1899] 2 Ch. 629. *Refd.* *Lock v. Queensland Investment & Land Mortgage Co.*, [1896] 1 Ch. 397; *Re* Claridge's Patent Asphalt Co. [1921] 1 Ch. 543. *Mentd.* *Soar v. Ashwell*, [1893] 2 Q. B. 390; *Brooks v. Muckleston*, [1909] 2 Ch. 519; *Taylor v. Davies*, [1920] A. C. 636.

— **Revenue applied for purposes properly due to capital.]—***See* No. 1093, *ante*.

3948. Whether capable of ratification by shareholders.]—The directors of a limited co. for several years presented to the general meetings of shareholders reports & balance-sheets in which various debts known by the directors to be bad were entered as assets, so that an apparent profit was shown though in fact there was none. The shareholders, relying on these documents, passed resolutions declaring dividends, which the directors accordingly paid. An order having been made to wind up the co. the liquidator applied, under 1862 Act, s. 165, for an order on the directors to replace the amount of dividends thus paid out of capital:—*Held*: even if the shareholders had known the true facts, so that their ratification of the payment of dividends would have bound themselves individually, they could not bind the co., for that the payment of dividends out of *corpus* was *ultra vires* the co., & incapable of ratification by the shareholders.—*Re* EXCHANGE BANKING CO., *FILTCROFF'S CASE* (1882), 21 Ch. D. 519; 52 L. J. Ch. 217; 48 L. T. 86; 31 W. R. 174, C. A.

Annotations:—*Consd.* *Guinness v. Land Corpn. of Ireland* (1882), 22 Ch. D. 349. *Distd.* *London Financial Asscn. v. Kelk* (1884), 26 Ch. D. 107; *Leeds Estate, Building & Investment Co. v. Shepherd* (1887), 36 Ch. D. 787. *Consd.* *Towers v. African Tug Co.*, [1904] 1 Ch. 558. *Refd.* *Re* Denham (1883), 25 Ch. D. 752; *Re* Oxford Benefit Building & Investment Soc. (1886), 35 Ch. D. 502; *Verner v. General & Commercial Investment Trust*, [1894] 2 Ch. 239; *Lucas v. Fitzgerald* (1903), 20 T. L. R. 16. *Mentd.* *Re* Faure Electric Accumulator Co. (1888), 40 Ch. D. 141; *Re* Liverpool Household Stores Asscn. (1890), 59 L. J. Ch. 616; *Municipal Freehold Land Co. v. Pollington* (1890), 63 L. T. 238; *Re* Sharpe, *Re* Bennett, *Masonic & General Life Asscn. v. Sharpe*, [1892] 1 Ch. 154; *Re* Bassett, *Ex p. Lewis* (1895), 2 Mans. 177; *Re* Kingston Cotton Mill Co. (No. 2), [1896] 1 Ch. 331; *Re* National Bank of Wales, [1899] 2 Ch. 629; *Moxham v. Grant*, [1900] 1 Q. B. 88.

3949. What amounts to—Payments based on estimated profits—Estimate by secretary.]—The arts. of assocn. of a limited co. provided that no dividends should be payable except out of "realised profits," and that no remuneration should be paid to the directors until a dividend of 7 per cent. had been paid to the shareholders. The business of the co. consisted chiefly in lending money to builders, on mtges. payable by instalments, & the directors treated, as part of the profits available for dividends, the value for the time being, upon an estimate made by their surveyor, who was also their secretary, of the instalments of principal & interest remaining unpaid by each mtgor. Upon this footing the directors paid for several years out of the floating capital from time to time in their hands, dividends of 7½ per cent. & upwards; & remuneration to themselves. Upon a summons taken out in the winding up of the co. by a creditor:—*Held*: "realised profits" must be taken in its ordinary commercial sense, as meaning at least "profits tangible for the purpose of division," & the

directors having treated estimated profits as realised profits & having in fact paid dividends out of capital, on the chance that sufficient profits might be made, were jointly & severally liable, as upon a breach of trust, to repay, & must repay, the sums improperly paid as dividends, & also the remuneration they had respectively received, with interest in each case at 4 per cent.

—*Re* OXFORD BENEFIT BUILDING & INVESTMENT SOCIETY (1886), 35 Ch. D. 502; 55 L. T. 598; 35 W. R. 116; 3 T. L. R. 46; *sub nom.* *Re* OXFORD BUILDING SOCIETY, *Ex p. SMITH*, 56 L. J. Ch. 98.

Annotations:—*Foldd.* *Leeds Estate Bldg. & Investment Co. v. Shepherd* (1887), 36 Ch. D. 787. *Consd.* *Lee v. Neuchatel Asphalt Co.* (1889), 41 Ch. D. 1. *Refd.* *Cullerne v. London & Suburban General Permanent Bldg. Soc.* (1890), 25 Q. B. D. 485; *Re* Liverpool Household Stores Asscn. (1890), 59 L. J. Ch. 616; *Municipal Freehold Land Co. v. Pollington* (1890), 63 L. T. 238; *Re* London & General Bank (1894), 72 L. T. 227; *Re* Kingston Cotton Mill Co. (No. 2), [1896] 1 Ch. 331; *Re* National Bank of Wales, [1899] 2 Ch. 629.

3950. ——— Debt treated as profit earned—Debt not recovered.]—*Re* LONDON & GENERAL BANK, LTD., No. 4007, *post*.

Compare No. 8197, *post*.

— **Payment where profits should replace lost capital.]—***See* Sect. 10, sub-sect. 6, B., *ante*, & No. 4000, *post*.

3951. ——— Payment out of money borrowed for capital purposes.]—The arts. of assocn. of a co. provided that all dividends on shares should be paid only out of the clear profits of the co., & that all moneys borrowed by the co., & all moneys received under insurances of the co.'s property against destruction or damage by fire should be deemed capital. A building of the co. having been destroyed by fire, the co. resolved to increase the capital by £150,000, for the purpose of reconstructing the building, & to issue for this purpose 15,000 preference shares. These shares were issued, & during the reconstruction of the building, no profits having been earned by the co., the directors paid four dividends on the shares. The first dividend was paid out of moneys received from an insurance co. in respect of the loss occasioned by the fire. The other three dividends were paid by means of moneys borrowed expressly for the purpose, from the contractors of the co. & a financial co., both of whom had notice of the purpose for which the money was borrowed, & both of whom held a large number of the preference shares:—*Held*: (1) the directors were, under 1862 Act, s. 165, jointly & severally liable to pay to the liquidator the amount of the first dividend; (2) with respect to the other three dividends, the result of the transactions as a whole had been only to increase the amounts of the proofs against the co. by the amounts of the loans, & consequently the directors were liable, jointly & severally, to pay to the liquidator only such a sum as would enable him to pay on all the debts of the co. a dividend equal to that which would have been paid on all the debts, other than the loans, in case no proof had been made in respect of the loans; (3) the order must be made without prejudice to the right of the directors to be indemnified by any shareholders or creditors of the co., who were parties or privies to the payment of dividends out of capital.—*Re* ALEXANDRA PALACE CO. (1882), 21 Ch. D. 149; 46 L. T. 730; 30 W. R. 771; *sub nom.* *Re*

entitled to no credit in respect thereof.—*Re* NORTHERN CONSTRUCTIONS, LTD. (1910), 19 Man. L. R. 528.—OAN.

s. — **Payments before provision**

made for expenses properly laid to income.]—Payment of a dividend may be restrained if proper provision has not been made for expenses which

ought to be paid out of income.—CITY OF GLASGOW BANK (LIQUIDATORS) v. MACKINNON (1882), 9 R. (Ct. of Sess.) 535.—SCOT.

ALEXANDRA PALACE CO., LTD., GOODSON'S CASE, 51 L. J. Ch. 655.

Annotations:—As to (3) Refd. Moxham v. Grant (1899), 68 L. J. Q. B. 283. Generally, Refd. Guinness v. Land Corp. of Ireland (1882), 22 Ch. D. 349. Mentd. Re Sharpe, Re Bennett, Masonic, & General Life Assoc. v. Sharpe, [1892] 1 Ch. 154.

See, also, No. 3281, ante.

3952. — Exchange of debentures for shares—Bonus due at future date converted into present liability.]—In 1904 a co. raised £50,000 by 5,000 £10 income bonds, repayable in seven years with a bonus of £25 exclusively out of the net profits from time to time of the co. By the conditions the registered holders of these bonds might exchange them for first mtge. debentures, but this was not to affect the bonus; by another condition, the co. had the option at any time after Dec. 1906, of giving notice to pay off the bonds & six months afterwards the principal, if not converted, & the bonus were to become payable. In 1909 most of the bonds had been converted into debentures leaving only the £25 bonus payable; no profits had been earned but it was proposed to extinguish the £25 by the issue in exchange for the bonus of twenty fully-paid new shares of the nominal value of £1 each. An action having been brought to test the validity of this proposed issue of further capital:—*Held*: there was nothing in the bond which authorised the co. to turn a contingent liability on income into a present liability payable out of capital; the proposed arrangement with the bond-holders was equivalent to a payment of dividends out of capital & provided a means of issuing shares at a discount, for there was no consideration given to the co. for the issue of these new shares; & on these grounds the arrangement was *ultra vires* the co. & must be restrained.—*FAMATINA DEVELOPMENT CORPN., LTD. v. BURY*, [1910] A. C. 439; 79 L. J. Ch. 597; 102 L. T. 866; 26 T. L. R. 540; *sub nom. BURY v. FAMATINA DEVELOPMENT CORPN., LTD.*, 54 Sol. Jo. 616, II. L.; *affg. S. C. sub nom. BURY v. FAMATINA DEVELOPMENT CORPN., LTD.*, [1909] 1 Ch. 754, C. A.

— **Payment out of capital profits.]—***See Nos. 3926, 3941, ante.*

3953. Onus of proof.]—*Re COUNTY MARINE INSURANCE CO., RANCE'S CASE*, No. 3977, *post*.

3954. ——The balance-sheets on which the dividends were declared were prepared not by the directors, but by the manager. They were delusive, they over-estimated the assets of the co., & were framed with the object of showing a profit available for a dividend. The auditor never looked at the arts. of assocn. but accepted the statements of the manager, & certified from time to time that the accounts submitted to him were

true copies of those shown in the books of the co. No proper statement of income & expenditure or auditor's report was ever laid before the co. The directors did not know the true state of the co.'s affairs or that the balance-sheets were delusive. They never exercised any judgment with reference to the accounts, but relied entirely on the manager & auditor:—*Held*: the directors had fallen short of the standard of care which they ought to have applied to the affairs of the co.; & the *onus* was upon them to show that the dividends had been paid out of profits.—*LEEDS ESTATE, BUILDING & INVESTMENT CO. v. SHEPHERD* (1887), 36 Ch. D. 787; 57 L. J. Ch. 46; 57 L. T. 684; 3 T. L. R. 841; 36 W. R. 322.

Annotations:—Apprvd. Dovey v. Cory, [1901] A. C. 477. Refd. Lee v. Neu Chatel Asphalt Co. (1889), 41 Ch. D. 1; Re Sharpe, Re Bennett, Masonic & General Life Assoc. v. Sharpe (1891), 65 L. T. 76; Re London & General Bank (No. 2), [1895] 2 Ch. 673; Re Kingston Cotton Mill Co. (No. 2), [1896] 1 Ch. 331; Re National Bank of Wales, [1899] 2 Ch. 629. Mentd. Municipal Freehold Land Co. v. Pollington (1890), 59 L. J. Ch. 734; Re Republic of Bolivia Exploration Syndicate, [1914] 1 Ch. 139.

Liability of directors.]—*See Sect. 28, sub-sect. 6, E. (f), ante.*

E. Right to Dividends.

(a) In General.

3955. Equal dividends—Reduction by agreement.]—*ASHTON VALE IRON CO. v. ABBOT*, [1876] W. N. 119.

— **Class rights.]—***See Sub-sect. 7, I., post.*

3956. Where dividend declared—Shareholder entitled.]—*FAWCETT v. LAURIE*, No. 3981, *post*.

Compare Part IX., Sect. 11, sub-sect. 5, post.

3957. Where dividend not declared—Dividend sold in advance—Dividend declared larger than that expected.]—*Deft. instructed plffs., stock-brokers, to sell the prospective dividends on certain stock, which they accordingly sold to H. & Co., jobbers, calculating the dividend at a certain rate per cent. The dividend, when declared, amounted to a higher rate per cent. than that which plffs. had calculated, &, according to usage of the Stock Exchange, they therefore paid H. & Co. the difference:—Held*: plffs. were entitled to recover this difference from *deft.*—*MARTEN v. GIBBON* (1875), 33 L. T. 561; 21 W. R. 87, C. A.

3958. — Preference shares—When court will interfere to compel declaration.]—*BOND v. BARROW HAEMATITE STEEL CO.*, No. 3934, *ante*.

3959. — Ordinary shares entitled to cumulative dividend—Amount sufficient to pay dividend carried forward.]—By art. 6 of the memorandum of assocn. of a limited co. incorporated in 1912 it was provided that the profits of the co. in each

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3958 i. Where dividend not declared—Preference shares—When court will interfere to compel declaration.]—An action at law may be maintained against a railway co. by the holder of preference shares for not appropriating to the shares of such holder a due proportion of the funds applied by the co. in payment of dividend on other shares of the same order of priority with those of pltf.—*CORY v. BELFAST & COUNTY DOWN RY. CO.* (1866), 1 R. 2 C. L. 112.—*IR.*

t. Recovery of dividends—Payment made by warrant—Warrant lost in post.]—Pltf., a shareholder in *deft. co.*, claimed payment of the amount of a dividend which had been forwarded through the post in the form of a cheque, called a dividend warrant, in

favour of pltf. or his order. Pltf. had changed his address, of which change he had given the postal authorities, but not the co., notice. There was no evidence that the warrant was ever delivered at either the new or old address. It fell into the hands of some unknown person who forged pltf.'s signature & obtained payment at the bank. The co.'s constitution made no provision as to how dividends were to be paid, but in forwarding the dividend warrant through the post the co. was following its usual procedure. Pltf. had received two previous dividends in the same way:—*Held*: pltf. had not requested or consented to his dividends being forwarded through the post in the form of a dividend warrant; the dividend had not been paid to him, & he was entitled to recover.—*ACRAMAN v. SOUTH AUSTRALIAN GAS CO.*, [1910]

S. A. L. R. 59.—*AUS.*

a. — After company's assignment in insolvency.]—Where a co. has assigned for the benefit of its creditors, a former shareholder is entitled to recover from assignee that portion of the dividend on the shares formerly held by him which had been retained by the co.—*SAVAGE v. SHAW* (1912), 17 B. C. R. 343.—*CAN.*

b. — After resolution of forfeiture—Decease of shareholder not officially notified—Though well known to company's officers.]—A limited co. by its arts. of assocn. provided that "notice of each dividend that shall be declared shall be given to each member in manner hereinafter mentioned, & all dividends unclaimed for three years after having been declared may by a resolution of the directors be forfeited for the benefit of the co."

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year should be applicable in the payment of a fixed cumulative preferential dividend of 7 per cent. on the preference shares; then in the payment of a cumulative dividend at a rate not exceeding 2s. per share on the ordinary & "B" shares ratably, after which the surplus, if any, should be carried to a reserve fund until it amounted to £25,000; & lastly, subject as aforesaid, & to the provisions of art. 126, that the ordinary shares should confer on the holders the right to one moiety, & the "B" shares should confer on the holders the right to the other moiety of the profits or other moneys of the co. available for dividend which the co. should determine to distribute. Art. 126 provided that the directors should set aside out of the profits of the co. such sum as was provided for by sub-sect. 3 of art. 6 of the memorandum, & might before recommending any further dividend under sub-sect. 4, set aside out of the profits a further reserve fund. The preference & ordinary shares were of £1 each, & "B" shares of 1s. each. For the financial year ending Nov. 30, 1912, the co. paid a dividend of 7 per cent. only on the ordinary shares, & a dividend of 6 per cent. for 1913. In 1914 no dividend was paid on any of the shares. In 1915 there was a credit balance to profit & loss account sufficient to pay the full cumulative dividend on the preference & ordinary shares, but no dividend was paid on the ordinary shares, & £6,662 3s. 11d. was carried over. In 1916 there was a credit balance of £17,066 19s. 4d. to profit & loss account & the directors recommended the payment of the cumulative preferential dividend, & after writing down the value of certain of the assets, placed £5,000 to reserve account & carried forward £9,580 6s. 10d. No dividend was paid on the ordinary shares. The recommendations of the directors were in each year indorsed by resolutions of the co. in general meeting. Subsequently to the issue of the writ deft. co., by special resolution, appropriated out of the profits for 1916 a

sum of 4d. per share on the ordinary & "B" shares for each of the years 1914, 1915, & 1916. In an action by pltf. as a holder of ordinary shares for a declaration against the co. as to his rights in the profits for the years 1915 & 1916:—*Held*: (1) the "profits" consisted of the credit balance in the profit & loss account of each year; (2) the case was similar to *Paterson v. R. Paterson & Sons*, No. 3686, *ante*, to determine the rights of shareholders *inter se*, & not strictly an action to recover payment of a dividend; & (3) pltf. was entitled to a declaration that, according to the true construction of the memorandum & arts., deft. co. was bound to apply the whole of the profits for the years 1915 & 1916, after providing for the preference dividend, in payment of the cumulative dividends at the rate of 2s. a share on the ordinary & "B" shares from the incorporation of the co. down to Nov. 30, 1916, & an account on the footing of such declaration.—*EVLING v. ISRAEL & OPPENHEIMER*, [1918] 1 Ch. 101; 87 L. J. Ch. 341; 118 L. T. 99; 34 T. L. R. 109.

As between tenant for life & remainderman—Bonus dividends.]—See SETTLEMENTS.

As between specific & residuary legatee.]—See EXECUTORS & ADMINISTRATORS; WILLS.

As between vendor & purchaser of shares.]—See No. 2224, *ante*.

3960. Recovery of dividends—Who may sue—Equitable mortgagee.]—(1) Although a clause in a co.'s deed of settlement provides that the co. shall not be affected by notice of any trust, & that the receipt of the person standing in its books as the shareholder shall, notwithstanding such notice, be a good discharge, it does not preclude a *cestui que trust* from requesting the co. to pay money due in respect of those shares to himself, or from suing the co. in respect of misappropriation of profits to which the owner of those shares would be entitled.

(2) Net profits, properly so called, are to be ascertained by putting a value on all the assets of the co., of whatever nature & deducting therefrom all liabilities, including among such liabilities

Notice was to be served either personally or by post "addressed to such member at his registered or last known place of abode." In 1892 K. & M. were registered as joint owners of 115 shares in the co. K. died in 1899, & though the fact of his death was never officially notified to the co., it was in fact well known to its officials. Notices of meetings of the co. at which dividends would be declared continued to be sent out to K., whose name appeared first on the register, & were returned marked "gone away," & in one instance, "deceased."

M. died in 1908, & on a claim for past dividends being made by his extrix., the co. relied on resolutions forfeiting the unclaimed dividends for the years 1908–1913:—*Held*: a resolution forfeiting an unclaimed dividend must be *strictissimi juris*, & the provisions of the arts. of assocn. regarding the service of notices on the shareholders must not be used dishonestly or unfairly, & if the officers of the co. have actual knowledge that one of two joint shareholders is dead the co. cannot rely on a formal notice addressed to deceased shareholder for the purpose of basing upon it a resolution forfeiting an unclaimed dividend.—*WARD v. DUBLIN NORTH CITY MILLING CO.*, [1919] 1 I. R. 5.—**IR.**

c. Jurisdiction of court—Unclaimed dividends in hands of liquidator.]—The ct. has jurisdiction to order payment into ct. of unclaimed dividends in the hands of a liquidator in the course of voluntary winding up of a

co.—*Re MOUNT DUNDAS & ZEEHAN RY. CO.* (1900), 26 V. L. R. 197.—**AUS.**

d. Shares allotted on terms of extra dividend—Whether extra dividend still payable on death of allottee.]—Where shares in a co. had been allotted on terms that the allottee or his exors. should receive an extra dividend thereon so long as they should hold them:—*Held*: the extra dividend continued to be payable after the death of the allottee, the shares still standing in his name; the co. had no equity to have the estate distributed or the shares appropriated to the parties beneficially entitled, so as to get rid of the condition on which the extra dividend was payable.—*BOMBAY BURMAH TRADING CORPN., LTD. v. SMITH* (1894), L. R. 21 Ind. App. 139.—**IND.**

e. Arrears on preference shares—Accumulating with consent of holders—Right to recovery.]—Preference shareholders of a railway co. upon whose shares an arrear of dividends had accrued due, permitted, for several years, the profits of the co. to be appropriated to the payment of dividends upon other preference shares *pursue to theirs*:—*Held*: in the special circumstances of the case, the preference shareholders had not lost their right to the arrear, either by their acquiescence or laches.—*SMITH v. CORK & Bandon RY. CO.* (1870), L. R. 5 Eq. 65.—**IR.**

f. Unclaimed dividends—Statute of Limitations inoperative.]—Dividends on ordinary shares in a co. had been declared & became payable more than

six & less than twenty years before the claims for them were made by the shareholders:—*Held*: arrears of dividends on ordinary shares were, under the arts. of assocn., recoverable after the lapse of six years.—*Re DROGHEDA S.S. CO.*, [1903] 1 I. R. 512.—**IR.**

g. Holders of partly-paid shares.]—The capital of a co., incorporated under 1862 & 1867 Acts, consisted of 60,000 shares of £1; 40,000 were fully paid-up & 20,000 to the extent only of 5s. per share. In a question whether the directors could competently recommend a dividend payable to each shareholder in proportion to the amount paid up upon the shares held by him:—*Held*: such a declaration of dividend was incompetent, because upon the true construction of the arts. of assocn., read with 1862 & 1867 Acts, all the shares were entitled to participate equally in dividend, without regard to the amount paid up upon each.—*OAKBANK OIL CO., LTD. v. CRUM* (1882), 8 App. Cas. 65; 10 R. (Ct. of Sess.) 11; 20 Sc. L. R. 244.—**SCOT.**

h. Cancellation of arrears—Mutual arrangement—By consent of court.]—Where a memorandum & arts. of assocn. of a co. contained power to cancel arrears of dividends on cumulative preference shares, the ct., under 1908 Act, s. 120, sanctioned a scheme of arrangement between the co. & its shareholders, whereby such arrears were cancelled.—*BALMENACH-GLENLIVET DISTILLERY*, [1916] S. C. 639.—**SCOT.**

k. Holders of deferred railway stock

the amount of the contributed capital, the surplus then remaining being net profits.—*BINNEY v. INCE HALL COAL & CANNEL CO.* (1866), 35 L. J. Ch. 363; 14 L. T. 392.

Annotation:—As to (1) *Refd.* New London & Brazilian Bank v. Brocklebank (1882), 21 Ch. D. 302.

3961. — Loss of right — By delay.—In 1819, a person entitled to a share in a coal mining co. became bkpt. Dividends were declared in 1831, 1838, & subsequently. The bkpt.'s shares were carried over to a separate account in the co.'s books down to 1850, but no claim was made by the assignees until that year:—*Held*: the right of the assignees to these dividends still subsisted, but they were not entitled to any profits made by their retainer.—*PENNY v. PICKWICK* (1852), 16 Beav. 246; 51 E. R. 773.

Annotation:—*Refd.* Re Severn & Wye & Severn Bridge Ry., [1896] 1 Ch. 559.

3962. — Period of limitation—How calculated.—The holder of shares, the certificate of which is under the seal of the co. & refers, as is usual, to the memorandum & arts. of the co., is not barred by Stat. Limitations until the expiration of twenty years, (1) in respect of dividends declared on the shares, from the date of declaration, & (2) in respect of capital to be returned on the shares, from the date of notice of the order of the ct. confirming the reduction.—*Re ARTISANS' LAND & MORTGAGE CORPN.*, [1901] 1 Ch. 796; 73 L. J. Ch. 581; 52 W. R. 330; 48 Sol. Jo. 222; 12 Mans. 98.

Compare Part IX., Sect. 11, sub-sect. 5, *post*.

(b) Apportionment.

3963. Under Apportionment Act, 1870 (c. 35)—Application of Act—Public company.—(1) The word "dividends" in the above Act, includes payments by way of bonus or surplus profits to the shareholders of a public co., even though such payments may be only occasional & not strictly periodical; as for instance where payments are made under the deed of settlement of a life assurance society, providing for distribution of a bonus or surplus profits among its shareholders once in every five years "unless a special meeting of shareholders shall otherwise direct."

(2) A life assurance society was unincorporated but was established, in 1843, by a deed of settlement with a board of directors, £100,000 capital & a list of shareholders, & was possessed of certain powers & concessions under a special Act of Parliament:—*Held*: it was a public co. within sect. 5

—*Participating ratably in event, with holders of ordinary stock.*—A railway co., exercising powers under their Act of 1876, created deferred & ordinary stock, the former to be entitled to participate ratably with the latter in any dividend in excess of 5 per cent paid on the latter. Up to 1913 dividends were declared half-yearly at half-yearly general meetings, & from half-yearly balance sheets, & deferred stock participated in each half-yearly dividend which exceeded the rate of 5 per cent *per annum*; but thereafter, under Railway Companies (Accounts & Returns) Act, 1911, balance sheets were prepared & general meetings held yearly. For the first half of 1914 the co. paid an interim dividend at the rate of 3 per cent *per annum* on the ordinary stock, & for the second half year declared a dividend thereon of 4½ per cent for the year, & accordingly paid the ordinary stockholders for the second half of 1914 a dividend at the rate of 6 per cent *per annum*. A deferred shareholder claimed a right to participate:—*Held*: he had no

such right in respect that he had no right to a half-yearly declaration of dividend on ordinary stock, & that the two payments in 1914 together formed one dividend of 4½ per cent.—*THOMSON v. GLASGOW & SOUTH WESTERN RY. CO.*, [1917] S. C. 125.—*SCOT*.

PART III. SECT. 30, SUB-SECT. 7.—E. (b).

1. Shares purchased at a premium.—Pltf. purchased fifty shares of stock in deft. co. of the nominal value of \$100 each, issued at a premium of \$20 per share, paying on application \$1,500, being a deposit of \$30 per share. The co. acknowledged receipt, stating the amount received to be a deposit of \$30 per share on an application for fifty shares of \$100 each at 20 per cent premium, but in its books it credited \$1,000 to the premium account & \$500 to the capital account, so that of the first payment of \$30 per share \$20 went to the premium & \$10 to the share itself. Dividends were paid on the paid-up portion of the capital:—*Held*: the payment should

of the above Act & a bonus or surplus profits accruing on shares in the co. specifically bequeathed by a will dated in 1875 were apportionable under that Act.—*Re GRIFFITH, CARR v. GRIFFITH* (1879), 12 Ch. D. 655; 41 L. T. 540; 28 W. R. 28.

Annotations:—As to (1) *Distd.* *Re Jowitt, Jowitt v. Keeling*, [1922] 2 Ch. 442. As to (2) *Distd.* *Re Sale, Nisbet v. Philp*, [1913] 2 Ch. 697. *Mentd.* *Re Sharp, Rickett v. Sharp* (1890), 62 L. T. 364.

3964. — — — — ——(1) Every co. registered under 1862 Act, is a public co. within Apportionment Act, 1870 (c. 35).

(2) A bequest of shares in a limited co., coupled with a declaration that the shares so bequeathed shall carry the dividend accruing thereon at testator's death, operates as an exclusion of the latter Act.

Testator bequeathed certain shares in a limited co. to trustees upon trust to sell, with a power of postponement, & stand possessed of the proceeds, & the shares remaining unsold, upon trust to receive the annual produce thereof, & hold the same in trust for testator's children, & declared that every share bequeathed by his will should carry the dividend accruing thereon at his death. The dividends were payable annually:—*Held*: the trustees took the whole of the dividend for the year in which testator died, without apportionment, & such dividend was payable as income to the tenants for life under the will.—*Re LYSAGHT, LYSAGHT v. LYSAGHT*, [1898] 1 Ch. 115; 67 L. J. Ch. 65; 77 L. T. 637, C. A.

Annotations:—As to (1) *Refd.* *Re White, Theobald v. White*, [1913] 1 Ch. 231. As to (2) *Distd.* *Re Edwards, Newbery v. Edwards*, [1918] 1 Ch. 142.

3965. — Dividends—What are.—*Re GRIFFITH, CARR v. GRIFFITH*, No. 3963, *ante*.

3966. — Interim dividends.—A payment by a co. to its shareholders out of revenue, in order to be apportionable under the Apportionment Act, 1870 (c. 35), need not be one which is usually made or declared at recurring intervals, but must be one which is made or declared in respect of a definite period.

A co., which had previously declared an interim dividend of 5 per cent. for the first half of its current financial year, subsequently during the same year passed a resolution that certain policy moneys then received should be distributed by way of "further interim dividend" & be paid in accordance with its arts. of assocn., *pro ratâ*, to the holders for the time being of specified shares in the co., & later declared a final dividend of

have been credited rateably on the premium & on the shares, & not first applied in payment of the premium.—*KINSTON v. STIRLING & PITCAIRN, LTD.*, [1921] 1 W. W. R. 162.—*CAN*.

m. Where no direction in articles of association.—In the absence of any direction in the arts. of assocn. upon the matter, dividends fall to be apportioned according to the amount of paid-up capital of each shareholder.—*HOGGAN v. THARSIS SULPHUR & COPPER CO., LTD.* (1882), 9 R. (Ct. of Sess.) 507, 1191, 1212; 19 Sc. L. R. 875.—*SCOT*.

n. As between preference & ordinary shareholders—Profits devoted to debt reduction.—The shares of a limited co. were divided into A. preference & B. ordinary shares, the former to rank prior to the latter on the profits of each year for a dividend at the rate of 10 per cent on the amount paid up & the latter to rank on the balance of the profits of each year remaining after payment of the preferential dividend also for a 10 per cent dividend. Any surplus was to

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5 per cent., which was stated to make up with the interim dividend of 5 per cent. previously declared, 10 per cent. for the whole year:—*Held*: the resolution for the distribution of the policy moneys, although expressed to be by way of further interim dividend, did not operate as a declaration that the payment of those moneys was made in respect of the then current financial year, & in the absence of such declaration & having regard to the nature & origin of that payment & the special rights conferred by the arts. of the co., the moneys so distributed were not apportionable by virtue of the Apportionment Act, 1870 (c. 35).—*Re JOWITT, JOWITT v. KEELING*, [1922] 2 Ch. 442; 91 L. J. Ch. 449; 127 L. T. 466; 38 T. L. R. 688; 66 Sol. Jo. 577.

— **Arrears of cumulative preference dividend.**—*See* No. 3994, *post*.

3967. — Exclusion of Act—By articles.—Testator bequeathed shares in a co. upon trust to pay the income to his wife. After his death the co. declared a dividend for a period prior to his death. Art. 90 of its arts. of assocn. provided that “every dividend whether arising from past or current profits shall for all purposes be deemed to accrue & fall due upon the day on which it is declared & not before”:—*Held*: this did not constitute such an express stipulation against apportionment of the dividends as would satisfy sect. 7 of the above Act, & the Act took effect.

Qu.: whether apportionment of dividends can be negated by anything in the arts. of the co. declaring the dividends.—*Re OPPENHEIMER, OPPENHEIMER v. BOATMAN*, [1907] 1 Ch. 399; 76 L. J. Ch. 287; 96 L. T. 631; 14 Mans. 139. *Annotation*:—*Refd. Re Muirhead, Muirhead v. Hill*, [1916] 2 Ch. 181.

3968. — By express stipulation.—*Re LYSAGHT, LYSAGHT v. LYSAGHT*, No. 3964, *ante*.

3969. ——*Re OPPENHEIMER, OPPENHEIMER v. BOATMAN*, No. 3967, *ante*.

See, generally, EXECUTORS & ADMINISTRATORS; SETTLEMENTS; WILLS.

— **As between capital & income.—Specific & residuary legatee.**—*See* EXECUTORS & ADMINISTRATORS; WILLS.

— **Tenant for life & remainderman.**—*See* SETTLEMENTS.

F. How Calculated.

3970. Whether payable on number of shares or amount paid up—Regulations of company.—An unincorporated banking co. by its deed of settlement was authorised to increase its capital from £500,000 to a sum not exceeding £1,000,000, by

belong to both classes of shares without any priority between them. It was also provided that “no deficiency in dividend in any year shall be made good out of the profits of future years.” For several years there was a loss on the reversion account resulting in a debit balance at Apr. 30, 1889, of £7,867. During the year ending Apr. 30, 1890, net profits of £6,909 were earned, which same was applied in reducing the debt previously incurred, & no dividends were declared. During the year ending Apr. 30, 1891, net profits were earned sufficient to wipe out the remaining debt & leave a surplus for division after paying 10 per cent dividend to the A. shareholders as for that year. In a special case between A. & B. shareholders the former contended that they were entitled to have this surplus applied in payment to them of 10 per cent

for the year ending Apr. 30, 1890, in respect of the net profits earned during that year:—*Held*: the A. shareholders were not entitled to a dividend for the year ending Apr. 30, 1890, the profits of that year having been properly applied in reducing debt.—*NIDDRIE & BENHAR COAL CO., LTD. v. HURLL* (1891), 18 R. (Ct. of Sess.) 805; 28 Sc. L. R. 534.—**SCOT.**

PART III. SECT. 30, SUB-SECT. 7.—F.

a. Whether payable on number of shares or amount paid up—Shareholders’ advance payments—On partly-paid shares.—The nominal capital of a joint-stock co. incorporated under 1862 Act was £1,236,660 divided into 123,660 shares of £10. On 31,100 of these only £7 had been called up; on the remainder of those issued the whole £10 had been paid. The arts. made no

the issue of new shares. Shares of £25 each (No. 1) were issued, & the capital was increased by the issue of £25 shares (No. 2); the amount of which shares respectively was immediately paid up in full. The capital was again increased by the issue of £25 shares (No. 3) which were distributed among the holders of shares Nos. 1 & 2, upon which only £2 10s. had been paid. The directors refused to make any further call, although by the co.’s deed it was provided that, with the consent of the directors, any proprietor might pay in advance any part of the money which should remain unpaid in respect of his shares, & which should not have been called for under the provisions, etc. The directors were to declare dividends, & to apply them either as a bonus to be added to the respective shares, or as interest or dividend upon such shares or upon the amount paid up in respect of such shares, or as part bonus & part interest, or dividend, or otherwise, as they might deem most expedient; & to divide such dividend or bonus into as many equal parts as there should be shares then held in the capital of the co. The directors had for ten years past divided the profits among the shareholders, according to the amount of capital paid up, & not according to the number of shares held in the co. A motion by a shareholder (No. 3) to restrain the directors from so dividing the dividends, was refused.—*WILKINSON v. CUMMINS* (1853), 11 Hare, 337; 20 L. T. O. S. 265; 68 E. R. 1305, L. C. & L. JJ.

3971. ——*By the arts. of assocn. of a joint-stock co. the directors were empowered to “declare a dividend to be paid to the members in proportion to their shares,” following the words of Table A of 1862 Act:—Held*: in the absence of any special resolution in accordance with 1867 Act, s. 24 (3), the directors had no power to pay a dividend in proportion to the amount paid up on each share, not all the shares being fully paid up.—*OAKBANK OIL CO. v. CRUM* (1882), 8 App. Cas. 65; 48 L. T. 537, H. L.

Annotations:—*Refd. Sheppard v. Seinde, Punjab, & Delhi Ry. & Abbott* (1887), 56 L. J. Ch. 558; *Birch v. Cropper, Re Bridgewater Navigation Co.* (1889), 14 App. Cas. 525; *Wood v. Odessa Waterworks Co.* (1889), 42 Ch. D. 636; *Re Driffield Gas Light Co.* (1898), 1 Ch. 451.

3972. Whether payable in respect of length of time share issued—Dividend for six months—Shares issued less than six months.—*EVANS v. MITCHELLS & BULLER, LTD.* (1901), 45 Sol. Jo. 239.

Deductions from profits—Before declaring dividend—Reserve fund.—*See* Nos. 4020, 4021, *post*.

— **Depreciation.**—*See* No. 4017, *post*.

Maximum dividend fixed by constitution of company—Dividend paid free of tax.—*Compare* No. 8225, *post*.

provision for the payment of dividends other than this, that “the directors may from time to time declare & divide an interim dividend out of the profits of the co. & pay the same to the members in proportion to the capital held by each.” The directors were further empowered to receive advances from any members of any sums due upon the shares held by him beyond what was actually called up, & to pay interest “in lieu of dividends thereon.” Capital was not defined in the arts.:—*Held*: in the absence of any direction in the arts. upon the matter, the dividends fell to be apportioned according to the amount of the paid-up capital of each shareholder.—*HOGGAN v. THARSIS SULPHUR & COPPER CO., LTD.* (1882), 9 R. (Ct. of Sess.) 1191.—**SCOT.**

p. Prepaid shares.—*LESLIE v.*

G. Payment of Dividends.

(a) In Shares or Debentures.

3973. Profits applied to capital—Issue of debentures in lieu of dividend—Construction of articles.]

—A co. constituted under 1862 Act, having applied the profits which had been earned to the construction of productive works instead of paying a dividend to the shareholders, passed a resolution proposing to give to the shareholders debenture bonds bearing interest, & redeemable at par, by an annual drawing, extending over thirty years. The arts. of assocn. empowered the directors, with the sanction of the co. to declare a dividend "to be paid" to the shareholders:—*Held*: what was proposed to be done by the passing of the resolution was, upon the true construction of the arts. not in accordance with them, & there must be an injunction to restrain the directors from acting on the resolution.—**WOOD v. ODESSA WATERWORKS Co.** (1889), 42 Ch. D. 636; 58 L. J. Ch. 628; 37 W. R. 733; 5 T. L. R. 596; 1 Meg. 265.

Annotations:—**Mentd.** *Salmon v. Quin & Axtens*, [1909] 1 Ch. 311; *Hickman v. Kent or Romney Marsh Sheep-Breeders' Assocn.*, [1915] 1 Ch. 881.

— **Issue amounting to issue of shares at a discount.]—Compare No. 8206, post.**

Dividend paid out of year's profits—Whether capital or income.]—See SETTLEMENTS.

(b) Payment Free of Tax.

Super-tax on—How calculated.]—See INCOME TAX.

Maximum dividend fixed by constitution of company.]—Compare No. 8225, post.

(c) Interference by Court.

3974. Who may apply to restrain dividend—Debenture-holder—Charge not enforceable.]—Pltf. was the holder of debenture-stock in a railway co. incorporated in 1855, whose capital was represented by ordinary shares, loan capital, & debenture-stock. The railway had been worked by an iron & steel co. who paid the railway co. a rental sufficient to pay the interest on its loan & share capital & the dividends on the debenture-stock. From the year 1898 no traffic had been carried on the railway, & in 1917 the rails had been taken up & sold. The co. had been paid the rent, the last half-yearly payment of which would expire in Sept. 1919, & it had paid the dividends & interest on the debenture-stock & loan & share capital. Pltf., on behalf of himself & the other debenture-holders, brought an action claiming that deft. co. ought to treat the sums received as capital & might be restrained from treating the sums payable by the iron & steel co. as profits available for paying dividends:—*Held*: (1) assuming there would be a deficiency of assets in 1919 to provide for the co.'s loan capital, the co. could go on distributing the annual surplus of the rent or price paid by the iron & steel co. remaining after paying the interest on the loan capital & expenses as dividends on the share capital; (2) the action by a debenture-stock holder with no enforceable charge, & whose annuity was not in arrear, was, for want of his direct interest in the administration of the co., not competent.—**LAWRENCE v. WEST SOMERSET MINERAL RY.**, [1918] 2 Ch. 250; 87 L. J. Ch. 513; 119 L. T. 509; 62 Sol. Jo. 652; [1918-19] B. & C. R. 91.

Annotation:—*As to* (2) *Refd.* *Cross v. Imperial Continental Gas Assocn.*, [1923] 2 Ch. 553.

3975. When court will interfere—To stop dividend—Not justified by pecuniary position of company.]—GREGORY v. PATCHETT, No. 4102, *post*.

3976. ——— Illegal apportionment among shareholders.]—GREGORY v. PATCHETT, No. 4102, *post*.

3977. ——— Founded on erroneous estimate.]—(1) The ct. has summary power in a voluntary winding up, on the application of the liquidator, to make an order under 1862 Act, ss. 138, 165, calling upon a director to repay a dividend or bonus declared & paid to him under a delusive balance-sheet.

In such a case where a bonus was declared & credited to a director against arrears of calls then due from him:—*Held*: it was a payment within the above sects.

(2) Where directors, after proper investigation of the financial position of the co., declare, & the shareholders agree to, a dividend or bonus, the ct. will not lightly interfere with the payment of such dividend or bonus, on the ground that the estimates on which it was founded have turned out to be erroneous. But where the directors declare a dividend or bonus without proper investigation or professional assistance, & it is afterwards called in question, the burden lies on them to show that it was fairly paid out of profits; & if they are unable to do so, the ct. will order them to refund what they have received.

The directors of a co. declared a bonus of 10s. per share, which was agreed to at a general meeting & paid. The directors prepared no profit & loss account, but only an account of the receipts & payments of the co., which made no allowance for the risks to which the co. was liable. The co. having resolved to wind up voluntarily:—*Held*: an order ought to be made on a director to repay the bonus paid to him.—**Re COUNTY MARINE INSURANCE Co., RANCE'S CASE** (1870), 6 Ch. App. 104; 40 L. J. Ch. 277; 23 L. T. 828; 19 W. R. 291, L. J.J.

Annotations:—*As to* (2) *Consd.* *Municipal Freehold Land Co. v. Pollington* (1890), 63 L. T. 238. *As to* (2) *Refd.* *Re National Funds Assocn.* (1878), 10 Ch. D. 118; *Guinness v. Land Corp'n. of Ireland* (1882), 22 Ch. D. 319; *Leeds Estate, Bldg. & Investment Co. v. Shepherd* (1887), 36 Ch. D. 787; *Leo v. Neuchatel Asphalte Co.* (1889), 41 Ch. D. 1; *Re Sharpe, Re Bennett, Masonic & General Life Assocn. v. Sharpe*, [1892] 1 Ch. 154; *Re Kingston Cotton Mill Co. (No. 2)*, [1896] 1 Ch. 331; *Dovey v. Cory*, [1901] A. C. 477; *Clark v. Sun Insee. Office* (1911), 104 L. T. 520. *Generally, Mentd.* *Re Denham* (1883), 25 Ch. D. 752; *Ammonia Soda Co. v. Chamberlain*, [1918] 1 Ch. 266.

3978. ——— Before capital depreciation made good.]—DAVISON v. GILLIES (1879), 16 Ch. D. 347, n.; 50 L. J. Ch. 192, n.; 44 L. T. 92, n.

Annotations:—*Refd.* *Dent v. London Tram. Co.* (1880), 50 L. J. Ch. 190; *Lambert v. Neuchatel Asphalte Co.* (1882), 51 L. J. Ch. 882; *Lee v. Neuchatel Asphalte Co.* (1889), 41 Ch. D. 1; *Verner v. General & Commercial Investment Trust*, [1894] 2 Ch. 239.

3979. ——— Insufficient reserve fund—Net profits determinable by company in general meeting.]—The arts. of a co. provided that the net profits should be applied to pay a dividend of 7 per cent. on its preferred shares, & subject thereto

CANADIAN BIRKBECK CO. (1913), 24 O. W. R. 407; 4 O. W. N. 1102; 10 D. L. R. 629; 15 D. L. R. 78.—CAN.

PART III. SECT. 30, SUB-SECT. 7.—*G. (a).*

a. Allotment of unissued capital stock—Ultra vires.]—A resolution of a

railway co. authorising the directors, in lieu of cash payments, to pay dividends by allotments of capital stock, then unissued, in the hands of the co.:—*Held*: to be *ultra vires*.—**BEAUMONT, ETC. v. GREAT NORTH OF SCOTLAND RY. Co.** (1868), 6 Macph. (Ct. of Sess.) 1027; 40 So. Jur. 580.—SCOT.

PART III. SECT. 30, SUB-SECT. 7.—*G. (c).*

c. Whether court will interfere—Profit-making company declaring no dividends.]—The fact that no dividend is declared by a profit-making co. is insufficient to warrant an order for an inspection under R. S. C. c. 79, s. 92.—

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a like dividend on its ordinary shares, & that the surplus of net profits should be divided ratably amongst all the shareholders. No distribution of profits was to be made without the consent of a general meeting; &, in case of any dispute as to the amount of net profits, the decision of the co. in general meeting was to be final. The directors were empowered, before recommending any dividend, to set aside, out of the net profits, a reserve fund for contingencies, or for equalising dividends, or for maintaining the works connected with the co. but it was provided that they should not be bound to do so. The co. worked under a concession granted for a term of years & subsequently prolonged. Pltf. claimed that for the purpose of ascertaining the net profits applicable for dividends, the directors "ought" in the first instance to set apart & capitalise, out of the gross profits of the co., a sufficient sum to replace, by means of a reserve or sinking fund, the capital expended in the purchase of the concession & any other wasting property of the co.:—*Held*: the ct. had no authority to interfere, as the rights of the preference & ordinary shareholders were clearly defined by the arts. by which a power was given to a general meeting to determine the distribution & amount of the "net profits," & the question of reserve was one left to the directors.—*LAMBERT v. NEUCHATEL ASPHALTE CO., LTD.* (1882), 51 L. J. Ch. 882; 47 L. T. 73; 30 W. R. 913.

Annotation:—Refd. Lee v. Neuchatel Asphalte Co. (1886), 3 T. L. R. 103.

3980. — Out of paper profits—Exercise of direction by directors.]—*LEVER v. LAND SECURITIES CO., LTD.* (1891), 8 T. L. R. 94.

Compare No. 8203, post.

3981. — When dividend declared—Application by single shareholder.]—(1) Where a bill was filed by a single shareholder against the directors of a banking co. & the co., for an injunction to restrain the directors from paying a dividend already declared, & from declaring or paying any future dividends, except out of the profits of the bank, but the other shareholders were not before the ct., the ct. granted an injunction as to future dividends, but refused to restrain the payment of the dividend which had been declared, on the ground that the declaration of the dividend gave the shareholders a legal right to the payment of that dividend, & that the ct. would not, in the absence of the shareholders, interfere with that right.

(2) Pltf., in order to enable him to file a bill on behalf of himself & other persons, must have a common interest with such persons.—*FAWCETT v. LAURIE* (1860), 1 Drew. & Sm. 192; 3 L. T. 50; 7 Jur. N. S. 61; 8 W. R. 699; 62 E. R. 352.

Annotation:—As to (1) Refd. Hoole v. G. W. Ry. (1867), 16 W. R. 118.

Re SARNIA RANCHING CO. (1915), 8 W. W. R. 697.—**CAN.**

s. — Where procedure of directors intra vires.]—Where the course of procedure of directors of a co. was *intra vires*, & no fraud or bad faith on the part of the directors or shareholders was alleged:—*Held*: the ct. could not interfere with the internal management of the co.—*COWLINSHAW v. CHRISTCHURCH PRESS CO.* (No. 1) (1907), 26 N. Z. L. R. 1038.—**N.Z.**

PART III. SECT. 30, SUB-SECT. 7.—H.

t. Distribution from reserve fund—& concurrent issue of new shares—

3982. — Future dividends.] — FAWCETT v. LAURIE, No. 3981, ante.

Distribution of profits.]—*See, generally, Sub-sect. 8, B., post.*

(d) Deduction of Income Tax.

See INCOME TAX.

H. Bonus Dividends.

3983. What is a bonus.]—A bonus is properly a sum arising from the division of some accumulated fund, which has been set apart from the profits of the preceding years.—*HOLLIS v. ALLAN* (1866), 12 Jur. N. S. 638; 14 W. R. 980.

Annotation:—Refd. Re Bouch, Sproule v. Bouch (1885), 29 Ch. D. 635.

Distribution of bonus—Whether capital or income—As between tenant for life or remainderman.]—*See SETTLEMENTS.*

Right to—As between specific legatee & testator's estate.]—*See EXECUTORS & ADMINISTRATORS; WILLS.*

Issue of bonus shares—Whether trustees entitled to accept.]—*See TRUSTS & TRUSTEES.*

3984. — Whether capital or dividend.]—Testator bequeathed his residuary personal estate to his exor. B. in trust for testator's wife for her life & after her death to B. Part of the residuary estate consisted of shares in a co. whose directors had power, before recommending a dividend, to set apart out of the profits such sum as they thought proper as a reserved fund, for meeting contingencies, equalising dividends or repairing or maintaining the works. After testator's death, the directors of the co. proposed to distribute certain accumulated profits, which had been temporarily capitalised, as a bonus dividend, to allot new shares, partly paid-up, to each shareholder, & to apply the bonus dividend in part payment of the new share. This proposal was carried out, & with B.'s consent new shares were allotted to him & registered in his name, the bonus dividend on testator's old shares being applied in part payment of the new shares:—*Held*: looking at all the circumstances, the real nature of the transaction was that the co. did not pay or intend to pay any sum as dividend, but intended to, & did, appropriate the undivided profits as an increase of the capital stock; the bonus dividend was therefore capital of testator's estate, & the life tenant was not entitled to the bonus or the new shares.—*BOUCH v. SPROULE* (1887), 12 App. Cas. 385; 56 L. J. Ch. 1037; 57 L. T. 345; 36 W. R. 193, H. L.; *reversing* S. C. *sub nom. Re BOUCH, SPROULE v. BOUCH* (1885), 29 Ch. D. 635, C. A.

Annotations:—Distd. Re Bromley, Sanders v. Bromley (1886), 55 L. T. 145. *Apld. Re Alsbury, Sugden v. Alsbury* (1890), 45 Ch. D. 237. *Consd. Re Paget, Listowel v. Paget* (1892), 9 T. L. R. 88. *Apld. Re Eastern & Australian S.S. Co., Ltd., & Reduced* (1893), 68 L. T. 321. *Consd. Re Armitage, Armitage v. Garnett*, [1893] 3 Ch. 337; *Re Malam, Malam v. Hitchens*, [1894] 3 Ch. 578; *Re Despard, Hancock v. Despard* (1901), 17 T. L. R. 478.

Nature of transaction—Whether device for conversion of profits into capital.]—The directors of a limited co. who had power to divide as dividend part of its reserve fund, accumulated from undivided profits, resolved to divide a portion of its reserve fund among the shareholders in the shape of a bonus of 50 per cent on the amount paid up, & at the same time to increase the capital of the co. by issuing concurrently with the payment of the bonus, preference shares of an amount equal in value to the bonus. A circular was sent to each shareholder intimating the sum to which he was entitled as bonus & the number of

preference shares he was entitled to, & enclosing an application form for the new shares. Subsequently warrants for the bonus dividend were sent to the shareholder payable on the day on which payment of the new shares was due. The trustees of a deceased shareholder, who were directed by the trust to hold certain shares in the co. for one person as life-renter & for others in fee, took up their quota of the new shares & applied the bonus in payment thereof. In a question between the life-renter & heirs of the original shares:—*Held*: the operation was a payment of dividend & not a conversion of profits into capital, &

Apld. Re Palmer, Palmer v. Cassel (1912), 28 T. L. R. 301. *Consd. Re Evans, Jones v. Evans*, [1913] 1 Ch. 23; *Re Thomas, Andrew v. Thomas*, [1916] 2 Ch. 331; *Re Ogilvie, Ogilvie v. Ogilvie* (1919), 88 L. J. Ch. 159; *I. R. Comrs. v. Blott, I. R. Comrs. v. Greenwood*, [1921] 2 A. C. 171. *Refd. Re Bridgewater Navigation Co.*, [1891] 2 Ch. 317; *Re Northage, Ellis v. Barfield* (1891), 60 L. J. Ch. 488; *Re Piercy, Whitwham v. Piercy*, [1907] 1 Ch. 289; *Re Hume Nisbet's Settlement*, (1911), 27 T. L. R. 461; *Pool v. Guardian Investment Trust Co.*, [1922] 1 K. B. 347.

Sec, generally, SETTLEMENTS.

— **Whether income liable to super-tax.**

— *See INCOME TAX.*

I. Preference Dividends.

3985. Whether cumulative — Construction of memorandum & articles.—A co. registered under 1862 Act, duly authorised the issue of 25,000 first preference shares on the following terms: "The preference capital authorised is £250,000, carrying dividend at £10 per cent. *per annum*, payable half yearly, & entitled to a *pro rata* participation in surplus dividends, after £10 per cent. has been paid on the ordinary share capital of £650,000":—*Held*: the owners of these preference shares were entitled to have the arrears of such preferential dividend made good out of the profits of subsequent years.—*WEBB v. EARLE* (1875), L. R. 20 Eq. 556; 44 L. J. Ch. 608; 24 W. R. 46.

Annotations:—*Distd. Staples v. Eastman Photographic Materials Co.*, [1896] 2 Ch. 303. *Refd. Re Espuola Land & Cattle Co.*, [1909] 2 Ch. 187; *Re Fraser & Chalmers*, [1919] 2 Ch. 114.

3986. — "Out of the profits of each year."—The memorandum of assocn. of a co. contained the clause: "The capital of the co. is £150,000 divided into 10,000 ordinary shares of £10 each & 5,000 preference shares of £10 each. The holders of preference shares shall be entitled, out of the net profits of each year to a preference dividend at the rate of 10 per cent. on the amount for the time being paid, or deemed to be paid up thereon. After payment of such preferential dividend the holders of ordinary shares shall be entitled to a like dividend at the rate of £10 per cent. *per annum* on the amount paid on such ordinary shares. Subject as aforesaid, the preference & ordinary shares shall rank equally for dividend":—*Held*: the preference shareholders were not entitled to a cumulative dividend of £10 per cent. so as to have the deficiency in one year paid out of the profits of a subsequent year before paying anything to the ordinary shareholders.—*STAPLES v. EASTMAN PHOTOGRAPHIC MATERIALS CO.*, [1896] 2 Ch. 303; 65 L. J. Ch. 682; 74 L. T. 479; 12 T. L. R. 403; 40 Sol. Jo. 513, C. A.

Annotations:—*Distd. Foster v. Coles & Foster* (1906), 22 T. L. R. 555. *Refd. Re Wakley, Wakley v. Vachell*, [1920] 2 Ch. 205.

3987. — "Profit from time to time available."—A co. whose memorandum & arts. provided for preference shares carrying a "cumulative preferential dividend," was reconstructed,

& the memorandum of assocn. of the new co. provided for preference shares carrying a "preferential dividend," & art. 95 of the arts. of assocn. of the old co. was altered by striking out the word "cumulative" before "preference," so as to read thus: "The net profit from time to time available for distribution as dividend shall be applied first in payment to the holders of the preference shares in the co. of a preference dividend":—*Held*: the holders of the preference shares in the new co. were entitled to a cumulative preferential dividend.—*FOSTER v. COLES & FOSTER (M. B.) & SONS, LTD.* (1906), 22 T. L. R. 555.

3988. — "Yearly profits of company."—*ADAIR v. OLD BUSHMILLS DISTILLERY CO.*, [1908] W. N. 24.

3989. Whether declaration necessary—Dividend cumulative.—*BOND v. BARROW HÆMATITE STEEL CO.*, No. 3934, *ante*.

3990. Whether subject to deductions—Colonial income tax.—An English co., which carried on business in a colony, passed resolutions under which a class of guaranteed preference stockholders became entitled to a cumulative payment of interest at the rate of 6 per cent. *per annum* in priority to the other stockholders. By a subsequent Act of the colonial legislature a duty, in the nature of income tax, was imposed on all dividends or interest paid out of assets in the colony to the members of cos. carrying on business therein, & it was declared that the duty payable in respect of the amount received by any member should be a debt due by him to the Crown:—*Held*: the contract between the preference & ordinary stockholders being an English contract, the rights under it of preference stockholders, not domiciled in the colony, were not affected by the colonial Act, & they were therefore entitled to their 6 per cent. without any deduction in respect of the colonial duty.—*SPILLER v. TURNER*, [1897] 1 Ch. 911; 66 L. J. Ch. 435; 76 L. T. 622; 45 W. R. 549; 41 Sol. Jo. 452.

Annotation:—*Mentd. Indian & General Investment Trust v. Borax Consolidated*, [1920] 1 K. B. 539.

3991. Rights of shareholders of cumulative preference shares—To participate in profits—After fixed cumulative dividend paid—Construction of articles.—A co. which had power under its arts. to issue new shares upon such terms, including preference, as the co. in general meeting might direct, passed a resolution that the capital of the co. be increased by the issue of certain new shares to be called preference shares, & that the holders thereof be entitled to a cumulative preferential dividend at the rate of 10 per cent. *per annum* on the amount for the time being paid up on such shares, & that such preference shares should rank, both as regards capital & dividend, in priority to the other shares. Preference shares were issued in accordance with this resolution. The arts. further provided that, subject to any priorities that might be given upon the issue of any new

the life-renter was entitled to have the bonus dividend paid to her.—*BLYTH'S TRUSTEES v. MILNE* (1905), 7 F. (Ct. of Sess.) 799; 42 Sc. L. R. 676; 13 S. L. T. 292.—*SCOT*.

PART III. SECT. 30, SUB-SECT. 7.—I.

3986 i. Whether cumulative — Construction of articles.—"Out of the profits of each year."—*MILN v. ARIZONA COPPER CO., LTD.* (1899), 36 Sc. L. R. 741.—*SCOT*.

a. — "As if they were ordinary shares."—The arts. of assocn. of a co. authorised the directors to "issue any of the shares of the co.,

whether forming part of the original capital or of the increased capital, upon terms giving to such shares, which shall be known as "A. shares preferential, a preference either as to capital or dividends, or as to both, as the directors may decide." Clause 11 of the arts. declared that "the said A. shares preferential shall be entitled to participate in all dividends paid as if they were ordinary shares, but they shall be issued subject to a preferential dividend equal to such an amount as the directors shall fix at the time of issue, & such dividend shall be paid in priority to the dividends upon all other shares, except those issued under

the next following art.":—*Held*: the words "as if they were ordinary shares," in the arts. were enabling & not restrictive, & the dividends on the preferential shares were cumulative.—*FITZHENRY v. CRADDOCK HARDWARE CO., LTD.* (1911), 31 N. Z. L. R. 287.—*N.Z.*

b. — *No provision in articles.*—*CROCKETT v. ACADEMY OF MUSIC* 22 C. L. T. 301.—*CAN.*

c. — *Terms of special resolution.*—Preference shares in a limited co. were issued under special resolution of the co. "those shares to be entitled to a preferential dividend of 5½ per

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shares, the profits of the co. available for distribution should be distributed as dividend among the members in accordance with the amounts paid on the shares held by them respectively:—*Held*: in the distribution of profits, holders of the preference shares were not entitled to anything more than a 10 per cent. dividend.—*WILL v. UNITED LANKAT PLANTATIONS CO., LTD.*, [1914] A. C. 11; 83 L. J. Ch. 195; 109 L. T. 754; 30 T. L. R. 37; 58 Sol. Jo. 29; 21 Mans. 24, H. L.

Annotations:—*Consd. Re National Telephone Co.*, [1914] 1 Ch. 755. *Refrd. Re Fraser & Chalmers*, [1919] 2 Ch. 114; *Anglo-French Music Co. v. Nicoll*, [1921] 1 Ch. 386.

3992. ———— *In winding up.*—

The express gift or attachment to preference shares, on their creation, of preferential rights, whether in respect of dividend or return of capital, is, *primâ facie*, a definition of the whole of their rights in these respects, & negatives any further or other right to which, but for the specified rights, they would have been entitled. The canon of construction in *Will v. United Lankat Plantations Co.*, No. 3991, *ante*, affecting the rights of preference shares with regard to dividend, applies to the rights of such shares in a winding up.—*Re NATIONAL TELEPHONE CO.*, [1914] 1 Ch. 755; 83 L. J. Ch. 552; 109 L. T. 389; 29 T. L. R. 682; 58 Sol. Jo. 12; 21 Mans. 217.

Annotations:—*Consd. Re Fraser & Chalmers*, [1919] 2 Ch. 114. *Refrd. Anglo-French Music Co. v. Nicoll*, [1921] 1 Ch. 386.

3993. ———— *It was provided by art. 5 of the memorandum of assocn. of a co. with a capital divided into ordinary & preference shares, that the preference shares should entitle the holders to a fixed cumulative dividend of 7 per cent. on the amount for the time being paid up thereon, & to the repayment of capital before any dividend was paid or capital repaid to the holders of the ordinary shares, & to a further dividend calculated as therein mentioned. The co. had power to increase its capital & was desirous of doing so. Upon a summons by the co. asking questions on the construction of art. 5 of the memorandum:—Held*: (1) upon the true construction of art. 5, the co. could pay dividends on the ordinary share capital subject only to the fixed cumulative dividend at 7 per cent. on the preference shares & the further specified dividend; (2) the preference shares entitled the holders thereof in the event of a winding up of the co. to rank *pari passu* with the holders of ordinary shares in any surplus assets of the co.—*ANGLO-FRENCH MUSIC CO. v. NICOLL*, [1921] 1 Ch. 386; 90 L. J. Ch. 183; 124 L. T. 592.

Compare No. 8221, post.

— *Right to arrears—In winding up.*—*See Sect. 36, sub-sect. 12, D. (c), Sect. 37, sub-sect. 9, A., D., & Sect. 38, sub-sect. 7, A., post.*

3994. Arrears paid after death of shareholder—Apportionment.—*Testator specifically bequeathed cumulative preference shares in a co. to his son R. & settled his residuary estate upon trust for all his children. At his death in 1905 the dividends on the shares were in arrear, & it was not until*

1907 that there were any profits available for dividend. In that year an *interim* dividend was declared sufficient in amount to satisfy all the arrears upon the preference shares:—*Held*: the dividend declared in 1907 must be treated as being in respect of that year only; Apportionment Act, 1870 (c. 35), did not apply; & consequently the whole of the dividend belonged to R.—*Re WAKLEY, WAKLEY v. VACHELL*, [1920] 2 Ch. 205; 89 L. J. Ch. 321; 123 L. T. 150; 36 T. L. R. 325; 64 Sol. Jo. 357, C. A.

Annotation:—*Refrd. Re Marjoribanks, Marjoribanks v. Dansey*, [1923] 2 Ch. 307.

Arrears paid after death of tenant for life—Whether tenant for life or remainderman entitled.

—*See SETTLEMENTS.*

Rights of ordinary shareholders—In priority to deferred shareholders.—*See No. 3938, ante.*

J. Interim Dividends.

3995. Whether authorised — Construction of articles—Class rights must be regarded.—*DURLACHER v. HOTCHKISS ORDNANCE CO., LTD.* (1887), 3 T. L. R. 807.

3996. Money carried to interim dividend account —Whether company bound to apply to dividend.—*It was provided by the arts. of assocn. of a co. that "the directors might from time to time pay to the members on account of the next forthcoming dividend such interim dividend as, in their judgment, the position of the co. justified." On Mar. 16, 1897, at a meeting of the directors, it was resolved that an interim dividend be declared for the current year at the rate of 4 per cent. per annum, payable on Apr. 20. On Apr. 12 the directors resolved that, having regard to certain litigation then pending, the payment of the proposed interim dividend should be postponed; & on Apr. 13, the co. requested their bankers to set aside out of money in their hands belonging to the co., under a special account intitled "Interim Dividend Account" a sum of £36,000 to cover the dividend, pending the co.'s instructions. The co. now claimed a declaration that neither they nor their bankers were bound to apply the said sum of £36,000 or any part thereof in payment of that dividend:—Held*: the co. were entitled to such a declaration.—*LAGUNAS NITRATE CO., LTD. v. SCHROEDER & CO. & SCHMIDT* (1901), 85 L. T. 22; 17 T. L. R. 625.

Dividend wrongly paid—Liability of directors.—*See No. 3292, ante.*

K. Guaranteed Dividends.

3997. Liability of guarantor—How discharged—Part of company's business discontinued during period.—*In 1872 a co. was formed to purchase a going concern consisting of, inter alia, railway tyre & steamroller works, & to carry on all or any of the businesses of the concern. The purchase was completed, the vendor accepting part of the purchase-money in fully paid-up shares in the co. By an agreement made between the vendor & the promoter of the co., & recited in the arts. of assocn., the vendor guaranteed to the shareholders for the time being a dividend for five years from*

cent *per annum*." During two years there were no profits of the co. where-with to pay the guaranteed dividend:—*Held*: the preference shareholders were entitled to payment of the arrears of dividend out of the first profits made by the co.—*PARTICK, HILLHEAD & MARYHILL GAS CO., LTD. v. TAYLOR* (1888), 15 R. (Ct. of Sess.) 711; 25 Sc. L. R. 539.—*SCOT.*

d. ———— "Postponed charge."]

—By a special resolution of a limited co. it was provided that "out of the profits of the co." holders of "A" preference shares should receive "as a first charge thereon, a cumulative preference dividend at the rate of 8 per cent." & holders of "B" preference shares "as a second & postponed charge, a preferential dividend at the rate of 5 per cent *per annum*": & provision was also made for the

distribution of the balance of profits:—*Held*: the dividend on the "B" shares was cumulative, the fact that it was not in terms described as such, in contrast to the dividend on the "A" shares, being insufficient to displace the general rule that preference dividends are *primâ facie* cumulative.—*FERGUSON & FORESTER v. BUCHANAN*, [1920] S. C. 154.—*SCOT.*

the date of the formation of the co. upon the capital from time to time called up at the rate of 10 per cent. *per annum*, & that, if in any one of the five years the profits should prove insufficient to pay such dividend, he would pay the amount required to make up such dividend. The business was carried on at a loss from the first, & in 1847 the directors, upon whom the arts. of assocn. conferred the widest powers of management, shut up the railway tyre department, which comprised four-fifths of the whole concern, & which they had carried on at a very considerable loss. In 1875 there were no profits to divide, & the co. commenced an action against the vendor to enforce payment of an amount sufficient to pay a dividend of 10 per cent. upon the called-up capital in accordance with his guarantee:—*Held*: the discontinuance by the co. of the branch of their business did not discharge the vendor from his guarantee, & the co. were entitled to judgment for the sum claimed, together with interest & costs.—*BROWN & Co. v. BROWN, BROWN v. BROWN & Co. (1877), 36 L. T. 272, C. A.*

Compare CONTRACT, Vol. XII., p. 417.

3998. — — — Guarantee incorporated in articles of association—Alteration of article.]—

(1) Where a limited co. takes a guarantee for a certain annual dividend, & incorporates that guarantee in the arts. of assocn., the guarantee is no more than a "regulation" of the co.; & it is *intra vires* of the co. by resolution of a general meeting, under 1862 Act, s. 50, to repeal or alter it so as to release the guarantor.

(2) If a co. does so release the guarantor, *bonâ fide* & for several good considerations, a substantial part of which he performs, but in some of which he fails by his own fraud, & the co. are not in a position to restore him to his *status quo* prior to the release, they cannot rescind that release, & cannot therefore sue on the guarantee.—*SHEFFIELD NICKEL Co. v. UNWIN (1877), 2 Q. B. D. 214; 46 L. J. Q. B. 299; 36 L. T. 246; 25 W. R. 493, D. C.*

3999. — — — Effect of discharge—Whether company can rescind—Restoration to status quo impossible.]—SHEFFIELD NICKEL Co. v. UNWIN, No. 3998, ante.

4000. Rights of shareholders—To sums paid by guarantor—Before capital lost made good.]—

Where vendors guarantee that the net profits of a co. shall not be less than a certain sum, the amount so guaranteed cannot be retained by the directors of the co. to make good any loss on the working of the co., but must be paid to the shareholders.—*RICHARDSON v. ENGLISH SPELTER Co., LTD. (1885), 1 T. L. R. 249.*

4001. — — — Amount of preference dividend guaranteed — Whether preference shareholders entitled to full dividend.]—

By decree of Feb. 1874 the imperial govt. of Brazil conferred upon the provincial govts. of that empire the right to grant railway concessions, & sanctioned the granting of a guarantee of interest not exceeding 7 per cent. on the capital *bonâ fide* spent in constructing the railway, the railway to be kept in good condition by the co. In July, 1874, a concession to make the railway of deft. co. was granted to certain concessionaires by the provincial govt. of Rio Grande do Norte, the concessionaires binding themselves to keep the railway in good condition on pain of fine or suspension of traffic. The provincial govt. contracted to guarantee for thirty years interest at the rate of 7 per cent. on the capital expended on the railway up to a certain amount; but if the traffic were interrupted for six months for reasons that might have been

avoided, the payment of the guaranteed interest should cease till the re-establishment of the traffic; it also stipulated that on the dividend exceeding 8 per cent., the surplus should be divided between the railway & itself. The concessionaires undertook to carry certain govt. officials & others at half-fares, & to carry the mails, etc., gratuitously. By decree of 1875 the imperial govt. granted to any co. formed to carry out the above concession a thirty years' guarantee of the 7 per cent. granted by the provincial govt., payable half-yearly to certain conditions, including the submission of the accounts of receipts & expenditure on the construction & maintenance of the railway. In 1878 deft. co. was incorporated under 1862 Act, for the purpose of acquiring, *inter alia*, the rights, benefits, & privileges of the above-mentioned concession & decrees. The share capital was fixed at £500,000, 25,000 shares at £20 each. Certain of these shares were entitled to a preferential dividend of 7 per cent. payable out of the guaranteed moneys & net earnings of the co. In 1880 plts. became the holders of 250 of such preferred shares, on which for some years they received a preferential dividend of 7 per cent., but in the last few years they received a much smaller dividend. The guaranteed interest had been duly paid by the imperial & provincial govts., but a portion of the interest so received had been applied towards the necessary maintenance of the line in proper working order, & other matters connected with the railway. Plts. brought their action for a declaration that the interest received by the co. from the imperial govt. of Brazil, in respect of the capital represented by the preferred shares, should be held upon trust for & appropriated to the payment of a 7 per cent. dividend on such preferred shares, & any other application of it so long as any part of such 7 per cent. dividend remained unpaid was wrongful & a breach of trust on the part of the co.; & for payment of the money so improperly withheld, & in the alternative rescission of plts.' contract with the co. to take the 250 shares; & repayment of the sum of £5,000:—*Held*: plts. were not entitled to the declaration or relief sought, on the ground that the guaranteed interest payable & paid by the Brazilian govt. was not payable, or paid, for the sole benefit of the holders of the preference shares in the co., but was paid to the co. as a contribution to its revenues to be applied to such purposes as the earnings of the undertaking might be legitimately applied, & to assist it in carrying out the obligations undertaken in the original contract.—*CLIFFORD v. IMPERIAL BRAZILIAN NATAL & NOVA CRUZ RY. Co. & GIBBS (1880), 60 L. T. 60.*

— — — As against liquidator of company.]—*See* Sect. 36, sub-sect. 10, A., *post*.

— — — To guarantee fund—As against liquidator of company.]—*See* Sect. 36, sub-sect. 10, A., *post*.

L. Liability for Dividends Improperly Paid.

Liability of directors.]—See, generally, Sect. 28, sub-sect. 6, E., (f), ante.

— — — Relying on servants of company.]—*See* Sect. 28, sub-sect. 4, C., *ante*.

Liability of secretary.]—See No. 3061, *ante*.

Liability of manager.]—See No. 3668, *ante*.

Liability of auditor.]—See No. 3668, *ante*.

M. Dividend Warrants and Coupons.

4002. Effect of warrant—As representation of title to shares—Estoppel of company.]—Pltf., a registered holder of twenty shares in deft. co., bought fifty additional shares & *bonâ fide* took a

Sect. 30.—Regulation and management: Sub-sect. 7, M.; sub-sect. 8, A.]

transfer of them, but he failed to obtain certificates of the registration of the transfer from the secretary. He subsequently received two dividend warrants, at intervals of six months, for dividends on the total number of shares. The transfer was forged by the secretary, & upon the fraud being discovered, deft. co. declined to recognise pltf.'s title to more than the original twenty shares, & upon his claim to establish his title to the fifty shares deft. co. counterclaimed for a return of the dividends paid by mistake upon those shares:—*Held*: deft. co. were not estopped from denying the title of pltf. to the fifty shares, inasmuch as the sending of a dividend warrant did not amount to a representation of pltf.'s title to the shares; nor was it such conduct as to lead pltf. into the belief that he had a good title, or a representation made in answer to any inquiry of pltf. whereby he was put to rest in regard to his title, & therefore was not a ground on which to base an estoppel.—*FOSTER v. TYNE PONTOON & DRY DOCKS Co. & RENWICK* (1893), 63 L. J. Q. B. 50; 9 T. L. R. 450.

Annotation:—*Re*fd. *Dixon v. Kennaway*, [1900] 1 Ch. 833.

4003. Transmission by post—What amounts to request for.]—The directors of a co. in a half-yearly report & statement of accounts recommended the payment of a certain dividend on preference & ordinary stock, & gave notice that dividends would be paid on a certain day by means of dividend warrants sent by post to the registered address of the stockholder in each case. The shareholders of the co. at their half-yearly general meeting declared the amount of dividend as proposed by the directors, but passed no resolution as to how payment should be made. On the day named in the directors' report a dividend warrant was sent by post to the registered address of a stockholder. The warrant was lost in the post:—*Held*: (1) in the circumstances there was a request by the stockholder to the co. to pay the amount due to him by means of a warrant sent by post to his registered address.

In an action by the stockholder against the co. to recover the amount of dividend in respect of the stock held by him:—*Held*: (2) the above facts supported a plea of payment by the co., & the remedy, if any, of the stockholder was to put in suit such rights as he had upon the lost warrant.—*THAIRLWALL v. GREAT NORTHERN RY. Co.*, [1910] 2 K. B. 509; 79 L. J. K. B. 924; 103 L. T. 186; 26 T. L. R. 555; 54 Sol. Jo. 652; 17 Mans. 247, D. C.

See, generally, CONTRACT, Vol. XII., pp. 471, 472.

4004. — Effect of loss in transmission.]—*THAIRLWALL v. GREAT NORTHERN RY. Co.*, No. 4003, *ante*.

4005. Stolen coupons—Right of bonâ fide holder for value to enforce payment.]—A share warrant to bearer issued by an English co. registered under 1867 Act, certifying that "the bearer is entitled to one share of the co." is a negotiable instrument, & if such warrant is stolen & afterwards gets into the hands of a *bonâ fide* holder for value without

notice of the fraud, such holder can enforce against the co. payment of coupons for dividends due in respect of such share warrant.—*WEBB, HALE & Co. v. ALEXANDRIA WATER Co., LTD.* (1905), 93 L. T. 339; 21 T. L. R. 572, D. C.

Whether negotiable instrument.]—*Compare* *BILLS OF EXCHANGE*, Vol. VI., p. 454, No. 2901

SUB-SECT. 8.—PROFITS.

A. In General.

4006. Profits — How ascertained.]—*BOND v. BARROW HÆMATITE STEEL Co.*, No. 3934, *ante*.

4007. — — —.]—(1) Profits, in the case of a trading or banking co., are the excess of the current gains over the working expenses as shown by the revenue account, as distinguished from the capital account.

(2) For the purposes of the revenue account it is not necessary such profits should be in hand.

If directors, in the honest exercise of their judgment, treat in a revenue account a debt as a profit earned, though not received, they cannot be said to be paying dividends out of capital, even if the debt should ultimately prove to be bad, & the dividend to have been paid out of capital.—*Re LONDON & GENERAL BANK, LTD.* (1894), 72 L. T. 227; 11 T. L. R. 156; 39 Sol. Jo. 180; *affd.*, [1895] 2 Ch. 673, C. A.

Annotations:—*As to* (2) *Re*fd. *Re National Bank of Wales*, [1899] 2 Ch. 629. *Generally*, *Mentd. Re Kingston Cotton Mill Co.*, [1896] 1 Ch. 6; *Re Kingston Cotton Mill Co.* (No. 2), [1896] 2 Ch. 279; *Re Western Counties Steam Bakeries & Milling Co.*, [1897] 1 Ch. 617; *R. v. Roberts*, [1908] 1 K. B. 407; *Re Republic of Bolivia Exploration Syndicate*, [1914] 1 Ch. 139.

4008. — — — Deduction of excess profits duty.]—Under the arts. of assocn. of a private co. there was to be no free market in respect of the ordinary shares of the co. so long as a purchaser selected by the board was willing to purchase the same at a fixed value, which was to be determined in manner defined by the arts., being based upon a three years' aggregate of the sums which would have been paid as dividend upon such ordinary shares "if in respect of each of such three years there had been distributed among the members the entire profits of such year available for distribution as dividend":—*Held*: in ascertaining the fixed value of a share, excess profits duty payable under Part III. of the Finance (No. 2) Act, 1915 (c. 89), must be deducted before the entire profits of any year available for distribution as dividend among the shareholders could be ascertained. For this purpose excess profits duty is not analogous to income tax.—*COLLINS v. SEDGWICK*, [1917] 1 Ch. 179; 86 L. J. Ch. 156; 115 L. T. 763; 32 T. L. R. 554.

Annotations:—*Folld. Re Condron, Condron v. Stark*, [1917] 1 Ch. 639. *Consd. Fellows v. Corker*, [1918] 1 Ch. 9. *Apprvd. & Folld. Patent Castings Syndicate v. Etherington*, [1919] 2 Ch. 254.

— — —.]—*See, also*, Nos. 3594, 3595, *ante*.

4009. — Construction of articles.]—*EVLING v. ISRAEL & OPPENHEIMER*, No. 3959, *ante*.

PART III. SECT. 30, SUB-SECT. 8.—A.

e. Profits available for dividend — Reserve fund.]—Profits, which were supposed to have been earned, instead of being distributed in dividends, were transferred to an account referred to & known as the "reserve account." The prospectus of the co. had stated that undrawn profits & assets of the co. had been appropriated to a

"reserve fund":—*Held*: the words "reserve fund," as used in the prospectus, did not necessarily mean a reserve fund which was invested, but the important thing was the reserving of amount out of property available for distribution in dividends, & appropriating it in the books of the co. to meet contingencies, which was shown to have been done.—*KENNEDY v. ACADIA PULP & PAPER MILLS Co.*

(1905), 38 N. S. R. 291.—CAN.

f. Replacement of rolling stock—Out of revenue — Discretion of directors.]—Where directors had been, for several years, replacing out of revenue rolling stock which was worn out, & the rolling stock appeared to be greater in money value than it was five years before, &, although there were some deficiencies in it which the

4010. Net profits—How ascertained—Deducting liabilities from assets.]—BINNEY v. INCE HALL COAL & CANNEL CO., No. 3960, ante.

— Deduction of income tax.]—See No. 3597, ante.

4011. — — — Deduction of excess profits duty.]—An agreement made in Apr. 1914, for the sale of a business provided that part of the consideration should be paid by "one equal third part of the net profits" of the business in the year ending Sept. 30, 1914, & in each succeeding year up to Mar. 31, 1919:—Held: "net profits" meant the profits of the year's trading which were divisible among the persons interested, & consequently, as excess profits duty must be deducted before the profits which were divisible could be ascertained, the vendors were only entitled to one third part of the profits after excess profits duty had been deducted.—*Re CONDRAN, CONDRAN v. STARK*, [1917] 1 Ch. 639; 86 L. J. Ch. 464; 117 L. T. 270; 33 T. L. R. 307; 61 Sol. Jo. 445.

Annotations:—Consd. Fellows v. Corker, [1918] 1 Ch. 9; *Port of London Authority v. Orsett Union Assmt. Com.*, [1919] 1 K. B. 84. *Apprvd. & Follid. Patent Castings Syndicate v. Etherington*, [1919] 2 Ch. 254.

— — — — —.]—See, also, Nos. 3595, 3598–3599, ante.

4012. — — — Provision for depreciation of capital.]—The arts. of assocn. of a limited tramway co. provided that no dividend should be declared except "out of profits"; that the directors should, with the sanction of the co., declare annual dividends "out of profits"; & that the directors should, before recommending a dividend, set aside "out of profits," subject to the sanction of the co., "a reserve fund for maintenance, repairs, depreciation, & renewals." The co. had for several years carried on their business, paying a dividend half-yearly on their ordinary shares; but they failed to set apart a reserve fund adequate for the maintenance of their tramway, which eventually became worn out. The co. having again declared a half-yearly dividend on their ordinary shares, & the total sum appropriated for the dividend being, as it appeared, much less than the sum required to reinstate the tramway:—Held: (1) the co. could only declare a dividend out of the net profits, & the net profits could not be ascertained without first restoring the tramway to an efficient condition, or making due provision for that purpose out of the co.'s assets. An injunction was accordingly granted restraining the co. from paying the half-yearly dividend they had declared, but leave was given them to move to dissolve the injunction, in the event of their being able to satisfy the ct. that there were profits available for the dividend; (2) the holders of preference shares, the dividend on which was "dependent upon the profits of the particular year only," were entitled to a dividend out of the profits of any year after setting aside a proportionate amount sufficient for the maintenance of the tramway for that year only; & were not to be deprived of that dividend in order to make good the sums which in previous years should have been set aside by the co. for main-

tenance, but which had been improperly applied by them in paying dividends.—*DENT v. LONDON TRAMWAYS CO.* (1880), 16 Ch. D. 344; 50 L. J. Ch. 190; 44 L. T. 91.

Annotations:—As to (1) Refd. Lambert v. Neuchatel Asphalte Co. (1882), 51 L. J. Ch. 882; *Verner v. General & Commercial Investment Trust*, [1894] 2 Ch. 239. *As to (2) Expld. & Distd. Lee v. Neuchatel Asphalte Co.* (1889), 41 Ch. D. 1. *Refd. Verner v. General & Commercial Investment Trust*, [1894] 2 Ch. 239; *Re Floating Dock Co. of St. Thomas* (1895), 64 L. J. Ch. 361.

4013. — — — Sale of business at profit.]—FRAMES v. BULFONTEIN MINING CO., No. 2987, ante.

4014. — — — Where ascertained by directors—Interference by court.]—LAMBERT v. NEUCHATEL ASPHALTE CO., LTD., No. 3979, ante.

— In service agreement.]—See Nos. 3596–3597, 3599, ante.

4015. Realised profits—Profits tangible for the purpose of division.]—*Re OXFORD BENEFIT BUILDING & INVESTMENT SOCIETY*, No. 3949, ante.

4016. Profits available for dividend—Net profits after proper deductions—Reserve fund.]—FISHER v. BLACK & WHITE PUBLISHING CO., No. 4021, post.

4017. — — — — —.]—On Mar. 3, 1897, plffs. agreed with A. to grant to him, or to an intended co., defts., an exclusive licence to use certain patents in consideration of payments to be made by the co., when formed, of a proportion of its "profits available for dividend" after payment of a preferential cumulative dividend of 8 per cent. on a capital of £150,000 & such sum as the directors should think fit had been set aside as a reserve fund. The licence was granted to A. & on Mar. 5, 1897, he agreed to sell to B., on behalf of the proposed co., the agreement of Mar. 3, & the licence, & other licences, for £120,000. The co. was incorporated on Mar. 8, & adopted the agreement of Mar. 5, but the licence was not actually assigned to them. Their balance-sheet of Oct. 1899, showed profits of £20,000, & they proposed to write off £3,000 against depreciation & towards the ultimate extinction of the cost of the licences. The action was brought to test their right to do this:—Held: (1) there was no direct contract between pltf. co. & deft. co. which would entitle pltf. co. to sue deft. co.; (2) deft. co. were justified in setting aside the £3,000 out of their income against depreciation before ascertaining the net "profits, available for dividend," & even assuming that pltf. co. had rights against deft. co. under the agreement, there would have been no money payable to pltf. co. at the time of the action being brought, & the action must have failed apart from the question of want of privity of contract.—*BAGOT PNEUMATIC TYRE CO. v. CLIPPER PNEUMATIC TYRE CO.*, [1902] 1 Ch. 146; 71 L. J. Ch. 158; 85 L. T. 652; 50 W. R. 177; 18 T. L. R. 161; 46 Sol. Jo. 121; 9 Mans. 56; 19 R. P. C. 69, C. A.

Annotations:—As to (1) Follid. Barker v. Stickney, [1918] 2 K. B. 356. *Refd. Dansk Rekyrliffel Syndikat Akt. v. Snell*, [1908] 2 Ch. 127; *Barker v. Stickney*, [1919] 1 K. B. 121. *As to (2) Refd. Macdonald v. Eyles*, [1921] 1 Ch. 631.

directors were gradually supplying, it did not appear that such deficiencies interfered with or inconvenienced traffic, the ct. refused to restrain the payment of a dividend to the preference shareholders, which had been declared at a general meeting, until the deficiencies in the rolling stock had been supplied.—*KEHOE v. WATERFORD & LIMERICK RY. CO.* (1888), 21 L. R. 1r. 221.—IR.

g. Replacement of capital out of profits—Whether any statutory obligation.]—There is no statutory obligation on a limited co. to replace capital, lost by depreciation in securities, out of profits.—*IRISH CATHOLIC CHURCH PROPERTY INSURANCE CO. v. INLAND REVENUE COMRS.*, [1918] 2 I. R. 510.—IR.

h. Expenses in connection with sale of undertaking—Whether chargeable to

revenue.]—The expense incurred by a co. in parliamentary proceedings, which resulted in an arrangement under which the co.'s undertaking was sold, should not be charged against the revenue of the year preceding the sale, but against the price obtained for the undertaking.—*PARTICK, HILLHEAD & MARYHILL GAS CO., LTD. v. TAYLOR* (1891), 18 R. (Ct. of Sess.) 1017; 28 Sc. L. R. 766.—SCOT.

Sect. 30.—Regulation and management: Sub-sect. 8, B. Sect. 31: Sub-sect. 1.]

B. Distribution.

4018. In accordance with memorandum.]—ASHBURY v. WATSON, No. 3856, *ante*.

4019. Realised profit on capital assets.]—A co. registered under the Joint Stock Cos. Acts can, in the absence of special provision to the contrary, distribute a realised profit on its capital assets.—(CROSS v. IMPERIAL CONTINENTAL GAS ASSOCN., [1923] 2 Ch. 553; 129 L. T. 558; 39 T. L. R. 470.

4020. Creation of reserve fund—Before declaring dividend.]—(1) It is an elementary principle that a ct. has no jurisdiction to interfere with the internal management of cos. acting within their powers. The co. must sue to redress a wrong done to it; but if a majority of its shares are controlled by those against whom relief is sought, the complaining shareholders may sue in their own names, but must show that the acts complained of are either fraudulent or *ultra vires*.

(2) A co. formed by letters patent under Canadian Act, 27 & 28 Vict. c. 23, is not bound to divide all its profits on each occasion amongst its shareholders. It can legally reserve any portion thereof at its own discretion, & a ct. has no jurisdiction to regulate it. Whether the undivided portion is retained to credit of profit & loss or carried to credit of a reserve it may lawfully, in the absence of any express power, be invested on such securities as the directors may select subject to the control of a general meeting; but not restricted to such investments as trustees are authorised to make.

(3) It is not *ultra vires* for a co. to invest in the name of a sole trustee. He is strictly accountable, but the dissentient shareholders are not entitled to an injunction against the directors & the co. in respect of such investment so long as it appears to be *bonâ fide*.

(4) Where a director purchased property without mandate from the co., & under such circumstances as did not make him a trustee thereof for the co., & thereafter resold the same to the co. at a profit:—*Held*: whether or not the co. was entitled to a rescission of the contract of resale, it was not entitled to affirm it & at the same time treat the director as trustee of the profit made.—BURLAND v. EARLE, [1902] A. C. 83; 71 L. J. P. C. 1; 85 L. T. 553; 50 W. R. 241; 18 T. L. R. 41; 9 Mans. 17, P. C.

Annotations:—As to (1) Follid. Dominion Cotton Mills Co. v. Amyot, [1912] A. C. 546. Consd. Cook v. Deeks, [1916]

1 A. C. 554; Foster v. Foster, [1916] 1 Ch. 532. *Reid. Campbell v. Australian Mutual Provident Soc. (1908), 77 L. J. P. C. 117; Kirsopp v. Highton (1911), 28 T. L. R. 129; I. R. Comrs. v. Blott, I. R. Comrs. v. Greenwood, [1921] 2 A. C. 171. As to (2) Reid. I. R. Comrs. v. Blott, I. R. Comrs. v. Greenwood, [1921] 2 A. C. 171. Generally, Montd. Normandy v. Ind Coope, [1908] 1 Ch. 84; Jacobus Marler Estates v. Marler (1913), 85 L. J. P. C. 167, n.*

4021. ——— To meet contingencies.]—The memorandum of assocn. of a co. provided that, as between the holders of the ordinary shares & the holders of the founders' shares, "the profits from time to time available for dividend" should be applicable as follows: (1) to the payment of a non-cumulative preferential dividend of 15 per cent. per annum on the shares other than the founders' shares; (2) of the surplus, two-thirds should be applicable to the payment of a further dividend on the shares other than the founders' shares, & the remaining one-third should be applicable to the payment of dividend on founders' shares.

The arts. of assocn. provided that, so far as they did not exclude or modify the regulations contained in 1862 Act, Table A, those regulations should, as far as applicable, be deemed to be the regulations of the co. The arts. expressly excluded some of the arts. of Table A, but did not expressly exclude art. 74, which provides that "the directors may, before recommending any dividend, set aside out of the profits of the co. such sum as they think proper as a reserved fund to meet contingencies, or for equalising dividends":—*Held*: art. 74 of Table A was not *in toto* excluded by implication, but it must be taken to form part of the arts.; "profits available for dividend" meant the net profits after making any deductions which the directors could properly make before declaring a dividend, & the directors were justified, after paying a dividend of 15 per cent. to the ordinary shareholders, in setting aside as a reserve fund to meet contingencies so much of the surplus of the profits of a year as they thought fit.

Qu.: whether the directors could have set aside a reserve fund for the purpose of equalising dividends.—FISHER v. BLACK & WHITE PUBLISHING CO., [1901] 1 Ch. 174; 71 L. J. Ch. 175; 84 L. T. 305; 49 W. R. 310; 17 T. L. R. 146; 45 Sol. Jo. 138; 8 Mans. 184, C. A.

Annotation:—Reid. Evling v. Israel & Oppenheimer [1918] 1 Ch. 101.

4022. ——— Equalisation of dividends.]—FISHER v. BLACK & WHITE PUBLISHING CO., No. 4021, *ante*.

PART III. SECT. 30, SUB-SECT. 8.—B.

k. Creation of reserve fund — From unallotted balance of profits — Agreed additional dividend to preference shareholders prejudiced — Powers of directors.]—Under the original arts. of assocn. of a limited co. whose capital consisted of cumulative preference shares & ordinary shares, the directors had power before recommending any dividend to set aside out of profits such sum as they might think proper as a reserve fund. Subsequently it was arranged between the preference & ordinary shareholders that the ordinary shares should be split into preferred & deferred ordinary shares, & as part of that arrangement there was added to the arts. of assocn. a new art. providing, *inter alia*, that should the profits be sufficient to enable the payment of 7 per cent on the deferred ordinary shares, after paying 5 per cent on the preference & preferred ordinary shares, the preference shareholders should be entitled to such additional dividend not exceeding 1 per cent as the balance of profit remaining would permit; this ad-

ditional dividend not being cumulative but contingent on the profits of the year. In 1904, after paying a dividend of 5 per cent on preference & preferred ordinary shares, & a dividend of 7 per cent on the deferred ordinary shares, there remained a balance which was more than sufficient to pay an additional 1 per cent dividend on the preference shares, but out of this the directors proposed to place to a reserve fund a sum which would preclude the payment of an additional dividend. In a question between the co. & the preference shareholders as to whether the directors were entitled to deal with the balance in this way instead of applying it, *primo loco*, in the payment of an additional 1 per cent dividend on the preference shares:—*Held*: on the construction of the arts. of assocn., the application of the balance proposed by the directors was *intra vires*.—WEMYSS COLLIERIES TRUST, LTD. v. MELVILLE (1905), 8 F. (Ct. of Sess.) 143.—SCOT.

1. "Surplus profits" — *Construction of articles.]—*The arts. of assocn. of a limited liability co. provided,

inter alia: "The net profits of the co. in each year shall be appropriated in order of priority & manner following the holders of the preference shares shall be entitled to a cumulative preferential dividend at the rate of £8 per cent *per annum* on the amount for the time being paid up on the preference shares held by them respectively, with the right to resort to the profits of subsequent years to make up any deficiency in the dividends of preceding years; subject to the rights of the holders of the preference shares, the holders of the ordinary shares shall be entitled to be paid out of the surplus profits in each year a dividend at the rate of £8 per cent *per annum* for each year on the amount for the time being credited as paid up on the ordinary shares held by them respectively; any surplus profits shall belong to the holders of the preferential & ordinary shares in proportion to the number of shares held by them respectively, & shall be divided amongst them at such time or times as the co. may determine, & until such direction be given, shall be retained by the co.:—*Held*: the

4023. — Construction of articles.]—PATERSON (R.) & SONS, LTD. v. PATERSON, [1916] W. N. 352, H. L.

— Before payment to participating policy-holders—Insurance company.]—See Part V., Sect. 1, *post*.

4024. Writing off depreciation of assets—Before declaring dividend.]—BAGOT PNEUMATIC TYRE CO., v. CLIPPER PNEUMATIC TYRE CO., No. 4017, *ante*.

Duty to make good lost capital.]—See Sect. 10, sub-sect. 6, B., *ante*.

Amount carried forward—Sufficient to pay cumulative dividend on ordinary shares—Dividend not declared.]—See No. 3959, *ante*.

Distribution of reserve fund—As dividend.]—See No. 3944, *ante*.

— In winding up.]—See Sect. 37, sub-sect. 9, D. (a), *post*.

Interference by court with dividends.]—See, generally, Sub-sect. 7, G. (c), *ante*.

SECT. 31.—POWERS AND LIABILITIES OF COMPANY.

SUB-SECT. 1.—IN GENERAL.

4025. Compared with individual.]—BOURKE v. ALEXANDRA HOTEL CO., LTD. (1877), 25 W. R. 782, C. A.

4026. —.]—A registered co. cannot do anything which all its members think expedient, & which, apart from the law relating to incorporated cos. they might lawfully do (LINDLEY, L.J.).—Re NEWMAN (GEORGE) & CO., [1895] 1 Ch. 674; 64 L. J. Ch. 407; 72 L. T. 697; 43 W. R. 483; 11 T. L. R. 292; 39 Sol. Jo. 346; 2 Mans. 267; 12 R. 228, C. A.

*Annotations:—*Refd. Seligman v. Prince, [1895] 2 Ch. 617; Salomon v. Salomon, Salomon v. Salomon (1896), 66 L. J. Ch. 35; Re Innes, [1903] 2 Ch. 254; Young v. Naval, Military, & Civil Service Co-op. Soc. of South Africa, [1905] 1 K. B. 687; Re Express Engineering Works, [1920] 1 Ch. 466; Hammond v. Prentice, [1920] 1 Ch. 201. *Mentd.* Re Bodega Co., [1904] 1 Ch. 276.

4027. — Liability for misrepresentation.]—The same rules as to false or deceptive representations which are applicable to contract between individuals are also applicable to contracts between an individual & a co.

The V. co. prospectus purported that a concession from a foreign government to make a

railway had been obtained, whereas the fact was that the V. co. had merely contracted to purchase the concession from another co. for £50,000:—*Held*: this was a material misrepresentation, & a purchase of shares on the faith of it was entitled to have the purchase set aside.—CENTRAL RY. CO. OF VENEZUELA (DIRECTORS, ETC.) v. KISCH (1867), L. R. 2 H. L. 99; 36 L. J. Ch. 849; 16 L. T. 500; 15 W. R. 821, H. L.; *affg.* S. C. *sub nom.* KISCH v. CENTRAL RY. CO. OF VENEZUELA, LTD. (1865), 3 De G. J. & Sm. 122, L. JJ.

*Annotations:—*Consd. Oakes v. Turquand & Harding, Peek v. Turquand & Harding, Re Overend, Gurney (1867), L. R. 2 H. L. 325; Re Reese River Silver Mining Co., Smith's Case (1867), 2 Ch. App. 604; Estates Investment Co., *Ex p.* Ashley, Scholey v. Central Ry. of Venezuela (1870), 39 L. J. Ch. 354. *Refd.* Henderson v. Lacon (1867), L. R. 5 Eq. 249; Re Overend, Gurney, *Ex p.* Oakes & Peek (1867), L. R. 3 Eq. 576; Hodgkinson v. Kelly (1868), L. R. 6 Eq. 490; Panama & South Pacific Telegraph Co. v. India Rubber, Gutta Percha & Telegraph Works Co. (1875), 10 Ch. App. 520, n.; Blonkhorn v. Penrose (1880), 43 L. T. 668; Mathias v. Yetta (1882), 46 L. T. 497; Scott v. Snyder Dynamite Projectile Co. (1892), 67 L. T. 104; Byrne v. Millom & Askam Hematite Iron Co. (1901), 46 Sol. Jo. 85. *Mentd.* Denton v. MacNeil (1866), L. R. 2 Eq. 352; Ross v. Estates Investment Co. (1866), L. R. 3 Eq. 122; Re Cachar Co., Lawrence's Case, Re Russian (Vyksounsky) Iron Works Co., Kincaid's Case (1867), 2 Ch. App. 412; Kent v. Freehold Land & Brickmaking Co. (1867), L. R. 4 Eq. 588; Re Madrid Bank, Wilkinson's Case (1867), 36 L. J. Ch. 489; Re Anglo-Danubian Steam Navigation & Colliery Co., Walker's Case (1868), L. R. 6 Eq. 30; Re Canadian Native Oil Co., Fox's Case (1868), L. R. 5 Eq. 118; Chester v. Spargo (1868), 18 L. T. 314; Langham v. East Wheel Rose Consolidated Silver-Lead Mining Co. (1868), 37 L. J. Ch. 253; Re Estates Investment Co., *Ex p.* Pawlo (1869), 38 L. J. Ch. 318; Re Estates Investment Co., McNeill's Case (1870), L. R. 10 Eq. 503; Cargill v. Bower (1878), 10 Ch. D. 502; Re Scottish Petroleum Co. (1883), 23 Ch. D. 413; Bellairs v. Tucker (1884), 13 Q. B. D. 562; Newlands v. National Employers' Accident Assn. (1885), 54 L. J. Q. B. 428; Symonds v. City Bank (1886), 34 W. R. 364; Aaron's Reefs v. Twiss, [1896] A. C. 273.

4028. — Assignability of personal contract.]—The rule that a publishing agreement between an author & an individual publisher or firm of individuals is of a personal nature, & that the benefit of the same cannot without the consent of the author be assigned, extends to such an agreement between an author & a limited co. Where a publishing co. became insolvent the ct. restrained the receiver in a debenture-holder's action against the co. from assigning the benefit of a publishing agreement without the consent of the author.—GRIFFITH v. TOWER PUBLISHING CO., LTD. & MONCRIEFF, [1897] 1 Ch. 21; 66 L. J. Ch. 12;

holders of the ordinary shares were not, under clause 2, entitled to cumulative dividends before the surplus profits were divided under clause 3.—COWLINSHAW v. CHRISTCHURCH PRESS CO. (No. 1) (1907), 26 N. Z. L. R. 1076.—N.Z.

*m. Reserve fund—From undivided profits—Rights of preference shareholders.]—*Although the reserve fund consists of undivided profits, as long as it exists as a reserve fund it exists for the benefit of both preference & ordinary shareholders, & the preference shareholders will cease to have an interest in the fund only when it is not required as a reserve fund, but is available for distribution as profits.—Re OAMARU WOOLLEN FACTORY CO., LTD. (1913), 32 N. Z. L. R. 145.—N.Z.

PART III. SECT. 31, SUB-SECT. 1.

*n. Power to enter association for mutual protection.]—*Coal mining cos. entered into a deed for the purpose of forming an assocn. to maintain & defend the commercial & industrial interests of the parties thereto & to fix & maintain prices without intent to act in any way to the detriment of the public generally. The deed provided

that the assocn. should be registered under Industrial Arbitration Act, 1912. Tovies were struck under the deed, & proceedings taken against deft. co. to enforce payment. It was contended on behalf of deft. co. at the hearing of the case, that deft. co. had no power to enter into such a deed:—*Held*: deft. co. had power under its memorandum of assocn. to become a party to such an assocn. of employers.—PREMIER COAL MINING CO. v. PROPRIETARY COAL MINES OF W. A. LTD. (1915), 17 W. A. L. R. 86.—AUS.

*o. Company in liquidation—Retention of corporate powers.]—*The provisions in Ontario Cos. Act, R. S. O., 1914, c. 178, under which the co. in liquidation was incorporated, by which it had power to sell or dispose of its undertaking for such consideration as it might think fit & in particular for shares of any other co. having objects altogether or in part similar to those of the co., if authorised by the vote of two-thirds of the shareholders, were not destroyed by the liquidation. The effect was to make the power of the co. subject to the approval of the ct. & the superior rights of the creditors.—Re BAILEY COBALT MINES, LTD. (1920), 47 O. L. R. 13.—CAN.

*p. —.]—*Re CANADIAN CEREAL & FLOUR MILLS CO. (1921), 67 D. L. R. 234; 51 O. L. R. 316.—CAN.

*q. Revocation of charter—Effect of re-instatement of company.]—*The letters-patent of the co. had been cancelled under Manitoba Cos. Act, s. 77, but subsequently its charter was revived under sect. 130:—*Held*: the revocation of the charter operated as a mere suspension of the powers & functions of the co. & the order in council reviving the letters-patent of incorporation restored the co. to its legal position at the time of the revocation as to the proceedings instituted between such revocation & the re-instatement of the co. for an order allowing the present appeal to the Supreme Ct. of Canada.—KILDONAN INVESTMENTS, LTD. v. THOMPSON (1917), 55 S. C. R. 272.—CAN.

*r. Stipulation as to area of operation—Insurance company.]—*An insurance co. incorporated by the legislature of Manitoba, without any limitation as to the locality of the property to be insured, but with the stipulation that the policy monies are to be made payable within the province of Manitoba, might issue a policy in

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75 L. T. 330; 45 W. R. 73; 13 T. L. R. 9; 41 Sol. Jo. 29.

See, generally, CONTRACT, Vol. XII., pp. 588 et seq.

4029. Ultra vires acts—Whether shareholders can authorise.]—If a co. has no power to do a particular act, that power cannot be given to the co. by the agreement of the shareholders, nor can the act be inferred to have been done legally merely from acquiescence, or from subsequent delay in questioning the transaction.—*Re BRITISH PROVIDENT LIFE & FIRE ASSURANCE SOCIETY, GRADY'S CASE* (1863), 1 De G. J. & Sm. 488; 1 New Rep. 407; 32 L. J. Ch. 326; 8 L. T. 98; 27 J. P. 516; 9 Jur. N. S. 631; 11 W. R. 385; 46 E. R. 194, L. C. Annotations:—*Refd. Re British Provident Life & Fire Assce. Soc., Lane's Case* (1863), 1 De. G. J. & Sm. 504; *Re Agriculturist Cattle Insce., Spackman's Case* (1865), 34 L. J. Ch. 321; *Hadley v. Hadley* (1897), 77 L. T. 131. *Mentd. British Provident Life & Fire Assce. Soc. v. Norton* (1863), 3 New Rep. 147.

4030. — Whether shareholders can ratify.]—*ASHBURY RAILWAY CARRIAGE & IRON CO. v. RICKE*, No. 4037, *post*.

4031. — —.]—*TOWERS v. AFRICAN TUG CO.*, No. 4120, *post*.

See, further, Sub-sect. 2, F., post.

4032. Governed by constitution.]—A commercial corp'n. has such powers as are expressly or impliedly warranted by its constitution. The objects of a colliery co. incorporated under 1862 Act, as expressed in its memorandum of assocn., included the purchasing or taking upon lease & working of certain coal mines & mineral lands, the selling of coal & other products, the carrying on generally of the businesses of colliers & coal merchants, & the acquiring of real estate or any right or interest therein. There was no express power of sale of real estate:—*Held*: the co. had power to sell land which it had acquired, a power to sell real estate being impliedly warranted by the constitution of the co.—*Re KINGSBURY COLLIERIES, LTD. & MOORE'S CONTRACT*, [1907] 2 Ch. 259; 76 L. J. Ch. 469; 96 L. T. 829; 23 T. L. R. 497; 14 Mans. 212.

4033. Distinguished from objects.]—The objects

of the co. & the powers of the co. to be exercised in effecting the objects are different things. Powers are not required to be, & ought not to be, specified in the memorandum (LORD WRENBURY).

—*COTMAN v. BROUGHAM*, No. 4070, *post*.

4034. To act as trustee.]—A limited co. may be a trustee, & may hold trust property in joint tenancy with a natural person as co-trustee. Where a settlement contains a power for the appointment of a new trustee, the donee of the power is entitled to appoint a limited co. as such trustee jointly with a continuing trustee, in the absence of indications in the settlement of a contrary intention.—*Re THOMPSON'S SETTLEMENT TRUSTS, THOMPSON v. ALEXANDER*, [1905] 1 Ch. 229; 74 L. J. Ch. 133; 91 L. T. 835; 21 T. L. R. 86.

Annotation:—Refd. Re Royal Naval School, Seymour v. Royal Naval School, [1910] 1 Ch. 806.

In relation to other companies — To act as manager.]—*See* No. 3683, *ante*.

— **To hold shares.]**—*See* No. 4054, *post*.

SUB-SECT. 2.—LIMITATION OF POWERS.

A. In General.

4035. General rule.]—A co. established for one purpose cannot against the wish of any dissentient minority (however small) undertake a business foreign to its original object. No portion of the funds of a co. can be applied in procuring the means of carrying on a different undertaking, such as soliciting a bill in parliament to confer powers necessary for that purpose.—*LYDE v. EASTERN BENGAL RY. CO.* (1866), 36 Beav. 10; 55 E. R., 1059.

Annotation:—Refd. A.-G. v. N. E. Ry., [1906] 2 Ch. 675.

4036. —.]—The governing body of a corp'n., which is in fact a trading partnership, cannot in general use the funds of the community for any purpose other than those for which they are constituted; whether that governing body is exclusively directors, or a council general, or the majority at a general meeting of the co. Therefore the special powers given either to the directors or to a majority by the statutes or other constituent

Manitoba to cover a loss by fire on a building in G., U.S.A., & yet be considered as doing business only in Manitoba.—*KITTLES v. COLONIAL ASSURANCE CO.*, [1917] 2 W. W. R. 878; 35 D. L. R. 588; 28 Man. L. R. 47.—**CAN.**

e. Express power by statute — Effect of.] When the legislature gives a co. express power to do a certain thing in a special way it is to be taken *prima facie* to prohibit by implication any deviation from the power so given.—*McGREGOR v. ST. CROIX LUMBER CO.* (1912), 12 E. L. R. 199.—**CAN.**

t. Implied powers — Trading company.]—A co. formed to find & publish a newspaper, even if not a "trading co." has an implied power to borrow & to pledge its assets for the purpose of defending a libel action.—*HOE v. LEE* (1903), 3 S. R. N. S. W. 30; 20 N. S. W. W. N. 23.—**AUS.**

a. —.]—Incidental powers of a co. are to be determined by a fair implication from the expressly conferred powers.—*COLUMBIA BITULITHIC, LTD. v. VANCOUVER LUMBER CO.* (1915), 30 W. L. R. 753; 7 W. W. R. 286; 8 W. L. R. 132; 20 D. L. R. 954; 21 D. L. R. 91.—**CAN.**

b. — Memorandum of association.]—The doctrine that a co. can do nothing which is not expressly or impliedly warranted by its memorandum of assocn. or other instrument

of incorporation, must be reasonably understood & applied. A co., therefore, in carrying on the trade for which it is constituted, & in whatever may be fairly regarded as incidental to, or consequential upon, that trade, is free to enter into any transaction not expressly prohibited by its memorandum of assocn.—*SHAMNUGGER JUTE FACTORY CO. v. RAM NARAIN CHATTERJEE* (1886), 1 L. R. 14 Calc. 189.—**IND.**

c. Powers assumed in articles of association — Manufacturing company — Stamp duty.]—A manufacturing co., which by its arts. of assocn. is empowered to promote cos., & to hold & deal in their shares, & to acquire & sell patents & licences, is not a co. formed exclusively for manufacturing purposes, & is not entitled to be exempted from payment of stamp duty.—*Re ELECTRIC LIGHT & POWER CO., LTD.* (1884), 2 N. Z. L. R. 28.—**N.Z.**

d. Mining company suing without miner's right.]—The four trustees of a registered mining co. with the co. as pl'ts. sued in the Ct. of Mines at Ballarat to set aside for irregularity a sale of the co.'s claim, machinery & chattels by the bailiff of the Ct. of Mines under a writ of execution. No evidence was given at the hearing that the co. held a miner's right at the time of the sale complained of, but miner's rights for the four trustees were pro-

duced & admitted. The plaint was dismissed on the ground that the co. pl'ts. did not produce any miner's right to them.—*VOLUNTEER EXTENDED GOLD MINING CO. v. GRAND JUNCTION EXTENDED GOLD MINING CO.* (1867), 4 W. W. & A'B. 6.—**AUS.**

e. Sale of whole undertaking — Necessity for express authority in memorandum.]—A co. has no power unless expressly authorised by its memorandum of assocn., to dispose of its whole undertaking. Power to sell its real & personal property is insufficient.—*REWA CO-OPERATIVE DAIRY CO. v. LONERGAN* (1905), 25 N. Z. L. R. 540.—**N.Z.**

f. Gratuities to officials.]—It is competent for a limited co. to give gratuities to its officials in consideration of services rendered or to be rendered.—*CAMERON v. GLENMORANGIE DISTILLERY CO.* (1896), 23 R. (Ct. of Sess.) 1092; 33 Sc. L. R. 781; 4 S. L. T. 93.—**SCOT.**

PART III. SECT. 31, SUB-SECT. 2.—A.

4035 i. General rule.]—A co. incorporated for definite purposes has no power to pursue objects other than those expressed in its charter, or such as are reasonably incidental thereto, nor to exercise its powers in the attainment of authorised objects in a manner not authorised by the charter. The assent of every shareholder makes

documents of the assocn., are always to be construed as subject to a paramount & inherent restriction, that they are to be exercised in subjection to the special purposes of the original bond of assocn.—**PICKERING v. STEPHENSON** (1872), L. R. 14 Eq. 322; 41 L. J. Ch. 493; 26 L. T. 608; 20 W. R. 654.

*Annotations:—***Consd.** Studdert v. Grosvenor (1886), 33 Ch. D. 528; Tomkinson v. S. E. Ry. (1887), 35 Ch. D. 675; *Re* Liverpool Household Stores Assocn. (1890), 59 L. J. Ch. 616. **Expld.** Peel v. L. & N. W. Ry., [1907] 1 Ch. 5. **Refd.** Cullerne v. London & Suburban General Permanent Bldg. Soc. (1890), 25 Q. B. D. 485; *Re* Sharpe, *Re* Bennett, Masonic & General Life Assee. v. Sharpe, [1892] 1 Ch. 154. **Mentd.** *Re* Faure Electric Accumulator Co. (1888), 40 Ch. D. 141; Breay v. Royal British Nurses' Assocn. (1897), 76 L. T. 735.

4037. —.]—A co., created a corpn. under 1862 Act, is not thereby created a corpn. with inherent common law rights. The objects of a co. proposed to be incorporated under that Act, as stated in the memorandum of assocn. required by sect. 8 of the Act, cannot be departed from, except so far as sect. 12 permits the change. The memorandum is the charter of the co. Consequently a contract made by the directors of such a co. upon a matter not included in the memorandum of assocn. is *ultra vires* of the directors, & is not binding on the co. Nor can such a contract be rendered binding on the co. though afterwards expressly assented to at a general meeting of shareholders. Being in its inception void, as beyond the provisions of the statute, it cannot be ratified even by the assent of the whole body of shareholders.—**ASHBURY RAILWAY CARRIAGE & IRON CO. v. RICKE** (1875), L. R. 7 H. L. 653; 44 L. J. Ex. 185; 33 L. T. 450; 24 W. R. 794, H. L.; *revsq.* S. C. *sub nom.* **RICKE v. ASHBURY RAILWAY CARRIAGE & IRON CO.** (1874), L. R. 9 Exch. 224, Ex. Ch.

*Annotations:—***Consd.** Cree v. Somervall (1879), 4 App. Cas. 648; A.-G. v. G. E. Ry. (1880), 5 App. Cas. 473; *Re* Coltman, *Coltman v. Coltman* (1881), 19 Ch. D. 64. **Distd.** Melliss v. Shirley & Freemantle Local Board of Health (1885), 54 L. J. Q. B. 408. **Fold.** *Re* Walker & Hacking (1887), 57 L. T. 763. **Consd.** *Re* London Celluloid Co., Bayley & Hanbury's Cases (1888), 59 L. T. 109. **Apld.** Southwark & Vauxhall Water Co. v. Dickenson (1889), 5 T. L. R. 251. **Consd.** Balkis Consolidated Co. v. Tomkinson, [1893] A. C. 396; A.-G. v. Mersey Ry., [1907] 1 Ch. 81; Amalgamated Soc. of Ry. Servants v. Osborne, [1910] A. C. 87; *Re* Birkbeck Permanent Benefit Bldg. Soc., [1912] 2 Ch. 183; A.-G. v. Fulham Corpn., [1921] 1 Ch. 440. **Refd.** Gibson v. Barton (1875), L. R. 10 Q. B. 329; Stone v. Yeovil Corpn. (1876), 24 W. R. 1073; *Re* West of England Bank, *Ex p.* Booker (1880), 14 Ch. D. 317; Guinness v. Land Corpn. of Ireland (1882) 22 Ch. D. 349; L. & N. W. Ry. v. Price (1883), 11 Q. B. D. 485; London Financial Assocn. v. Kelk (1884), 26 Ch. D. 107; Ashbury v. Watson (1885), 30 Ch. D. 376; *Re* Railway Time Tables Publishing Co., Sandys' Case (1889), 61 L. T. 94; Foster v. L. C. & D. Ry., [1895] 1 Q. B. 711; *Re* Walker & Smith (1903), 72 L. J. Ch. 572; Corbett v. S. E. & C. Rys.' Managing Committee, [1906] 2 Ch. 12; *Re* Kingsbury Collieries & Moore's Contract, [1907] 2 Ch. 259; British South Africa Co. v. De Beers Consolidated Mines, [1910] 1 Ch. 354; Sinclair v. Brougham, [1914] A. C. 398; Dundee Harbour Trustees v. Nicol, [1915] A. C. 550; Bowman v. Secular Soc., [1917] A. C. 406; County Hotel & Wine Co. v. L. & N. W. Ry., [1918] 2 K. B. 251; Kensington & Knightsbridge Electric Lighting Co. v. Notting Hill Electric Lighting Co. (1918), 87 L. J. K. B. 565; Jenkin v. Pharmaceutical Soc. of Great Britain, [1921] 1 Ch. 392. **Mentd.** Hope v. International Financial Soc. (1876), 4 Ch. D. 327; *Re* Norwich Provident Insee. Soc. (1877), 37 L. T. 272; *Re* Albion Life Assee. Soc., Winstone's Case (1879), 27 W. R. 752; *Re* Dronfield Silkstone Coal Co. (1880), 17 Ch. D. 76;

Chapleo v. Brunswick Permanent Bldg. Soc. (1881), 6 Q. B. D. 696; *Re* German Date Coffee Co. (1882), 20 Ch. D. 169; Murray v. Scott, Brimelow v. Murray, Agnew v. Murray (1884), 53 L. J. Ch. 745; *Re* South Durham Brewery Co. (1885), 31 Ch. D. 261; Wenlock v. River Dee Co. (1885), 10 App. Cas. 354; Trevor v. Whitworth (1887), 12 App. Cas. 409; Newell v. Hemingway (1888), 53 J. P. 324; *Re* Patent Ivory Manufacturing Co., Howard v. Patent Ivory Manufacturing Co. (1888), 38 Ch. D. 156; Putney Overseers v. L. & S. W. Ry., [1891] 1 Q. B. 440; Mann & Beattie v. Edinburgh Northern Tram. Co. (1892), 1 R. 86; Ooregum Gold Mining Co. of India v. Roper, Wallroth v. Roper, [1892] A. C. 125; Andrews v. Gas Meter Co., [1897] 1 Ch. 361; *Re* Borax Co., Foster v. Borax Co., [1901] 1 Ch. 326; Ho Tung v. Man On Insee., [1902] A. C. 232; L. C. C. v. A.-G., [1902] A. C. 165; A.-G. v. West Gloucestershire Water Co. (1909), 25 T. L. R. 650; A.-G. v. Leicester Corpn., (1910), 103 L. T. 214; *Re* Doeckham Gloves, [1913] 1 Ch. 226; *Re* Woking U. D. C. (Basingstoke Canal) Act, 1911, [1914] 1 Ch. 300; Bonanza Creek Gold Mining Co. v. R., [1916] 1 A. C. 566; *Re* Layard, Layard v. Bessborough (1916), 85 L. J. Ch. 505.

See, generally, CORPORATIONS, Vol. XII., pp. 354 *et seq.*, & compare Part IX., Sect. 12, sub-sect. 2, *post*.

Ratification or authorisation of ultra vires acts.]

—*See* Nos. 4029–4031, *ante*, No. 4042, *post*.

4038. What operates as limitation—Giving option to take unissued capital.]—The fact that a co. has given to any person the option of taking its unissued shares at a future date at an agreed price does not fetter the co. in any way in the conduct of its business in the interval, & it may exercise all the powers conferred upon it by the memorandum or arts. of assocn., & either dispose of its business to another co. or agree to a voluntary liquidation.—**HIRSCH & CO. v. BURNS** (1897), 77 L. T. 377, H. L.; *affg.* S. C. *sub nom.* *Re* SOUTH AFRICAN TRUST & FINANCE CO., LTD., *Ex p.* HIRSCH & CO. (1896), 74 L. T. 769, C. A.

4039. — Delegation of powers.]—**BLAIR OPEN HEARTH FURNACE CO., LTD. v. REIGART**, No. 3823, *ante*.

Construction of memorandum & articles.]—*See, generally,* Sect. 7, sub-sect. 3, *ante*.

Alteration—Of memorandum.]—*See* Sect. 7, sub-sect. 4, A., *ante*.

Of articles of association.]—*See* Sect. 30, sub-sect. 2, C., *ante*.

B. In regard to Shares.

4040. Acquisition of company's own shares—Where not expressly authorised—General rule.]—Nothing but a direct authority given in plain terms to purchase its own shares can enable a co. to make a valid purchase of them.—*Re* LONDON, HAMBURG & CONTINENTAL EXCHANGE BANK, ZULUETA'S CLAIM (1870), 5 Ch. App. 444; 39 L. J. Ch. 598; 18 W. R. 778, L. J.

*Annotations:—***Mentd.** *Re* Marseilles Extension Ry., *Ex p.* Credit Foncier & Mobilier of England (1871), 7 Ch. App. 161; **Mentd.** Parker v. Lewis (1873), 28 L. T. 91.

4041. — Transfer to directors in trust for company to escape liability.]—A. a shareholder in a joint-stock co., being anxious to be freed from his liabilities in respect of his shares, proposed to sell them to the co., but afterwards, being advised that the co. could not legally purchase, declined to do so, & subsequently sold them to a director in his individual capacity, taking debentures of the co. in payment, & at the same

no difference.—**CHARLEBOIS v. DELAP** (1895), 26 S. C. R. 221.—**CAN.**

g. Transfer of control.]—Corpn. cannot give up to others their special powers on the control of their undertakings unless authorised by their constituting instrument or by statute.—**BROWN v. WICKHAM & BULLOCK ISLAND COAL CO., LTD.** (1894), 15 N. S. W. L. R. 306; 11 N. S. W. W. N. 30.—**AUS.**

h. Express powers in memorandum of association—Powers limited to incidental activities.]—A co. whose express powers are limited to the powers necessary to carry on a saw-milling business, & which has power under its memorandum of assocn. to insure its plant, etc., against loss by fire, & itself in respect of accidents to its workmen, & whose memorandum of assocn. also contains the usual

general power to do such things as are incidental or conducive to the objects of the co., has no power to join a mutual insurance co. whose members agree to mutually insure each other as sawmill proprietors against accidents.—**WAIRARAPA SAWMILLERS' ACCIDENT INSURANCE CO. v. MANAWATU SAW-MILLING CO., LTD.** (1912), 31 N. Z. L. R. 1200.—**N.Z.**

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time advancing a sum to the co. upon other debentures. The secretary of the co. acted as the director's agent in part of these transactions:—*Held*: A. was a contributory, in respect of losses, etc., of the co., only up to the date of the transfer by him of his shares.—*Re VALE OF NEATH & SOUTH WALES BREWERY CO., HOLLWEY'S CASE* (1849), 1 De G. & Sm. 777; 13 L. T. O. S. 400; 13 Jur. 954; 63 E. R. 1291.

Annotations:—*Distd. Re Vale of Neath & South Wales Brewery Joint-Stock Co., Ex p. Lawes* (1851), 20 L. J. Ch. 295. *Reid. Re Vale of Neath & South Wales Brewery Co., Walters' Second Case* (1850), 3 De G. & Sm. 244; *Re Phoenix Life Assce., Reeve's Case* (1862), 7 L. T. 267.

4042. ——— *Ultra vires.*—A shareholder transferred 150 shares to the manager & a director "on behalf of the co.," on the understanding that the value of them at par should be credited to him as payment in full on other 50 shares, of which he retained possession. The co. had no power to hold its own shares:—*Held*: the transaction being *ultra vires*, he could not thus divest himself of his liability without notice to & the knowledge of all the individual shareholders; & he was still a contributory for the whole number of 200 shares.—*Re GENERAL PROVIDENT ASSURANCE CO., LTD., CROSS'S CASE* (1869), 38 L. J. Ch. 583; 17 W. R. 1006.

4043. ——— *Transfer to directors after threat of winding-up proceedings by transferor.*—A., a shareholder in a co., being dissatisfied with the proceedings of the directors, threatened them with a winding-up petition or a bill to restrain them from acting *ultra vires* unless within a week they would find some one to take a *bonâ fide* transfer of his shares, & give him an indemnity. A. also insisted by his solr. that, the transfer should be *bonâ fide*. One of the directors took the shares, the money was paid, an indemnity was given, & the transfer was registered:—*Held*: A., who had taken every possible means for rendering the transfer *bonâ fide* & legal, had effectually parted with his shares, & was not liable as a contributory under the winding up of the co.—*Re PHOENIX LIFE ASSURANCE CO., REEVE'S CASE* (1862), 7 L. T. 267; 10 W. R. 817. *Annotation*:—*Reid. Re General Provident Assce., Cross's Case* (1869), 38 L. J. Ch. 583.

4044. ——— *—*—B., an original shareholder in a co., informed the directors that he should present a petition for an immediate winding-up order, unless they would find him a *bonâ fide* purchaser for his shares, & would pay his costs of a former petition. The co. proposed one purchaser, but he was objected to by B. as being a purchaser on behalf of the co., & therefore not

a *bonâ fide* one. A second was found, who bought the shares, & who said he was not purchasing on behalf of the co. The evidence in the case, however, showed that B. could not have been otherwise than aware of the fact that he was purchasing the shares for the co., & that in the then existing state of the co.'s affairs a *bonâ fide* purchaser could not have been found:—*Held*: B.'s name must be placed on the list of contributories.—*Re CONSOLS INSURANCE ASSOCN., BENHAM'S CASE* (1865), 12 L. T. 224; 11 Jur. N. S. 381; 13 W. R. 483.

4045. ——— *Effect of special resolution.*—A co. having 150,000 shares issued & half paid-up, passed a special resolution that the directors should have power to apply the co.'s assets in purchasing from any shareholders willing to sell, any number of shares not exceeding 100,000; & that such shares should not be re-issued by the directors without the authority of a general meeting. The co. had no power under its memorandum of assocn. or arts. to purchase or deal in its own shares or accept surrenders:—*Held*: the scheme was *ultra vires* & invalid, being either an attempt to reduce the capital of the co. without complying with the provisions of 1867 Act, ss. 9–13, or else a trafficking in the shares of the co. which was not authorised by the memorandum of assocn.—*HOPE v. INTERNATIONAL FINANCIAL SOCIETY* (1876), 4 Ch. D. 327; 46 L. J. Ch. 200; 35 L. T. 924; 25 W. R. 203, C. A.

Annotations:—*Consd. Trevor v. Whitworth* (1887), 12 App. Cas. 409. *Reid. Re James's Bank, Colville's Case* (1879), 48 L. J. Ch. 633; *Re Dronfield Silkstone Coal Co.* (1880), 17 Ch. D. 76; *Eichbaum v. City of Chicago Grain Elevators* [1891] 3 Ch. 459.

4046. ——— *Provision regulating transfer of shares.*—One of the arts. of assocn. of a Scottish joint-stock limited co. enacted that "no transfer of any shares of the co.'s stock, either upon a sale, or in consequence of the bkpey. or insolvency of any shareholder, or in consequence of the marriage of any female shareholder, shall be valid or effectual without the consent of a majority of the other shareholders expressed in writing; but in the event of the other shareholders declining to consent to any such proposed transfer of shares in the co., they shall be bound to take such shares at the price offered in the case of a proposed sale, & at the market price of the day in the case of a proposed transfer for any other cause." Added subsequently by special resolution: "Unless such shares shall not at the time be fully paid up, & the reason for declining to consent be that the directors are not satisfied with the proposed transferee." Trustees entered upon the register were anxious in the discharge of their duty to dispose of their trust shares, which consisted of

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4045 i. *Acquisition of company's own shares—Where not expressly authorised—Effect of special resolution.*—A co. was incorporated under a special Act of Parliament, the preamble of which set forth the objects of the co. as they appeared in the trust deed. The Act further provided that all alterations to the trust deed which might be made in conformity with its provisions should be registered in the Deeds Office:—*Held*: the purchase of its shares by the co. with a view to reducing its capital not being authorised by the terms of the trust deed or Act of incorporation could not be validated by resolution of shareholders.—*WOLFE v. SMYTH & CRAWFORD (LIQUIDATORS)*, [1914] C. P. D. 187.—**S. AF.**

k. ——— *—*—A condition attached to a class of shares that the

co. shall or may take the shares back at the request of the shareholder is *ultra vires* as it amounts to an agreement by the co. to purchase its own shares.—*LONG v. GUELPH LUMBER CO.* (1880), 31 C. P. 129.—**CAN.**

l. ——— *—*—An arrangement between a co. & certain of its shareholders whereunder the shares are cancelled & the money paid therefor is returned to the shareholders is void, even though the co. be solvent at the time, unless the power to purchase its shares has been given to the co. by the Act by or under which it was incorporated, & the shareholders whose shares have been so dealt with are liable to be placed on the list of contributories on the winding up of the co.—*Re WOODBRIDGE GRAIN CO., LTD.*, [1918] 2 W. W. R. 886.—**CAN.**

m. ——— *—*—*SHYMKA v. SMOKY LAKE UNITED FARMERS CO.* (1922), 66

D. L. R. 729.—**CAN.**

n. ——— *Ultra vires.*—Directors agreed to sell an accumulated stock of whisky to a co-director in exchange for a number of his paid-up shares:—*Held*: the transaction was *ultra vires* involving the purchase by a co. of its own shares, but that having been ratified by the co. was valid as against the liquidator.—*Re BALGOVLEY DISTILLERY CO.* (1885), 17 L. R. Ir. 239.—**IR.**

o. ——— *What amounts to.*—A declaration alleged that pltf. had been entitled to the issue to him of certain shares in deft. co., but had agreed with the co. to sell to it his rights thereto for consideration:—*Held*: such agreement did not amount to a purchase by the co. of its own shares in reduction of its capital, but only as an extinguishment of pltf.'s rights to the said shares.—*JACOBS v. AFRICAN AGRICULTURAL*

100 £100 shares, fifty being fully paid up, & fifty on which £1 per share had been paid. After negotiations, the four directors by special minute approved of the purchase by three of themselves of these shares to be held in trust for the co. A transfer was executed in favour of the three directors, "in trust for the co.," & their names were entered upon the register of members with the same designation. The money paid for the shares came out of the funds of the co.; & thereafter the selling trustees ceased to be treated as having any interest therein. At the next general meeting the purchase was approved of by a majority of the shareholders. There was no other transfer or transferees proposed. More than fifteen months after the transaction the co. was wound up voluntarily:—*Held*: (1) the names of the three persons, the three directors, now appearing upon the register as holding these shares could not be disturbed; the transfer to them being valid & effectual, & the rights of creditors having intervened; (2) the above art. of assocn. did not give any power to the co. to become the purchaser of its own shares, nor had the transaction been carried on under its provisions.

—*CREE v. SOMERVAIL* (1879), 4 App. Cas. 648; 41 L. T. 353; 28 W. R. 34, H. L.

Annotation:—As to (1) *Distd. Re Castle Crag S.S. Co., Raine's Case* (1887), 4 T. L. R. 302.

— **Banking company.**—*See* BANKERS & BANKING, Vol. III., p. 140, No. 126.

4047. — Where expressly authorised—By articles—Exercise *bonâ fide*.—A co. limited by shares can purchase its own shares when the arts. of assocn. expressly authorise the purchase, although the memorandum of assocn. contains no such power, provided the arts. are not intended to authorise any trafficking in shares for the purposes of profit.

The memorandum of a co. contained the usual powers, & the general clause at the end of its powers "to do all things conducive to the attainment of the above objects." The memorandum contained no power authorising the co. to purchase its own shares. The arts. of assocn. expressly authorised the purchase by the co. of its own shares. The vendor to the co. had entered into an arrangement with it, by which the co. was to purchase on certain terms certain shares issued to him. The transaction was carried out perfectly *bonâ fide*, & the co. was placed on the list of shareholders as owner of the shares:—*Held*: the transaction was valid, & the vendor had effectually ceased to be a member of the co.—*Re DRONFIELD SILKSTONE COAL CO.* (1880), 17 Ch. D. 76; 44 L. T. 361; *sub nom. Re DRONFIELD SILKSTONE COAL CO., LTD., Ex p. WARD*, 50 L. J. Ch. 387; 29 W. R. 768, C. A.

Annotations:—*Dbtd. Trevor v. Whitworth* (1887), 12 App.

& FINANCE CORPN., LTD., [1905] T. H. 47.—S. AF.

p. — *Authorised by articles of association—Power not expressed in memorandum.*—By one of the arts. of assocn. of a co. power was given to the co. to set aside a reserve fund out of profits, & out of such fund to invest in govt. debentures & to purchase shares in other public cos., including shares of the co. itself. The memorandum of assocn. did not give express power to the co. to purchase its own shares:—*Held*: such art. of assocn. was *ultra vires*, & the co. had not power to purchase its own shares.—*Re COLONIAL INVESTMENT AGENCY CO.* (1893), 19 V. L. R. 381.—AUS.

q. — *Jehangir Rastamji Modi v. Shamji Ladhá* (1867), 4 Bom. O. C. 185.—IND.

r. *Winding up—Attempt to re-instate original holders.*—Both the memorandum & arts. of assocn. of a limited co. gave it power to purchase its own shares. In the years 1882 & 1885, the co. purchased from some of its shareholders partly paid-up shares held by them, which were thereupon cancelled. On Nov. 30, 1886, a resolution was passed for the voluntary winding up of the co. & the appointment of a liquidator. On Jan. 11, 1887, the list of contributories was settled by the liquidator, & on Feb. 7, 1887, an order was made for continuing the winding up under supervision. The shareholders who had sold to the co. were not placed on the list of contributories, & the transfers by them were treated by the co. & by the liquidator as valid up to Jan. 2,

Cas. 409. *Refd. Re Mersina, Tarsus & Adana Railway Construction Co.* (1889), 1 Meg. 341; *Re Sovereign Life Assce.*, [1892] 3 Ch. 279; *Bellerby v. Rowland & Marwood's S.S. Co.*, [1902] 2 Ch. 14. *Mentd. Guinness v. Land Corpn. of Ireland* (1882), 22 Ch. D. 349; *Re Ince Hall Rolling Mills Co.* (1882), 23 Ch. D. 545, n.; *Re Florence Land & Public Works Co., Nichol's Case, Tufnell & Ponsonby's Case* (1885), 29 Ch. D. 421; *Eichbaum v. City of Chicago Grain Elevators*, [1891] 3 Ch. 459.

4048. — — — — ——A limited co. was incorporated under the Joint Stock Cos. Acts with the objects, as stated in its memorandum, of acquiring & carrying on a manufacturing business, & any other transactions which the co. might consider to be in any way connected therewith. The arts. authorised the co. to purchase its own shares. The co. having gone into liquidation, a former shareholder made a claim against the co. for the balance of the price of his shares sold by him to the co. before the liquidation & not wholly paid for:—*Held*: such a co. has no power under the Cos. Acts to purchase its own shares, & the purchase was therefore *ultra vires*, & the claim must fail.—*TREVOR v. WHITWORTH* (1887), 12 App. Cas. 409; 57 L. J. Ch. 28; 57 L. T. 457; 36 W. R. 145; 3 T. L. R. 745, H. L.

Annotations:—*Apld. Re London Celluloid Co., Bayley & Hanbury's Cases* (1888), 59 L. T. 109. *Consd. Re Mersina & Adana Construction Co.* (1889), 5 T. L. R. 680; *Re Denver Hotel Co.*, [1893] 1 Ch. 495. *Distd. Re Borough Commercial & Bldg. Soc.*, [1893] 2 Ch. 242. *Expld. British & American Trustees & Finance Corpn. v. Couper*, [1894] A. C. 399. *Consd. Bellerby v. Rowland & Marwood's S.S. Co.*, [1902] 2 Ch. 14; *Rowell v. Rowell*, [1912] 2 Ch. 609. *Refd. Re Walker & Hacking* (1887), 57 L. T. 763; *Re Almada & Tinto Co.* (1888), 38 Ch. D. 415; *Fauro Electric Accumulator Co. v. Phillipart* (1888), 58 L. T. 525; *Lee v. Neuchatel Asphalt Co.* (1889), 41 Ch. D. 1; *Re Railway Time Table Publishing Co., Ex p. Sandys* (1889), 58 L. J. Ch. 504; *Re West London Commercial Bank, Whiteley's Case* (1889), 60 L. T. 807; *Eichbaum v. City of Chicago Grain Elevators*, [1891] 3 Ch. 459; *Ooregum Gold Mining Co. of India v. Roper, Wallroth v. Roper*, [1892] A. C. 125; *Re Sharpe, Re Bennett, Masonic & General Life Assce. v. Sharpe*, [1892] 1 Ch. 154; *Re Sovereign Life Assce.*, [1892] 3 Ch. 279; *Re Eddystone Marine Insce.*, [1893] 3 Ch. 9; *Vorner v. General & Commercial Investment Trust*, [1894] 2 Ch. 239; *Re Lamson Store Service Co., Re National Reversionary Investment Co.* (1895), 2 Mans. 537; *Metropolitan Coal Consumers' Asscn. v. Scrimgeour* (1895), 44 W. R. 35; *Re Railway Time Tables Publishing Co., Ex p. Welton*, [1895] 1 Ch. 255; *Lock v. Queensland Investment & Land Mortgage Co.*, [1896] 1 Ch. 397; *Welton v. Saffrey*, [1897] A. C. 299; *Mother Lode Consolidated Gold Mines v. Hill* (1903), 19 T. L. R. 341; *Bury v. Fanatina Development Corpn.*, [1909] 1 Ch. 754; *Hopkinson v. Mortimer Harley*, [1917] 1 Ch. 646; *I. R. Comrs. v. Blott, I. R. Comrs. v. Greenwood*, [1921] 2 A. C. 171. *Mentd. Re Thomas, Andrew v. Thomas*, [1916] 2 Ch. 331.

4049. — — — — — By memorandum.—A co. cannot legally purchase its own shares, even when such purchasing is one of the objects expressly stated in its memorandum of assocn.—*Re CASTLE CRAG S.S. CO., LTD., RAINE'S CASE* (1888), 4 T. L. R. 302.

4050. — — — — — Surrender by way of

1889, when the co. took out a summons for an order, under 1862 Act, s. 35, to rectify the register by inserting thereon the names of these shareholders, & by striking out the entry of the cancellation of their shares. There was no evidence of fraud or collusion in the purchase of the shares:—*Held*: without deciding whether the power conferred by the memorandum & arts. was valid or not, that the ct., having a discretion under the sect., & not being, under the circumstances, satisfied of the justice of the case, ought not to make the order sought.—*Re GENERAL FINANCE CO.* (1889), 23 L. R. Ir. 173.—IR.

s. — *— — — — —*—It is *ultra vires* for a co. to purchase its own shares or to advance capital of the co. to a director to do so.—*Re IRISH PROVIDENT*

Sect. 31.—Powers and liabilities of company: Sub-sect. 2, B., C., D., E. & F.]

forfeiture.]—*Re MERSINA & ADANA CONSTRUCTION Co. (1889), 5 T. L. R. 680; 1 Meg. 341.*

— **Effect of purchase.]—***See Nos. 3379, 4047, ante.*

— **Forfeiture or surrender of shares.]—***See, generally, Sects. 26, 27, ante.*

— **By agreement with shareholder.]—***See Sect. 27, sub-sect. 4, ante.*

4051. Trafficking in company's own shares.]—Arts. of a mutual loan society contained a provision confining securities for repayment of advances to "real or other securities, excepting personal securities, either by bonds, bills of exchange, or promissory notes :"—*Held* : (1) loan certificates of the society were not personal securities within the exception in the arts. ; (2) there is no rule of law prohibiting a co. from trafficking in its own shares.—*GRIMWADE v. MUTUAL SOCIETY (1884), 52 L. T. 409; sub nom. Re MUTUAL SOCIETY, GRIMWADE v. MUTUAL SOCIETY, 1 T. L. R. 115.*

4052. —.]—*Re DRONFIELD SILKSTONE COAL Co., No. 4047, ante.*

4053. Issue of shares—Bogus issue of shares to obtain Stock Exchange quotation.]—Where there is a corporate body capable of suing, that body only is the proper pltf. in a suit for the recovery of property, whether from its officers or directors or from any other person, & a bill for that purpose cannot be sustained by one shareholder on behalf of himself and all others except debts. The only exception to this rule is where the directors or majority of shareholders are doing something fraudulent against the minority, who are overwhelmed by them.

In order to obtain the sale of a business to a projected limited co., the L. co., & to procure a settling day for the co. on the Stock Exchange, it became necessary that 40,000 shares in the co. should be subscribed for, with £5 paid upon each. To effect this purpose, it was arranged between the directors of the L. co., & the I. co., who were promoting the L. co., & the N. bank, that the N. bank should discount promissory notes of the I. co. to the amount of £200,000; that the I. co. should pay the sum so received back in to the N. bank to the account of the L. co.; that in return for such payment, 40,000 shares in the

L. co. should be allotted to the nominees of the I. co., & that the money so paid in should be retained by the bank, & employed in meeting the promissory notes when arrived at maturity. This scheme was carried out. Subsequently a bill was filed by a shareholder in the L. co., on behalf of himself & all other shareholders in the company for a declaration that the application of these moneys to meet the debts of the I. co. had been a breach of trust, and for the recovery of the amount from the directors of the L. co. & the N. bank :—*Held* : (1) such a suit came within the above-stated rule, & was not sustainable; (2) the whole scheme was a sham, with regard to which no liability could arise, either at law or in equity, between the three cos. who were parties to it.—*GRAY v. LEWIS, PARKER v. LEWIS (1873), 8 Ch. App. 1035; 43 L. J. Ch. 281; 29 L. T. 1219; 21 W. R. 923, 928, L. JJ.*

Annotations :—As to (1) Distd. British & American Telegraph Co. v. Albion Bank (1872), L. R. 7 Exch. 119. Reid. Hardy v. Metropolitan Land & Finance Co. (1871), L. R. 12 Eq. 386; Menier v. Hoopers Telegraph Works (1874), 43 L. J. Ch. 330; MacDougall v. Gardiner (1875), L. R. 20 Eq. 383; Russell v. Wakefield Waterworks Co. (1875), L. R. 20 Eq. 474. As to (2) Reid. Re Disderi (1870), L. R. 11 Eq. 242. Generally, Mentd. Robson v. Dodds (1869), 38 L. J. Ch. 547; Laffitte v. Laffitte (1873), 42 L. J. Ch. 716; Parker v. McKenna (1874), 43 L. J. Ch. 802; Plumer v. Gregory (1874), L. R. 18 Eq. 621; Lloyd v. Dimmack (1877), 38 L. T. 173; New Sombrero Phosphate Co. v. Erlanger (1877), 46 L. J. Ch. 425; Mercantile Investment & General Trust Co. v. River Plate Trust Loan & Agency Co., [1894] 1 Ch. 578.

— **Preference shares.]—***See Sect. 15, ante.*

— **Shares credited as partly or fully paid.]—***See Sect. 20, ante.*

4054. Power to hold shares—In other company.]—(1) A limited co. may become a shareholder in another limited co., if authorised by its own memorandum & arts. of assocn. to do so.

(2) A transfer was executed by P. to co. C. of shares in co. B. The intention of both parties was, that P. should transfer & co. C. accept all the shares which P. held. At the time when P. executed the deed & handed it to his agent, it contained no description of the shares. Before it left his agent's hands, it was filled up with a number of shares, being all P.'s shares, & with a description of them as shares in co. B., but the denoting numbers of the shares were not inserted. The seal of the C. co. was then affixed to it. The denoting numbers of the shares & the date of the transfer were afterwards filled in, it was handed

ASSURANCE CO., LTD., [1913] 1 L. R. 352.—**IR.**

t. — **Trustees for class of shareholders.]—***GILL v. ARIZONA COPPER CO., LTD. (1900), 2 F. (Cl. of Sess.) 843. —SCOT.*

4051 i. Trafficking in company's own shares.]—As a compromise of pending litigations, partially unpaid shares in a co. were transferred to a trustee for the co., the compromise containing an agreement that the holders of the shares were to be relieved from liability thereon. The co. subsequently went into liquidation :—*Held* : the names of the owners of the above shares should be removed from the list of contributories, the transaction not having amounted to a trafficking in its own shares by the co., & it would be inequitable to permit the co. to take the full benefit of the agreement, & insist at the same time that such agreement was *ultra vires*.—*Re COLONIAL ASSURANCE CO., [1917] 1 W. W. R. 793; 27 Man. L. R. 313; 34 D. L. R. 341.—CAN.*

u. **Acquisition of shares in another company—Security for loan.]—**A co. has power to lend money upon security of shares & to do all such

other things as may be conducive to attainment of any of its objects & would not be justified in purchasing shares in another co. as a speculation but having advanced money on shares might complete its security by becoming registered proprietor thereof & to perfect its title & prevent any improper dealings by its debtor to its prejudice.—*VICTORIAN MORTGAGE & DEPOSIT BANK, LTD. v. AUSTRALIAN FINANCIAL AGENCY & GUARANTEE CO., LTD., & LUCAS (1893), 19 V. L. R. 680.—AUS.*

a. — **Business similar or analogous.]—**The implied charter power in Ontario Cos. Act, R. S. O. 1914, c. 178, s. 23 (c), is to purchase shares in any other co. having objects similar to those of the co. or carrying on a business capable of being conducted so as directly or indirectly to benefit the co. The wide wording of the by-law under sect. 94 must in practice be regarded as controlled & limited by the narrower provisions to be read into the charter.—*McINTYRE v. TEMISKAMING MINING CO. (1921), 50 O. L. R. 467; 58 D. L. R. 597; 19 O. W. N. 450.—CAN.*

b. — **—.]—**A clause in the memorandum of assocn. of a co.

declared one of the objects of the co. to purchase the undertaking of any other co., assocn. or person carrying on business of a nature similar or analogous to the co.'s business or any share or interest therein. One co. cannot take shares in another co. under such a clause unless the second co. is actually carrying on a business similar or analogous to that of the first co. It is not sufficient that it is within the power of the second co. to do so.—*NEW ZEALAND FLOUR-MILLERS' CO-OPERATIVE ASSOCN., LTD. v. TIMARU MILLING CO., LTD. (1901), 20 N. Z. L. R. 650.—N.Z.*

c. **Payment of commission—Not authorised by articles of association.]—**Where a co.'s arts. of assocn. do not authorise payment of a commission for obtaining subscription to its shares, it cannot allow a shareholder a credit on his own shares as a commission for procuring other subscriptions.—*Re CITY COLD STORAGE CO., GOTH'S CASE (1916), 35 W. L. R. 135; 11 W. W. R. 135; 30 D. L. R. 574.—CAN.*

d. **Release of shareholder.]—**The directors of a limited co., by a composition deed executed whilst the co. was a going concern, & under power

in for registration, & the C. co. were registered as shareholders:—*Held*: the transaction was not invalidated by the fact of the deed of transfer having been executed in an incomplete form, & the C. co. were liable as shareholders.

(3) The seal of the C. co. was affixed without any resolution of the board of directors, but by the directions of the three persons who had the chief management of the affairs of the co.:—*Held*: it must be considered as affixed by due authority.

(4) After the deed of transfer had been sent in for registration, but before it had been registered, the winding up of the C. co. commenced:—*Held*: the validity of the registration of the C. co. as shareholders was not affected by 1862 Act, s. 153.—*Re BARNED'S BANKING Co., Ex p. CONTRACT CORPN.* (1867), 3 Ch. App. 105; 37 L. J. Ch. 81; 17 L. T. 269; 16 W. R. 193, L. J.

Annotations:—As to (1) *Fold.* *Re Peruvian Ry., Ex p. International Contract Co.* (1869), 19 L. T. 803. *Reid.* *Re Asiatic Banking Corp., Royal Bank of India's Case* (1869), 4 Ch. App. 252; *Re Thomas, Thomas v. Sully*, [1915] 1 Ch. 325. As to (4) *Reid.* *Mersey Steel & Iron Co. v. Naylor* (1882), 9 Q. B. D. 648. *Generally, Mentd.* *Re International Contract Co., Hughes' Claim* (1872), L. R. 13 Eq. 623; *Re Land Credit Co. of Ireland, Weikerheim's Case* (1873), 28 L. T. 253; *Staple of England (Mayor, etc. of Merchants of) v. Bank of England* (1887), 21 Q. B. D. 160.

See, also, Sect. 31, sub-sect. 1, C., *post*.

4055. Division of "undertaking" into "shares or interests"—Company limited by guarantee.—A co. limited by guarantee & not having a capital divided into shares passed special resolutions to alter their arts. The new arts. provided that in order to determine the proportions in which its members were interested, the undertaking should be deemed to be divided into a specified number of shares or interests, the members to be deemed entitled to the shares in equal proportions; & provided also that persons might become members by subscription, admission, transfer, or succession:—*Held*: these resolutions were not *ultra vires*, & were not an attempt to make the undertaking a co. limited by guarantee, & having a capital divided into shares within 1862 Act, s. 14.—*MALLESON v. GENERAL MINERAL PATENTS SYNDICATE, LTD.*, [1894] 3 Ch. 538; 63 L. J. Ch. 868; 71 L. T. 476; 43 W. R. 41; 10 T. L. R. 616; 38 Sol. Jo. 663; 13 R. 144.

Allotment of shares.—See Sect. 17, sub-sect. 3, C., *ante*.

Payment of commission.—See Sect. 11, sub-sect. 2, A. (a), *ante*.

Transfer of shares—Compulsory transfer.—See Sect. 23, sub-sect. 16, *ante*.

conferred by the arts. of assocn., purported to release a shareholder from payment of the balance then unpaid on his shares, but the shareholder's name remained on the register:—*Held*: the release was no answer to an action by the liquidator of the co. for calls made by the directors before liquidation & subsequent to the date of the deed. A co. has no power to release a shareholder from payment of either past or future calls.—*COLONIAL FINANCE, MORTGAGE INVESTMENT & GUARANTEE CO. v. GOLD-SMITH* (1909), 8 C. L. R. 241; 25 N. S. W. W. N. 79.—*AUS.*

e. Issue of shares—Right of repurchase.—Pltf. became salesman to & manager of deft. co., now in liquidation, for a period of two years at a salary of £20 per month. In consideration of his appointment pltf. took & paid for 200 fully paid-up £1 shares in the co., it being agreed that pltf. should not alienate his shares during the period of two years, & at the end of that period, if pltf. desired, the co. should repurchase the shares

at par. The contract was entered into on behalf of the co. by S., the managing director, who represented that he had power to enter into the contract. Table A. of Cos. Act in substance regulated the working of the co. No formal delegation of their powers was made to S. by the other directors, but in practice they allowed him to superintend the business of the co. Before the lapse of the period of two years the co. went into liquidation. The liquidators having repudiated the contract, pltf. sued them for damages based on the amount of the purchase price of the shares & salary for the unexpired portion of the period of two years:—*Held*: the undertaking by the co. to repurchase pltf.'s shares was illegal & unenforceable, as it was in effect an unauthorised reduction of the capital of the co.—*WOLFE v. SMYTH & CRAWFORD (LIQUIDATORS)*, [1914] C. P. D. 187.—*S. AF.*

f. Return of money paid for shares.—*BRITANNIA ENGINEERING CO., LTD., & LIQUIDATOR v. EDWARD*, [1909] 2 S. L. T. 300.—*SCOT.*

C. In regard to Dividends.

See, generally, Sect. 30, sub-sect. 7, *ante*.

D. In regard to Directors, Officers and Servants.

4056. Employment—Appointment of manager without control by directors, where affairs to be controlled by directors—Control vested in directors by articles.—An art. of assocn. of a limited co. provided that the governing directors as such should have the supreme control in the management & affairs of the co. A special agreement made between the co. & the manager of a department provided "that the department & all extensions of the same should be under the sole management of the manager in all respects, & he should have full power to conduct in a reasonable manner the practical & commercial business of the same without in any way being interfered with by the governing directors or board of directors" with certain exceptions:—*Held*: the special agreement was *ultra vires* of the arts. of assocn.—*HORN v. FAULDER (HENRY) & CO., LTD.* (1908), 99 L. T. 524.

Remuneration—Of directors.—See Sect. 28, sub-sect. 3, *ante*.

Officers & servants generally.—See Sect. 29, sub-sect. 1, C., *ante*.

Secretary.—See Sect. 29, sub-sect. 2, B., *ante*.

Managers.—See Sect. 29, sub-sect. 3, B., *ante*.

Solicitors.—See Sect. 29, sub-sect. 4, *ante*.

Auditors.—See Sect. 29, sub-sect. 5, *ante*.

Compare Part IX., Sects. 9 & 10, *post*, & *BANKERS & BANKING*, Vol. III., p. 140, No. 128, *CLUBS*, Vol. VIII., p. 515, No. 61.

E. In regard to Ownership and Disposition of Property.

See Sect. 32, *post*.

F. In regard to Amalgamation.

4057. Under constitution of company—Power to manage business.—Where by the deed of settlement of a joint-stock co., no express power is given to the directors for the purpose, it is not competent for them to amalgamate with another co. carrying on the same business, & to assume, on behalf of their own co., the debts & responsibilities of the other. A clause in the deed of settlement authorising the directors "generally where these presents are silent, or do not otherwise

PART III. SECT. 31, SUB-SECT. 2.—D.

g. Power of election of directors vested in company—Delegation of power.—*DUNN v. BANKNOCK COAL CO., LTD.* (1901), 9 S. L. T. 51.—*SCOT.*

h. Agents empowered to appoint solicitor to company—Attempt by directors to override authority of agents.—*NUSSERWANJI MERWANJI PANDAY v. GORDON* (1881), 1 L. R. 6 Bom. 266.—*IND.*

PART III. SECT. 31, SUB-SECT. 2.—F.

k. No power in articles of association—Resolution—Notice.—The following notice was issued to the shareholders of a registered co.: "Notice is hereby given that an extraordinary general meeting of the A. Co. will be held at, etc., when the subjoined resolution will be proposed. Should the resolution be passed by the required majority, it will be submitted for confirmation, as a special resolution to a second extraordinary meeting, which, in the absence of further notice,

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provide, to act in the direction of the concerns of the society in such manner as at their absolute discretion they shall think most conducive to the interests of the society" is not a sufficient authority for the above purpose. — *Re ERA ASSURANCE CO., WILLIAMS' CASE, ANCHOR CASE* (1860), 2 John. & H. 400; 30 L. J. Ch. 137; 3 L. T. 314; 6 Jur. N. S. 1334; 9 W. R. 67; 70 E. R. 1113; *subsequent proceedings* (1862), 1 Hem. & M. 672; (1863), 1 De G. J. & Sm. 172 L. JJ.

Annotation:—Reid. Re Bank of Hindustan, China & Japan, Higg's Case (1865), 2 Hon. & M. 657.

4058. — Power to sell & dispose of business.]—*Re EMPIRE ASSURANCE CORPN., DOUGAN'S CASE, No. 4410, post.*

4059. — Power to amalgamate—Exercise of power—Business of friendly society acquired.]—A., a limited co., had power by its memorandum to make & carry into effect "such arrangements with respect to the union of interests or amalgamation, either in whole or in part, or working arrangements with any other cos. or persons of a similar nature to that of this co." :—*Held*: taking over bodily stock, assets, & liabilities of B., a friendly society, which had the same objects, & giving a new class of shares in A. to the shareholders of B., was an amalgamation within the power of the co.—*PULBROOK v. NEW CIVIL SERVICE CO-OPERATION, LTD.* (1877), 26 W. R. 11.

4060. — Whether dissenting shareholders bound.]—Although directors of a co. may be empowered by their arts. of assocn. "to purchase or acquire" the business of any other co., & "to amalgamate with any other co. carrying on business" with similar objects, such amalgamation is not binding upon shareholders who do not assent to the arrangement, as neither 1862 Act, s. 161, nor any such provision contained in the arts. of assocn., can have the effect of authorising directors to render their shareholders liable for engagements of another co.—*Re BANK OF HINDUSTAN, CHINA, & JAPAN, LTD., HIGGS' CASE* (1865), 2 Hem. & M. 657; 6 New Rep. 327, 332; 12 L. T. 669; 13 W. R. 937; 71 E. R. 619.

Annotations:—Apld. Re New Quebrada Co., Pontifex's Case (1867), 36 L. J. Ch. 903. *Consd. Postlethwaite v. Port Philip & Colonial Mining Co.* (1889), 43 Ch. D. 452. *Reid. Nicholl v. Eberhardt Co.* (1888), 59 L. T. 860; *Wall v. London & Northern Assets Corpn.*, [1898] 2 Ch. 469.

See, generally, Sect. 37, post.

G. In regard to Borrowing and Mortgages.

See, generally, Sect. 34, sub-sect. 1, post.

will be held," etc. Resolution: "That the co. be voluntarily wound up, & that T. & J. be & they are hereby appointed liquidators to wind up the same, with power & authority to sell all the property, assets, & goodwill of the co. to a new co., to be formed & registered under the name of the A. Co., on the terms set out in an agreement in the form of the draft already prepared & submitted to this meeting, & which draft is marked 'A.' & identified by the indorsement of the names of E. & R., two of the directors; & to carry the same into effect; & also to consent to the registration of such co. under the name of the A. Co., Ltd." The arts. of assocn. contained no power of amalgamation:—*Held*: the notice was not bad for not stating that the sale was to be under Cos. Act, s. 212, because the resolution expressly referred to power being given to the liquidators, & the shareholders must have known that the proposed sale or amalgamation

was to be under the Act.—*ISRAEL v. ATLAS ENGINEERING CO.* (1889), 10 N. S. W. Eq. 277.—*AUS.*

PART III. SECT. 31, SUB-SECT. 2.—H.

1. Rate of interest fixed by bye-law—Effect of collateral security.]—Deft. having applied for & obtained certain shares in pltf. co., applied for & obtained a loan of \$600. The shares were allotted & the loan granted upon certain conditions, which included the payment of a membership fee, & certain monthly dues, & the execution, as collateral security, of a mtge., which was to continue until the maturity of the shares, or until payment of the loan was made. Under the bye-laws of the co. the rate of interest on loans was declared to be 6 per cent, but under the provisions of the mtge., executed by deft., the rate of interest payable where the stock payments, dues, & interests were not promptly paid, was 15 per cent:—

H. In regard to Loans.

4061. Advance to infant—Adult joining "as trustee"—Whether advance on personal securities such as bills of sale or promissory notes.]—*Re HOME INVESTMENT SOCIETY, LTD.* (1886), 2 T. L. R. 662.

4062. Loan to servant—Incidental or useful to business of company.]—(1) C., the registered holder of shares in the deft. co., in May, 1903, deposited the certificate for the shares with pltf. as security for a loan, & executed a transfer to pltf. with the date left in blank. There was a note at the foot of the certificate: "without the production of this certificate no transfer of the shares mentioned therein can be registered." C., who was in the employment of the co., in June, 1903, entered into an arrangement with the managing director & two of the officers of the co. for an advance to be made to him by the co., part of the arrangement being that he should sell his shares in the co., & that the proceeds of sale should be paid to the co. in part repayment of the loan. C. sold his shares to Y. for £90, & the money was paid by Y. to the co. C. lodged a transfer of the shares to Y. with the co. for registration without the certificate, but with a declaration that the certificate was held by a friend of his, but not "as a charge against any loan or other consideration." C. was trusted by the directors, & they, acting in good faith, accepted his statement, & registered the transfer to Y., & issued a new certificate to him:—*Held*: on the facts, the co. had received the £90 with such knowledge, & under such circumstances that they ought to be treated as having received it to the use of pltf., & pltf. was entitled to recover it from the co.

(2) The arts. of the co. empowered the directors to lend money & generally undertake such other financial operations as might in their opinion be incidental or useful to the general business of the co.:—*Held*: this authorised the making of a loan to a servant trusted by the co.—*RAINFORD v. KEITH (JAMES) & BLACKMAN CO., LTD.*, [1905] 2 Ch. 147; 74 L. J. Ch. 531; 92 L. T. 786; 54 W. R. 189; 21 T. L. R. 582; 49 Sol. Jo. 551; 12 Mans. 278, C. A.

Annotations:—As to (1) *Reid. Mackereth v. Wigan Coal & Iron Co.*, [1916] 2 Ch. 293. *Generally, Mendt. Guy v. Waterlow & Layton* (1909), 25 T. L. R. 515.

I. In regard to Guarantees.

4063. Construction of articles—Guarantee of money due by contractor expended on company's works.]—A bill prayed that a mtge. might be cancelled & for further relief, but it proved to be valid to some extent. The ct. refused the relief

Held: deft. having made default in her payments the co. was entitled to payment of the amount due with interest at the latter rate.—*CANADIAN MUTUAL LOAN CO. v. BURNS* (1901), 34 N. S. R. 303.—*CAN.*

PART III. SECT. 31, SUB-SECT. 2.—I.

m. Guarantee of debt of another.]—It is *ultra vires* of a tug co., incorporated for the purpose of carrying on a general business, towing, wrecking, & salvage business in all its branches, to guarantee payment by the owner of a tug employed by the co. of a boiler purchased by him to operate the tug.—*WILLIAMS (A. R.) MACHINERY CO., LTD. v. CRAWFORD TUG CO., LTD., & CRAWFORD* (1908), 16 O. L. R. 245; 11 O. W. R. 321.—*CAN.*

n. —.]—Deft. co. was incorporated by letters-patent issued under the Ontario Cos. Act, R. S. O. 1897, c. 191, "to buy, sell & deal in timber & lumber, & for the said pur-

asked, or to make a decree for redemption on payment of what was properly due, & dismissed the bill with costs. A mining co. empowered to raise money gave a security to bankers for moneys due & to become due from the contractor to whom they were indebted:—*Held*: though the co. could not guarantee the debt of a stranger, still, the advances to the contractor might be valid if he were the agent of the co.

Semble: the security would be valid to the extent of the money properly expended by the contractor on the works of the co.—*CRENVER, ETC. MINING CO., LTD. v. WILLIAMS* (1866), 35 Beav. 353; 55 E. R. 932; *sub nom.* CREWER & WHEAL ABRAHAM UNITED MINING CO. v. WILLIAMS, 14 L. T. 93; 14 W. R. 444; *on appeal*, 14 W. R. 1003, L. J.J.

Annotation:—*Refd.* National Bank of Australasia v. United Hand-in-Hand & Band of Hope Co. (1879), 4 App. Cas. 391.

4064. ——— **Company dealing in railway machinery.**—The objects of a joint-stock co. limited were declared to be for the making, maintaining, buying, leasing, hiring, selling, letting on lease or hire, or otherwise dealing with all & every kind of machinery etc., employed in the construction of railways, the acquisition of lands for the purposes of the co., erection of buildings etc., “& the doing of all such things as are necessary, contingent, incidental, or conducive to all or any of such objects.” The co. entered into an agreement under seal to pay deposits on a concession of the Belgian Govt. & to the grantees to make & construct a railway from A. to T., with a view of enabling the contractors to execute & complete the work, which was in fact a guarantee for a large sum, in the hope of obtaining benefits of the concession, & by which the co. would profit by executing the rolling stock, plant, etc., for the railway. On bill filed by a shareholder in the co. to set aside this contract on the ground that the same was not within the powers of the directors:—*Held*: such a contract & guarantee was *ultra vires*.

“Quiescence” as distinguished from “acquiescence” commented upon (*see* No. 4111, *post*).—*BRITISH & FOREIGN RAILWAY PLANT CO., LTD. v. ASHBURY CARRIAGE & IRON CO., LTD., SMITH v. ASHBURY CARRIAGE & IRON CO., LTD.* (1869), 20 L. T. 360.

Compare BANKERS & BANKING, Vol. III., p. 147, No. 167.

posers to operate & carry on sawmills, bending factories, & to carry on the business of a farmer & dealer in live stock & farm produce”:—*Held*: the incidental powers of the co. did not extend to guaranteeing the debts of another & different co. whose sole connection with deft. co. was that of a customer; & the assent of all the shareholders could not give validity to the guarantee, if the co. had no power to make it.—*UNION BANK OF CANADA v. MCKILLOP (A.) & SONS, LTD.* (1913), 3 O. W. N. 493; 30 O. L. R. 87; 24 D. L. R. 787.—*CAN.*

o. ——— **Endorsement of promissory note.**—Deft. co. was incorporated to carry on a general contracting business, its activities being principally directed to street paving; its objects, as defined in its memorandum of assocn., did not specifically include power to guarantee the payment of the obligations of others, or to undertake primary liability therefor. Deft. co. having, by its officers, endorsed a promissory note made by a quarry co., with the intention either of guaranteeing payment of the quarry co.’s indebtedness to pltf. co. or of becoming primarily liable for

that indebtedness, pltf. co. sued deft. co. for a balance due upon the note, after a payment made on account by the quarry co. Deft. co. was the owner of shares in the quarry co., which it had power to acquire; it was a creditor of the quarry co. & the mtgee. of its effects; it expected in the ordinary course of business to obtain stone from the quarry co. for use in its business, & it was contended that it had a substantial interest in the success of the quarry co.:—*Held*: even assuming that deft. co.’s interests would be served by endorsing the note, the endorsement was *ultra vires*, & did not bind the co.—*CARTER DEWAR CROWE CO., LTD. v. COLUMBIA BITULITHIC, LTD.* (1914), 28 W. L. R. 758; 18 D. L. R. 520; 6 W. W. R. 1215; 20 B. C. R. 37.—*CAN.*

p. **Guarantee of account of another company with bank.**—Defts., a co. incorporated in 1910 by a charter of the Dominion of Canada, had, by the charter, power to manufacture, buy, & sell hardware, etc., & to guarantee the contracts of or otherwise assist, any business which defts. were authorised to carry on, or any business capable of being conducted so as

4065. **What amounts to guarantee—Founder as co-surety.**—*Re ERA LIFE ASSURANCE SOCIETY*, [1866] W. N. 309.

4066. ——— **Provision for interest due by another company contractor—Company expressly without power to guarantee.**—A co. with a power of making advances of money upon the security of charges & securities of all descriptions upon or affecting messuages, lands, hereditaments, & real property of all descriptions, but with no power to guarantee, entered into a covenant with building contractors who were erecting a large building for a co. promoted by the guaranteeing co., to provide or advance at interest after the rate of 4½ per cent. *per annum* on security of the property & assets of the co., employing the contractors, such sum or sums of money as would enable the co. to pay the contract price to the contractors:—*Held*: the covenant was *ultra vires*.—*Re QUEEN ANNE & GARDEN MANSIONS CO.* (1894), 1 Mans. 460.

See, generally, GUARANTEE.

J. In regard to Promotion of Other Companies and Underwriting.

4067. **Payments to brokers to create false market in new company’s shares.**—H. co. was formed to take over a shipbuilding business. M. co. had agreed to assist in bringing out H. co. Brokers were employed to purchase shares in H. co. to induce the public to purchase them, & considerable liabilities were thereby incurred. Subsequently to the transaction, I. co. was formed, to take over the business of M. co. & another. The directors of I. co. advanced large sums to the brokers to cover their losses, as being part of the business of M. co. taken over by them.

A demurrer by one of the directors of I. co. to a bill filed against them by the liquidators, overruled.—*IMPERIAL MERCANTILE CREDIT ASSOCN. v. CHAPMAN* (1871), 19 W. R. 379.

Annotation:—*Refd.* Parker v. Lewis (1873), 28 L. T. 91.

4068. **Agreement to buy option & float new company to purchase.**—A co. was formed (a) to acquire land, mines, mineral & other properties & grants, concessions, claims, licences, & options in any part of the world; (b) to purchase & undertake the business of N. co. under a specified agreement; (c) to carry on business as general merchants, bankers, capitalists, financiers, & all kinds of financial, commercial, trading, & other similar

directly or indirectly to benefit defts.:—*Held*: the giving by defts. of a guarantee of the account with pltf. bank of a co. carrying on a business which defts. were authorised to carry on, & conducted so as directly to benefit defts., was within the powers of defts. under their charter.—*BANK OF OTTAWA v. HAMILTON STOVE & HEATER CO.* (1918), 44 O. L. R. 93.—*CAN.*

q. **Guarantee not incidental to objects of company.**—*LIFE ASSOCN. OF SCOTLAND v. CALEDONIAN HERITABLE SECURITY CO., LTD. (IN LIQUIDATION)* (1886), 13 R. (Ct. of Sess.) 750; 23 Sc. L. R. 529.—*SCOT.*

r. **Agreement to indemnify directors as to costs of action for defamation.**—Where a co., at a meeting of directors, agreed to indemnify certain directors as to the costs in an action for defamation to be brought by the latter personally & further agreed to take the benefit of any damages that might be awarded:—*Held*: such agreements were *ultra vires* of the co.—*WESSELS v. CAVANAGH* (1910), 20 C. T. R. 422.—*S. AF.*

Sect. 31.—Powers and liabilities of company: Sub-sect. 2, J., K., L. & M.; sub-sect. 3, A., B. & C.]

operations or business in any part of the world; (g) to promote co.'s having objects wholly or in part similar to those of the co., & in particular to provide the whole or any part of the capital thereof, or by taking shares therein; (n) to subscribe for, acquire, hold, sell, & give guarantees in relation to the shares & securities of any co. The co. had undertaken & carried on the business of N. co., but, having money unemployed, the directors proposed to acquire a large interest in a mine over which they had bought an option. If the option should be exercised, a new co. promoted by deft. co. was to be formed to take over the mine from the co., & it was proposed that the deft. co. should subscribe for 64,000 shares in such new co., applying £32,000 of its cash in hand in paying for such shares. On a motion by a shareholder for an injunction to restrain the co. from carrying into effect the purchase of the mine on the ground that the proposed agreement was *ultra vires*:—*Held*: although if clauses (a) & (b) had stood alone it might have been possible to find in the memorandum of assocn. such a main primary object of the co. as was found in *Stephens v. Mysore Reefs (Kangundy) Mining Co., Ltd.*, No. 325, *ante*, yet that when read in conjunction with the following clauses, especially (g) & (n) it was shown that the co. contemplated many primary objects, & what was proposed to be done was not *ultra vires*.—*BUTLER v. NORTHERN TERRITORIES MINES OF AUSTRALIA, LTD.* (1906), 96 L. T. 41; 23 T. L. R. 179.

4069. Joint purchase of property—& flotation of company to complete buildings—Financial company.]—*LONDON FINANCIAL ASSOCN. v. KELK*, No. 4117, *post*.

4070. Underwriting—By rubber company—Authorised by memorandum.]—The memorandum of assocn. of E. co. contained an objects clause with thirty sub-clauses enabling the co. to carry on almost every conceivable kind of business which a co. could adopt. Sub-clause (1) authorised the co. to acquire, take over, work, & develop any licences, concessions, etc., & in particular four specified licences to collect rubber, etc.; & sub-clause (12) authorised the co. to buy or otherwise acquire in any way, or deal with or in any stocks or shares of any co.; & the objects clause concluded with a declaration that every sub-clause should be construed as a substantive clause & not limited or restricted by reference to any other sub-clause or by the name of the co., & that none of such sub-clauses or the objects specified therein should be deemed subsidiary or auxiliary merely to the objects mentioned in the first sub-clause. E. co. underwrote & had allotted to it shares in A. co., & these shares were transferred to L. co. All three cos. being in liquidation, the liquidator of A. co. settled L. co. on the A. list of contributories & E. co. on the B. list in respect of these shares. On an application by the liquidator of E. to vary the B. list by striking out that co.'s name, on the ground that the underwriting was *ultra vires* of the co.:—*Held*: (1) the memorandum must be construed according to its literal meaning, & the underwriting was *intra vires*; (2) function of the memorandum of assocn. discussed (No. 286, *ante*).—*COTMAN v. BROUGHAM*, [1918] A. C. 514; 87 L. J. Ch. 379; 119 L. T. 162; 62 Sol. Jo. 534;

sub nom. Re ANGLO-CUBAN OIL, BITUMEN & ASPHALT CO., LTD., COTMAN v. BROUGHAM, 34 T. L. R. 410, H. L.

K. In regard to Application and Investment of Funds.

4071. Application of funds—Procuring means of carrying on different undertaking.]—*LYDE v. EASTERN BENGAL RY. CO.*, No. 4035, *ante*.

4072. — Presentation of challenge cup for shooting.]—*LOCKWOOD v. HOP BITTERS CO.* (1887), 3 T. L. R. 698.

4073. — Gift for scientific purposes.]—The memorandum of assocn. of a limited co., formed to purchase & carry on the business of chemical manufacturers as its primary object, contained in clause 3 the various objects & powers ancillary to the main object, & concluding with one whereby the co. was enabled to do "all such business & things as may be incidental or conducive to the attainment of the above objects, or any of them." The co. passed a resolution authorising the directors "to distribute to universities, or other scientific institutions in the United Kingdom, for the furtherance of scientific education & research the sum of £100,000 out of invested surplus reserve account." A shareholder of the co., suing on behalf of himself & the other shareholders, claimed a declaration that this resolution was *ultra vires* the objects & powers of the co., & moved for an injunction to restrain the co. from acting upon it. There was uncontradicted evidence by the chairman & directors of the co. to the effect that they desired to encourage a class of men prepared to devote their abilities to scientific education & research, & that from these trained experts the co. could select men to instruct in the scientific investigation necessary for its purposes; & that this was probably the most advantageous & profitable way in which this sum could be expended:—*Held*: the advantage to accrue to the co. by the expenditure of this sum was direct & substantial, & not speculative or too remote; & the co. had discharged the burden of proving that the proposed expenditure was also conducive to & indeed necessary for its continued progress as chemical manufacturers.—*EVANS v. BRUNNER, MOND & CO.*, [1921] 1 Ch. 359; 90 L. J. Ch. 294; 124 L. T. 469; 65 Sol. Jo. 134.

4074. — Guaranteeing debentures of another company.]—Where a memorandum of assocn. of a co. provided that the co. could "subsidise or otherwise assist" another co., such clause enabled the co., having such memorandum, to guarantee the debenture-stock of the other co.—*Re FRIARY HOLROYD & HEALY'S BREWERIES, LTD., FRIARY HOLROYD & HEALY'S BREWERIES, LTD. v. SECKHAM* (1922), 67 Sol. Jo. 97, 126.

— **Remuneration of directors.]—***See Sect. 28, sub-sect. 3, ante.*

— **Of officers & servants.]—***See Sect. 29, sub-sect. 1, C., ante.*

— **Of secretary.]—***See Sect. 29, sub-sect. 2, B., ante.*

— **Of manager.]—***See Sect. 29, sub-sect. 3, B., ante.*

— **Of solicitor.]—***See Sect. 29, sub-sect. 4, C., ante.*

— **Of auditors.]—***See Sect. 29, sub-sect. 5, ante.*

— **Capital.]—***See Sect. 10, sub-sect. 5, ante.*

PART III. SECT. 31, SUB-SECT. 2.—K.

1. Application of funds—Land company—Purchase of hotel.]—*DONALDSON v. ANGLO-AUSTRALIAN INVESTMENT CO.* (1892), 13 N. S. W. L. R. 124, 202.—AUS.

— — — — — **Return of excess capital.]—See Sect. 10, sub-sect. 3, F. (e), ante.**

— — — — — **In payment of dividends.]—See Sect. 30, sub-sect. 7, D. (b), ante.**

— — — — — **In payment of promotion money.]—See Nos. 36, 159, 160, ante, No. 4386, post.**

— — — — — **In payment of underwriting commission & brokerage.]—See Sect. 11, sub-sect. 2, A., ante.**

— — — — — **In promoting other companies.]—See Sub-sect. 2, J., ante.**

— — — — — **In purchase of company's own shares.]—See Sect. 10, sub-sect. 3, F. (a), ii., ante.**

— — — — — **Profits.]—See Sect. 30, sub-sect. 8, ante.**

4075. Investment of funds—Amount to be invested in any one stock share or obligation limited—Different securities of same undertaking.]—One of the arts. of assocn. of a co. provided that "not more than 1-20th of the funds . . . shall be invested in any one stock, share, or obligation." Less than 1-20th had been invested in each of two classes of securities of the same undertaking, but the two sums combined amounted to more than 1-20th of the funds:—*Held*: on the construction of the art., this was not *ultra vires*.—*Re IMPERIAL & FOREIGN INVESTMENT & AGENCY CORPN., LTD.* (1892), 9 T. L. R. 129, C. A.

4076. — In name of single trustee.]—BURLAND v. EARLE, No. 4020, ante.

L. In regard to Legal Proceedings.
See Sect. 33, post.

M. Companies for Special Purposes.
Insurance companies.]—See Part V., post.
Electric lighting companies.]—See ELECTRIC LIGHTING & POWER.
Banking companies.]—See Part IV., post.
Friendly societies.]—See FRIENDLY SOCIETIES.
Building societies.]—See BUILDING SOCIETIES.

SUB-SECT. 3.—EXERCISE OF POWERS.

A. Who may exercise.

By directors.]—See, generally, Sect. 28, ante.
Whether directors necessary.]—See No. 3683, ante.

B. Litigation.

See Sect. 33, post.

C. Rights of Majority and Minority.

4077. Power of majority to bind minority—After minority heard.]—Certain of the directors of a railway co. acting on the nomination of another railway co. which was interested in certain shares in it, & which nominated those directors by virtue of the Act constituting the co., were excluded by a resolution of the board of directors, from the meetings of the directors, & the majority delegated all the powers of the board to a managing committee:—*Held*: that although in such a body the majority binds the minority, yet, that it is essential to the validity of their acts, that the voice of the minority should have been heard, & such exclusion of directors was restrained.—*GREAT WESTERN*

Ry. Co. v. RUSHOUT (1852), 5 De G. & Sm. 290; 7 Ry. & Can. Cas. 991; 19 L. T. O. S. 281; 16 Jur. 238; 64 E. R. 1121.

Annotations:—*Mentd. G. W. Ry. v. Oxford, Worcester & Wolverhampton Ry.* (1853), 3 De G. M. & G. 341; *Green v. Nixon* (1857), 23 Beav. 530.

4078. — Compliance with regulations.]—(1) Where a deed enables the majority of a body to bind the minority by a resolution passed in a certain manner, the provisions of the deed in that respect must be strictly complied with, otherwise the minority are not bound.

(2) The subscribers' agreement of a provisionally registered co. authorised the directors, with the consent of a majority at a meeting of subscribers, summoned as therein mentioned, to amalgamate the undertaking with any other similar undertaking. The directors agreed to an amalgamation with D. co., & sent a circular to the subscribers, stating the terms agreed upon. A majority of the subscribers assented to the amalgamation, & took the benefit of it, but no meeting ever was called to sanction it:—*Held*: the amalgamation was not binding on any shareholders, who had not assented to it.

(3) The subscribers' agreement authorised the directors to adopt all such measures as they should in their judgment consider necessary or expedient for the promotion of the undertaking:—*Held*: a resolution of the directors, enabling any three of them to draw cheques on the funds of the co. was within this power, & when three directors drew a cheque under the authority given by that resolution, & applied the money improperly, those directors who were not privy to such drawing or application, were not liable.

(4) At the meeting at which amalgamation with D. co. was resolved, one of the directors opposed the amalgamation, but, finding that he was in a minority, insisted on the insertion of certain terms, which, as he believed, would prevent its taking place, & a resolution was then passed for an amalgamation subject to those terms:—*Held*: he was not responsible in respect of the amalgamation.—*Re DIRECT EAST & WEST JUNCTION RY. CO., Ex p. JOHNSON* (1855), 3 Eq. Rep. 479, L. J.J.

4079. — Act intra vires.]—A shareholder in a trading co., who possessed both original & preferential shares filed a bill on behalf of himself & all the other shareholders, except debts., complaining of acts done by the directors & other debts. injurious to the interests of the co. The suit had not been authorised by any general meeting of the shareholders; but pltf. alleged that it was not practicable for any parties but the directors to call such a meeting. The acts complained of consisted of improperly increasing the liabilities of the co., by contracting debts & otherwise, & of giving to some of the holders of preferential shares an advantage over others, by changing their shares for debentures. These acts were held to be within the general powers of the co., & were done in consequence of, & as the directors insisted, in accordance with, a resolution passed at a general meeting. A demurrer, on the part of the co., for want of equity, was allowed, upon the ground that an individual shareholder was not entitled to be pltf. in a suit of such a nature; & that the interests

PART III. SECT. 31, SUB-SECT. 3.—C.

4077 i. Power of majority to bind minority—After minority heard.]—Where there exists a body of persons in which the acts of the majority are to bind a minority it is essential that the minority should at least have

been given an opportunity of stating their views, & to enable them effectively to do this it is essential that the minority should have been given time to consider the matter, & should have been furnished with or given access to whatever information may be necessary to form an opinion.—*ROBINSON*

v. IMROTH, [1917] W. L. D. 159.—S. AF.

4079 i. — Act intra vires.]—The ct. will not at the instance of a minority interfere to restrain the carrying out of a resolution adopted by a majority *intra vires*, unless it clearly appears

Sect. 31.—Powers and liabilities of company: Subsect. 3, C. & D.]

of the original & preferential shareholders were not so identical as to admit of such a bill being filed on behalf of both sets of shareholders.—**LORD v. COPPER MINERS (GOVERNOR & CO. OF) (1848)**, 2 Ph. 740; 1 H. & Tw. 85; 18 L. J. Ch. 65; 13 L. T. O. S. 3; 12 Jur. 1059; 47 E. R. 1337, L. C.

Annotations:—**Apld.** Cooper v. Shropshire Union Ry. & Canal Co. (1849), 6 Ry. & Can. Cas. 136. **Folld.** Yetts v. Norfolk Ry. (1848), 5 Ry. & Can. Cas. 487. **Consd.** Clinch v. Financial Corp'n. (1868), L. R. 5 Eq. 450. **Distd.** Ward v. Sittingbourne & Sheerness Ry. (1874), 9 Ch. App. 490, n. **Apld.** MacDougall v. Gardiner (1875), 1 Ch. D. 13. **Refd.** Cohen v. Wilkinson (1849), 14 L. T. O. S. 149. Wall v. London & Northern Assets Corp'n. (1898), 79 L. T. 249.

4080. — Act within scope of company's business—& for company's benefit.]—(1) Directors of a trading co., have, incidental to their office, the power of doing that which is ordinarily & reasonably done with a view to getting either better work from their servants or to attract customers. (2) The test whether a majority can bind the minority in voting the co.'s money must be whether the proposed payment is reasonably incidental to & within the scope of carrying on the business of the co. for the co.'s benefit.

Remuneration of directors for past services, & compensation to meritorious officials on dismissal, are justifiable, provided that they are likely to conduce to the advantage of a co. in the future. Therefore, to justify any such payments, the co. must be a going concern. Where, therefore, a co. had ceased to exist as a profit-making co., & only continued for the purpose of regulating their internal affairs, of winding up the same, & distributing when received the sums which had been fixed by arbn. as the purchase-money for their undertaking:—**Held**: (3) it was not within the power of the directors themselves, or of a general meeting of the co., to pass a resolution voting remuneration to the directors for their past services prior to the transfer of the undertaking, & compensation to officials who had been discharged in consequence of such transfer; (4) the co. could in general meeting vote a reasonable sum for remuneration for services during the winding up. (5) **Semble**: a resolution voting the distribution of a sum of money, first in paying certain expenses properly payable thereout, the amount of which can only be estimated, & the balance among the directors by way of remuneration, even though remuneration is properly payable, is bad.

(6) Remuneration for past services of directors cannot be voted at an ordinary general meeting unless special notice be given of the intention to propose such a resolution (**FRY, L.J.**).—**HUTTON v. WEST CORK Ry. Co. (1883)**, 23 Ch. D. 654; 52 L. J. Ch. 689; 49 L. T. 420; 31 W. R. 827, C. A.

Annotations:—**As to (2) Refd.** Kaye v. Croydon Tram. Co., [1898] 1 Ch. 358. **As to (3) Distd.** Henderson v. Bank of Australasia (1888), 40 Ch. D. 170; Kaye v. Croydon Tram. Co., [1898] 1 Ch. 358. **Folld.** Stroud v. Royal Aquarium,

& Summer, & Winter Garden Soc. (1903), 89 L. T. 243. **Apld.** Warren v. Lambeth Waterworks (1905), 21 T. L. R. 685. **Refd.** Tomkinson v. S. E. Ry. (1887), 36 Ch. D. 675; Re Newman, [1895] 1 Ch. 674. **As to (4) Refd.** Re Newman, [1895] 1 Ch. 674; Kaye v. Croydon Tram. Co., [1898] 1 Ch. 358; Warren v. Lambeth Waterworks (1905), 21 T. L. R. 685; Cyclists' Touring Club v. Hopkinson, [1910] 1 Ch. 179. **As to (5) Refd.** Henderson v. Bank of Australasia (1888), 40 Ch. D. 170. **As to (6) Refd.** Re Leicester Club, & County Racecourse Co., Ex p. Cannon (1885), 30 Ch. D. 629. **Generally, Mentd.** Re Newspaper Proprietary Syndicate, Hopkinson v. Newspaper Proprietary Syndicate, [1900] 2 Ch. 349; Moriarty v. Regent's Garage Co., [1921] 1 K. B. 423.

4081. — — — — —.]—A co., established for the preparation & sale of porcelain clay, carried on business for several years but without success; their resources having become nearly exhausted, & an entire reconstruction of their works & alteration in their mode of manufacture being found necessary, a resolution was passed, for winding up the co. Before the resolution was confirmed, a proposition was made, & finally accepted by a majority of more than two-thirds of the shareholders for leasing their works upon terms apparently advantageous. The deed of settlement empowered the directors, with the sanction of two-thirds of the votes recorded at an extraordinary general meeting, to do any act which the whole body of shareholders, all consenting, could do. Upon a bill filed to set aside the lease as being inconsistent with the purpose for which the co. had been incorporated, & as having been granted *ultra vires*:—**Held**: the lease was good, as being a lawful means of making the most of the assets of the co., & the granting of it was not *ultra vires*.—**FEATHERSTONHAUGH v. LEE MOOR PORCELAIN CLAY Co. (1865)**, L. R. 1 Eq. 318; 35 L. J. Ch. 84; 13 L. T. 460; 11 Jur. N. S. 994; 14 W. R. 97.

4082. Right of minority to restrain majority—Act of majority fraudulent—Majority due to vote of party benefiting by fraud.]—M. being the owner of certain mines, worth to his knowledge not more than £4,000, agreed with W. to promote a co. to purchase the mines at £7,000 of which W. was to receive £3,000. The co. was formed: M. & W. were parties to a prospectus in which these facts were fraudulently concealed, & they in their capacity of directors, by the like fraudulent concealment, induced the co. to complete the purchase. A majority of the shareholders refused to take steps to get the contract set aside, but such majority was due to the votes of M. in respect of shares allotted to him as consideration for the purchase:—**Held**: a bill would lie by one of the shareholders, on behalf of himself & the other shareholders, except debts.; & a decree was made cancelling the agreement, with a declaration that the co. ought to be wound up.—**ATWOOL v. MERRYWEATHER (1867)**, L. R. 5 Eq. 464, n.; 37 L. J. Ch. 35.

Annotations:—**Consd.** Gray v. Lewis, Parker v. Lewis (1873), 8 Ch. App. 1035; Menier v. Hoopers Telegraph Works (1874), 9 Ch. App. 350; MacDougall v. Gardiner (1875), L. R. 20 Eq. 383; Russell v. Wakefield Waterworks Co. (1875), L. R. 20 Eq. 474. **Apld.** Mason v.

that such resolution practically constitute a fraud on such minority.—**ENGLISH v. NEW RIETFOUNTAIN D. L. G. M. Co., LTD. (LIQUIDATORS) (1895)**, 2 O. R. 249.—**S. AF.**

t. — Subsequent ratification by majority.]—The ct. will not interfere with the doing of an act by a co. which should have been sanctioned by a majority of the shareholders before the act was done, if such sanction can be afterwards obtained.—**PURDOM v. ONTARIO LOAN & DEBENTURE Co. (1892)**, 22 O. R. 597.—**CAN.**

a. — Sale of assets to pay credi-

tors.]—The holders of the majority of the shares in the capital stock of a co. authorised the selling of the co.'s property in order to pay debts:—**Held**: the sale should not be enjoined at the instance of a dissentient shareholder.—**PATRICK v. EMPIRE COAL & TRAMWAY Co. (1907)**, 4 E. L. R. 98, 3 N. B. Eq. Rep. 571.—**CAN.**

b. — — — — —.]—The offer in this case in substance provided for the turning over of all the assets to a new co.; the new co. to pay the creditors in full, the largest creditor limiting his claim to a fixed amount; & shares in the new co. to be given to the share-

holders of the co. in liquidation. The creditors & the majority of the shareholders were anxious that the offer should be accepted; a small minority of the shareholders opposed acceptance, contending that they could not be compelled by the majority to accept shares in a new co. in lieu of money. It was not shown that any other or better offer could be procured:—**Held**: it was the duty of the ct. to give effect to the wishes of the large majority of the shareholders by sanctioning the acceptance of the offer.—**Re BAILEY COBALT MINES, LTD. (1920)**, 47 O. L. R. 13.—**CAN.**

Harris (1879), 11 Ch. D. 97. *Distd. Willing v. Met. Dis. Ry.* (1888), 4 T. L. R. 723. *Refd. Silber Light Co. v. Silber* (1879), 12 Ch. D. 717; *Spokes v. Grosvenor Hotel Co.*, [1897] 2 Q. B. 124; *Whitwam v. Watkin* (1898), 78 L. T. 188. *Mentd. Macdougall v. Gardiner* (1875), 23 W. R. 846.

4083. ———.]—GRAY v. LEWIS, PARKER v. LEWIS, No. 4053, *ante*.

4084. ———.]—BURLAND v. EARLE, No. 4020, *ante*.

4085. ———.]—(1) The cases in which a dissentient minority of shareholders can sustain an action to reverse the course approved by the majority are confined to those in which the acts complained of are fraudulent or beyond the powers of the co.

(2) It is the right & duty of directors to advise the members of a co. as to the prudence of proposed changes in the scope of the co.'s operations, & it is within their powers to circulate statements & arguments in favour of such changes, at the expense of the co. There is, however, no obligation, legal or moral, to do the like on behalf of the dissentient members.—CAMPBELL v. AUSTRALIAN MUTUAL PROVIDENT SOCIETY (1908), 77 L. J. P. C. 117; 99 L. T. 3; 24 T. L. R. 623; 15 Mans. 344.

4086. ——— Act of majority abuse of powers—Assets transferred to some shareholders.]—GREGORY v. PATCHETT, No. 4102, *post*.

4087. ——— Majority benefited at expense of minority.]—Where the majority of a co. purpose to benefit themselves at the expense of the minority, the ct. may interfere to protect the minority. In such a case, the bill is rightly filed by one shareholder, on behalf of the others & against the co.—MENIER v. HOOPER'S TELEGRAPH WORKS (1874), 9 Ch. App. 350; 43 L. J. Ch. 330; 30 L. T. 209; 22 W. R. 396, L. J.J.

*Annotations:—*Consd. MacDougall v. Gardiner (1875), L. R. 20 Eq. 383; Pender v. Lushington (1877), 6 Ch. D. 70. *Apld. Mason v. Harris* (1879), 11 Ch. D. 97. *Consd. Wall v. London & Northern Assets Corp.* (1898), 79 L. T. 249; *Tlessen v. Henderson*, [1899] 1 Ch. 861; *Burland v. Earle*, [1902] A. C. 83. *Distd. Normandy v. Ind. Coope*, [1908] 1 Ch. 84. *Consd. Re Consolidated South Rand Mines Deep*, [1909] 1 Ch. 491; *Dominion Cotton Mills Co. v. Amyot*, [1912] A. C. 546. *Refd. Spokes v. Grosvenor Hotel Co.*, [1897] 2 Q. B. 124; *Alexander v. Automatic Telephone Co.*, [1900] 2 Ch. 56; *Alexander v. Automatic Telephone Co. (No. 2)* (1900), 44 Sol. Jo. 407; *Re Shepherd's Bush Improvements* (1909), *Times*, Mar. 9; *Re New York Taxicab Co.*, *Sequin v. New York Taxicab Co.*, [1913] 1 Ch. 1; *Cook v. Decks*, [1916] 1 A. C. 554; *Foster v. Foster*, [1916] 1 Ch. 532. *Mentd. Allen v. Gold Reefs of West Africa, Same v. Same*, [1900] 1 Ch. 656; *Baillie v. Oriental Telephone & Electric Co.*, [1915] 1 Ch. 503.

4088. ———.]—Where a dissentient minority of shareholders in a co. seek redress against the action of the majority they must show that such action is *ultra vires*, or that the majority have abused their powers or are depriving the minority of their rights.

Two shareholders in a co. brought an action to set aside a lease of the co.'s mills. The co. was incorporated by letters patent, which were after-

wards superseded by an Act of the Parliament of Canada, which in express terms authorised the co. to dispose of its mills. The lease was approved by a resolution of the co. in a general meeting:—*Held*: the lease was not *ultra vires* of the co., & its terms were intended to be, & in fact were, fair, & based on a fair & liberal valuation.—DOMINION COTTON MILLS CO., LTD. v. AMYOT, [1912] A. C. 546; 81 L. J. P. C. 233; 106 L. T. 934; 28 T. L. R. 467; 19 Mans. 363, P. C. *Annotation:—**Refd. Foster v. Foster*, [1916] 1 Ch. 532.

4089. ——— Act of majority *ultra vires*.]—GREGORY v. PATCHETT, No. 4102, *post*.

4090. ———.]—BURLAND v. EARLE, No. 4020, *ante*.

4091. ———.]—CAMPBELL v. AUSTRALIAN MUTUAL PROVIDENT SOCIETY, No. 4085, *ante*.

4092. ———.]—DOMINION COTTON MILLS CO., LTD. v. AMYOT, No. 4088, *ante*.

4093. ——— Decision arrived at fairly & honestly.]—Two directors of a co. were alleged to have been concerned in the promotion of the co., & to have received a large amount in money & shares from the vendors to the co. Upon a general meeting of the co. being held it was decided by a large majority that no proceedings should be commenced. The shareholders in a minority applied to the ct. to allow an action to be brought by them in the name of the co.:—*Held*: as the co. had fairly & honestly determined not to prosecute the claim the ct. ought not to interfere.—*Re TRANSVAAL GOLD EXPLORATION & LAND CO., LTD.* (1885), 1 T. L. R. 604.

— In whose name action brought.]—See Sect. 33, sub-sect. 3, A., *post*.

Interference by court generally.]—See Sub-sect. 3, E., *post*.

D. Position of Non-Members.

4094. Presumption that powers properly exercised.]—By the deed of settlement of a joint-stock co., the directors were authorised to borrow under the common seal of the co., such sums as should from time to time, by a resolution passed at a general meeting of the co., be authorised to be borrowed, not to exceed a certain sum. At a general meeting, the directors were authorised to borrow such sums & at such interest & for such periods as they might deem expedient, in accordance with the provisions of the deed of settlement & the Act of Parliament. The directors having borrowed £1,000 on bond, under the common seal of the co.:—*Held*: the co. were liable to repay the amount, whether the resolution was or was not a sufficient authority to the directors to borrow; for though parties dealing with joint-stock cos. are bound to take notice of any limitation of the authority of the directors in the deed of settlement, yet, where the directors as in this case, have power to borrow, the lenders of the

4083 i. Right of minority to restrain majority—Act of majority fraudulent.]—Two cos. existed in Y., a gas co., & an electric light co. Attempts were unsuccessfully made to consolidate them. Certain members of the electric light co. promoted a new co. called the M. Co., which acquired the property & assets of the electric light co. The promoters of the new co. afterwards acquired a controlling interest in the gas co. & proceeded to sell out all the property & assets of the M. Co. to the gas co., issuing bonds of the gas co. secured by mtge. of all their property to pay for it. An action was brought by certain of the minority shareholders of the gas co. to set aside the mtge. & the bond issue. On the trial, an

amendment of the statement of claim was granted, allowing plffs. to amend by inserting a paragraph alleging the action to be brought on behalf of themselves & the other shareholders, not being defts., & also to make necessary amendments of the statement of claim in conformity with the evidence. The judge found that the scheme of the promoters of the M. Co., who also constituted a majority of the shareholders of the gas co., was a fraud upon the minority shareholders of the gas co. & an attempt to benefit themselves at the expense of such shareholders:—*Held*: plffs. were entitled to relief.—CANN v. INTERNATIONAL TRUST CO. (1894), 40 N. S. R. 65.—CAN.

4083 ii. ———.]—CLARK v. MOOERS, [1922] 3 W. W. R. 594; 69 D. L. R. 448.—CAN.

c. ——— Irregularity.]—No mere informality or irregularity committed by a co. in effecting an act, which can be remedied by the majority of the shareholders, entitles a minority of the shareholders to claim a cancellation of such act, if the act, when done regularly, would be within the power of the co., & the intention of the majority of the shareholders is clear.—GOODMAN v. SUBURBAN ESTATES, LTD. (IN LIQUIDATION), [1915] W. L. D. 15.—S. AF.

Sect. 31.—Powers and liabilities of company: Sub-sect. 3, D. & E.]

money have a right to presume that the co. which put forward their directors as authorised to borrow, have taken every step requisite to empower them to do so.—**ROYAL BRITISH BANK v. TURQUAND** (1856), 6 E. & B. 327; 25 L. J. Q. B. 317; 2 Jur. N. S. 663; 119 E. R. 886, Ex. Ch.

*Annotations:—***Apld.** *Agar v. Athenæum Life Assce. Soc.* (1858), 3 C. B. N. S. 725; *Athenæum Life Insce. Co. v. Pooley* (1858), 28 L. J. Ch. 119; *Prince of Wales Assce. Co. v. Harding* (1858), E. B. & E. 183. **Consd.** *Re Athenæum Soc., Ex p. Eagle Co.* (1858), 4 K. & J. 549. **Distd.** *Commercial Bank of Canada v. G. W. Ry. of Canada* (1865), 3 Moo. P. C. C. N. S. 295. **Apld.** *Totterdell v. Farcham Brick Co.* (1866), L. R. 1 C. P. 674. **Consd.** *Fountaine v. Carmarthen Ry.* (1868), L. R. 5 Eq. 316. **Apld.** *Re Land Credit Co. of Ireland, Ex p. Overend, Gurney* (1869), 4 Ch. App. 460; *Royal British Bank v. Turquand* may now, I think, be considered as a leading authority applicable to cases of this description, & so far as I am aware, it has never been questioned (*SELWYN, L.J.*); *Mahony v. East Holyford Mining Co.* (1875), L. R. 7 H. L. 869. **Distd.** *Irvine v. Union Bank of Australia* (1877), 2 App. Cas. 366. **Consd.** *Re Briton Medical & General Life Asscn.* (1889), 5 T. L. R. 502. **Folld.** *County of Gloucester Bank v. Rudry Merthyr, Steam & House Coal Colliery Co.*, [1895] 1 Ch. 629. **Consd.** *Duck v. Tower Galvanizing Co.*, [1901] 2 K. B. 314. **Apld.** *Dey v. Pullinger Engineering Co.*, [1921] 1 K. B. 77. **Refd.** *Balfour v. Ernest* (1859), 5 C. B. N. S. 601; *Re London, Hamburg & Continental Exchange Bank, Zulucta's Claim* (1870), 5 Ch. App. 444; *Re Bank of Hindustan, China & Japan, Campbell's Case, Hippisley's Case, Alison's Case* (1873), 9 Ch. App. 1; *Colonial Bank of Australasia v. Willan* (1874), L. R. 5 P. C. 417; *Re County Palatine Loan & Discount Co., Cartmell's Case* (1874), 9 Ch. App. 691; *Riche v. Ashbury Ry. Carriage & Iron Co.* (1874), L. R. 9 Exch. 224; *Yorkshire Ry. Wagon Co. v. Maclure* (1881), 30 W. R. 288; *Ward v. Royal Exchange Shipping Co., Ex p. Harrison* (1887), 58 L. T. 174; *Premier Industrial Bank v. Carlton Manufacturing Co. & Crabtree*, [1909] 1 K. B. 106. **Mentd.** *Guest v. Poole & Bournemouth Ry.* (1870), L. R. 5 C. P. 553; *Melbourne Banking Corpn. v. Brougham* (1878), 4 App. Cas. 156; *Re Hampshire Land Co.*, [1896] 2 Ch. 743.

4095. ———.]—Where some act, such as the granting of an obligation in the course of its business, is put by the constitution of a co. within its power, & certain formalities of administration are prescribed by the arts. of assocn. which for domestic purposes regulate the duties of the directors to the shareholders, the mere failure to comply with a formality, such as a proper appointment or the presence of a quorum of directors, will not affect a person dealing with the co. from outside & without knowledge of the irregularity. He is presumed to know the constitution of the co., but not what may or may not have taken place within doors that are closed to him. Lord Hatherley's judgment in *Mahony v. East Holyford Mining Co.*, No. 4239, *post*, is for practitioners in company law the classical exposition of this principle. But the case stands quite otherwise when the act is one which has not, by the constitution of the corp., been put within its power excepting on the fulfilment of a condition. In that event the persons dealing with the corp. are bound to ascertain whether the condition has been fulfilled (**LORD HALDANE**).—**PACIFIC COAST COAL MINES, LTD. v. ARBUTHNOT**, [1917] A. C. 607; 86 L. J. P. C. 172; 117 L. T. 613, P. C.

4096. Where act only conditionally intra vires.]—**PACIFIC COAST COAL MINES, LTD. v. ARBUTHNOT**, No. 4095, *ante*.

See, further, Sub-sect. 5, A. (b), i., post.

4097. Right of action—In respect of act ultra vires.]—The ct. will not entertain a suit at the instance of one rival co. against another, alleging that defts. were acting *ultra vires*, & contrary to the public interest, where pl'ts. sustain no private injury by the acts done.—**STOCKPORT DISTRICT WATERWORKS Co. v. MANCHESTER CORPN.** (1862),

7 L. T. 545; 9 Jur. N. S. 266; 11 W. R. 156, L. C.

*Annotations:—***Apld.** *Pudsey Coal Gas Co. v. Bradford Corp.* (1873), L. R. 15 Eq. 167. **Refd.** *Dover Picture Palace & Pessers v. Dover Corp. & Crundall Wraith, Gurr & Knight* (1913), 11 L. G. R. 971. **Mentd.** *Preston Corp. v. Fullwood L. B.* (1885), 53 L. T. 718; *Dundee Harbour Trustees v. Nicol*, [1915] A. C. 550.

4098. Right to restrain dealing with assets.]—In a suit on behalf of A. co. praying relief on the footing that a payment for promotion money made by their directors to B. co. was a breach of trust, the ct. refused to restrain B. co., which was a limited co. being voluntarily wound up, by interlocutory injunction from dealing with the money or dissolving the co.: the right to such money being the question to be decided at the hearing, & there being no admission of a trust so as to entitle pl'ts. to an order for payment of the money into ct.—**BANK OF TURKEY v. OTTOMAN Co.** (1866), L. R. 2 Eq. 366; 14 L. T. 884; 14 W. R. 819.

4099. ——— Diminishing fund for payment of creditors.]—(1) A simple contract creditor of a co. cannot sustain a bill to restrain the co. from dealing with their assets as they please, on the ground that they are diminishing the fund for payment of his debt.

(2) A shareholder in a co. who seeks to restrain the co. from doing an *ultra vires* act must show, by distinct & definite averments, the illegality of the act.

(3) *Qu.*: whether persons having an equitable interest in shares, but not being registered shareholders, can file a bill to restrain a co. from doing an *ultra vires* act.—**MILLS v. NORTHERN RY. OF BUENOS AYRES Co.** (1870), 5 Ch. App. 621; 23 L. T. 719; 19 W. R. 171, L. C.

*Annotations:—**As to* (1) **Consd.** *Cutbill v. Shropshire Ry.* (1891), 7 T. L. R. 381. **Refd.** *Coxon v. Gorst*, [1891] 2 Ch. 73.

E. Interference by Court.

4100. When court will interfere—Where members can control company—No interference.]—Bill by two of the proprietors of shares in a co. incorporated by Act of Parliament, on behalf of themselves & all other the proprietors of shares except defts., against the five directors, three of whom had become bankrupt, & against a proprietor who was not a director, & the solicitor & architect of the co., charging defts. with concerting & effecting various fraudulent & illegal transactions, whereby the property of the co. was misapplied, aliened & wasted; that there had ceased to be a sufficient number of qualified directors to constitute a board; that the co. had no clerk or office; that in such circumstances the proprietors had no power to take the property out of the hands of defts., or satisfy the liabilities or wind up the affairs of the co.; praying that defts. might be decreed to make good to the co. the losses & expenses occasioned by the acts complained of; & praying the appointment of a receiver to take & apply the property of the co. in discharge of its liabilities, & secure the surplus:—**Held**: the continued existence of a board of directors *de facto* must be intended; the possibility of convening a general meeting of proprietors capable of controlling the acts of the existing board was not excluded by the allegations of the bill; in such circumstances there was nothing to prevent the co. from obtaining redress in its corporate character in respect of the matters complained of; therefore pl'ts. could not sue in a form of pleading which assumed the practical dissolution

of the corpn.—*Foss v. Harbottle* (1843), 2 Hare, 461; 67 E. R. 189.

Annotations:—*Apld.* *Mozley v. Alston* (1847) 1 Ph. 790. *Consd.* *Hare v. L. & N. W. Ry.* (1861), 2 John. & H. 80; *Fraser v. Whalley, Gartside v. Whalley* (1864), 2 Hem. & M. 10; *Seaton v. Grant* (1867), 36 L. J. Ch. 638; *Featherstone v. Cook* (1873), 21 W. R. 835. *Apld.* *Trade Auxiliary Co. v. Vickers* (1873), 21 W. R. 836. *Distd.* *Ward v. Sittingbourne & Sheerness Ry.* (1874), 9 Ch. App. 490, n. *Apld.* *MacDougall v. Gardiner* (1875), 1 Ch. D. 13. *Consd.* *Russell v. Wakefield Waterworks Co.* (1875), L. R. 20 Eq. 474; *Duckett v. Gover* (1877), 25 W. R. 554; *Isle of Wight Ry. v. Tahourdin* (1883), 25 Ch. D. 320. *Apld.* *Willing v. Met. Dist. Ry.* (1888), 4 T. L. R. 723; *Lever v. Land Securities Co., De Carteret v. Land Securities Co.* (1893), 70 L. T. 323. *Consd.* *Compagnie De Mayville v. Whitley*, [1896] 1 Ch. 788; *Wall v. London & Northern Assets Corpn.* (1898), 79 L. T. 249; *Whitwam v. Watkin* (1898), 78 L. T. 188; *Dominion Cotton Mills Co. v. Amyot*, [1912] A. C. 546; *Fruit & Vegetable Growers Assocn. v. Kekewich*, [1912] 2 Ch. 52. *Refd.* *Lord v. Copper Miners' Co.* (1848), 1 H. & Tw. 85; *Edwards v. Shrewsbury & Birmingham Ry.* (1849), 2 De G. & Sm. 537; *Salomons v. Laing* (1850), 6 Ry. & Can. Cas. 289; *White v. Carmarthen, etc. Ry.* (1863), 1 Hem. & M. 786; *East Pant Du United Lead Mining Co. v. Merryweather* (1864), 5 New Rep. 166; *Gregory v. Patchett* (1864), 33 Beav. 595; *Attwood v. Merryweather* (1868), L. R. 5 Eq. 464, n.; *Turquand v. Marshall* (1869), 4 Ch. App. 376; *Pickering v. Stephenson* (1872), L. R. 14 Eq. 322; *Gray v. Lewis, Parker v. Lewis* (1873), 8 Ch. App. 1035; *MacDougall v. Gardiner* (1875), 10 Ch. App. 606; *Studdert v. Grosvenor* (1886), 33 Ch. D. 528; *Southern Counties Deposit Bank v. Rider & Kirkwood* (1895), 73 L. T. 374; *Alexander v. Automatic Telephone Co.*, [1900] 2 Ch. 56; *Steele v. South Wales Miners' Federation* (1907), 96 L. T. 260; *Kirsopp v. Highton* (1911), 28 T. L. R. 129; *Foster v. Foster*, [1916] 1 Ch. 532; *Lawson v. Financial News* (1917), 34 T. L. R. 52. *Mentd.* *Yettis v. Norfolk Ry.* (1848), 5 Ry. & Can. Cas. 487; *Cooper v. Shropshire Union Ry. & Canal Co.* (1849), 6 Ry. & Can. Cas. 136; *Bagshaw v. Eastern Union Ry.* (1850), 6 Ry. & Can. Cas. 152; *Kent v. Jackson* (1851), 14 Beav. 367; *Re Norwich Yarn Co., Ex p. Bignold* (1856), 22 Beav. 143; *Henry v. G. N. Ry.* (1857), 4 K. & J. 1; *Hodgkinson v. National Live Stock Insee.* (1859), 26 Beav. 473; *Taunton v. Royal Insee.* (1864), 2 Hem. & M. 135; *Hallows v. Fernie* (1867), L. R. 3 Eq. 520; *Hoole v. G. W. Ry.* (1867), 3 Ch. App. 262; *Clinch v. Financial Corpn.* (1868), L. R. 5 Eq. 450; *Gray v. Lewis* (1869), L. R. 8 Eq. 526; *Menier v. Hooper's Telegraph Works* (1874), 9 Ch. App. 350; *Pender v. Lushington* (1877), 6 Ch. D. 70; *Tomkinson v. S. E. Ry.* (1887), 56 L. T. 812; *Tiessen v. Henderson*, [1899] 1 Ch. 861; *Burland v. Earle*, [1902] A. C. 83; *Punt v. Symons*, [1903] 2 Ch. 506; *Normandy v. Ind. Coope*, [1908] 1 Ch. 84; *Baillie v. Oriental Telephone & Electric Co.*, [1915] 1 Ch. 503; *Piercy v. Mills* (1919), 122 L. T. 20.

4101. — In matters of internal management.]

—A ct. of equity will not interfere with the internal management of a joint-stock or incorporated co.—*FRASER v. WHALLEY, GARTSIDE v. WHALLEY* (1864), 2 Hem. & M. 10; 11 L. T. 175; 71 E. R. 361.

Annotations:—*Refd.* *Punt v. Symons*, [1903] 2 Ch. 506. *Mentd.* *Piercy v. Mills*, [1920] 1 Ch. 77.

4102. — Act not warranted by constitution of company.]—(1) Shareholders in a co. cannot, by sanctioning, or by their silence at least acquiescing in, an arrangement which is *ultra vires* of the co., watch the results, in order, & if it be favourable & profitable to themselves, to abide by it & insist on its validity, but, if it prove unfavourable & disastrous, then to institute proceedings to set it aside. Therefore, where shareholders complained of acts *ultra vires*, which they had acquiesced in for six years, relief was refused.

(2) In matters strictly relating to the internal

management of a co. the ct., though it should come to the conclusion that the course adopted is not warranted by the terms of the instrument, will not interfere, even though the minority should have summoned a meeting of all the shareholders, & the majority should have persisted in the course complained of.

(3) But if the measures adopted are plainly beyond the powers of the co., & are inconsistent with the objects for which the co. was constituted, then the ct. will, at the instance of the minority, interpose to prevent the performance of the act complained of, & it will do so whether an appeal has or has not been made by the minority to the shareholders generally.

(4) The ct. will not interfere to prevent a call not required, or stop a dividend not justified by the pecuniary condition of the co., though it will prevent the illegal apportionment of the dividends amongst the shareholders.

(5) Where the ct. interferes by injunction to prevent the performance, by the directors of a co., of an act *ultra vires*, it will also, to the extent of its power, redress the act performed & give relief to the persons injured thereby, although it is not called upon to dissolve the co. or wind up its affairs.

The only available property of a co. was transferred to two shareholders in lieu of their shares, & the co. was thereby practically put an end to, & the debts were thrown on the remaining shareholders. This was sanctioned by a majority of the shareholders at a general meeting:—*Held*: (6) the majority could not bind the minority in such a transaction, & it must be set aside; (7) under the circumstances, the co. was not a necessary party to the suit to impeach acts of its directors.—*GREGORY v. PATCHETT* (1864), 33 Beav. 595; 11 L. T. 357; 10 Jur. N. S. 1118; 13 W. R. 34; 55 E. R. 499.

Annotations:—*As to* (4) *Refd.* *Re National Bank of Wales, Ltd.*, [1899] 2 Ch. 629; *Bond v. Barrow Hematite Steel Co.*, [1902] 1 Ch. 353; *Ammonia Soda Co. v. Chamberlain*, [1918] 1 Ch. 266.

4103. — Act ultra vires.]—*GREGORY v. PATCHETT*, No. 4102, *ante*.

4104. — Disputes between members of governing body.]—The existence of disputes between different members of the governing body of a co. which prevent its affairs being carried on properly, is a ground for the intervention of the ct. by injunction & receiver to protect the property of the co., but the interference of the ct. will be continued only until a governing body is duly appointed.—*FEATHERSTONE v. COOKE, TRADE AUXILIARY Co. v. VICKERS* (1873), L. R. 16 Eq. 298; 21 W. R. 835, 836.

4105. — Application of funds.]—*LOCKWOOD v. HOP BITTERS Co.* (1887), 3 T. L. R. 698.

4106. — Regulations as to exercise of powers not complied with.]—By art. 75 of a co. the business of the co. was to be managed by the directors, who might exercise all the powers of the co. "subject to such regulations—being not inconsistent with the provisions of the arts.—as may be prescribed by the co. in general

PART III. SECT. 31, SUB-SECT. 3.—E.

4103 i. When court will interfere—In matters of internal management—Act ultra vires.]—The ct. will not restrain acts done by the directors in the exercise of their discretion in managing the affairs of their co., unless the acts complained of are illegal, as *ultra vires*.—*KIRKHOE v. WATERFORD & LIMERICK Ry. Co.* (1888), 21 L. R. Ir. 221.—*IR.*

*d. — Fraud.]—*Cts. will not & in fact have no jurisdiction, in the absence of fraud, to interfere with internal management of a co.—*HILL v. STARR MANUFACTURING Co.* (1913), 13 E. L. R. 420; 15 D. L. R. 146.—*CAN.*

*e. — Discretion of Governor-in-Council.]—*Where a co. is authorised by statute to expropriate lands, & the necessity of such expropriation is left to the discretion of the Governor-in-

Council, the ct. will not entertain an application to declare the necessity of such expropriation.—*MILLER v. HALIFAX POWER Co., THOMPSON v. HALIFAX POWER Co.* (1913), 13 E. L. R. 394; 13 D. L. R. 844; 47 N. S. R. 334.—*CAN.*

*f. — Restoration of parties to original rights.]—*A *bond fide* transaction with a co., impeachable only on the ground of being *ultra vires*, will be set aside only on the terms that both

Sect. 31.—Powers and liabilities of company: Sub-sect. 3, E. & F. (a).]

meeting." By art. 80 no resolution of a meeting of the directors having for its object the acquisition or letting of premises should be valid unless notice should have been given to each of the managing directors A. & B. & neither of them should have dissented therefrom.

The directors passed resolutions with the object of acquiring & letting premises, from which B. duly dissented, & resolutions to the same effect were passed at an extraordinary general meeting of the co. by a simple majority of the shareholders:—*Held*: upon the true construction of the arts. the resolutions of the co. were inconsistent with the provisions of the arts., & the co. must be restrained from acting upon them.—*QUIN & AXTENS, LTD. v. SALMON*, [1909] A. C. 442; 78 L. J. Ch. 506; 100 L. T. 820; 25 T. L. R. 590; 16 Mans. 230; *sub nom. SALMON v. QUIN & AXTENS, LTD.*, 53 Sol. Jo. 575, H. L.

Annotations:—*Reid. Logan v. Davis* (1911), 104 L. T. 914; *Hickman v. Kent or Romney Marsh Sheep-Breeders' Assocn.*, [1915] 1 Ch. 881. *Mentd. Foster v. Foster*, [1916] 1 Ch. 532.

4107. — Resolution carried by votes of directors interested—Directors' claims denied by company.—The directors & staff of a co. were asked to take less than their full salaries during the war, & they did so, but it was not clear whether they permanently gave up the difference or whether their claims were only in abeyance. The directors afterwards resolved to issue debentures to themselves & the staff in respect of the arrears, & some of the shareholders brought an action against the co., the directors, & the other shareholders, & asked for an interlocutory injunction restraining the resolution from being acted on:—*Held*: as the matter was carried through by the votes of two of the directors who would themselves benefit but whose claims were not admitted by the co., *pltf.*s. were entitled to an order granting an injunction till the trial, but *defts.* should have leave to move to dissolve the injunction in the event of the scheme proposed by the directors being confirmed by the co.—*LAWSON v. FINANCIAL NEWS, LTD.* (1917), 34 T. L. R. 52, C. A.

— **Meetings—Holding.**—See Sect. 30, sub-sect. 3, *G.*, *ante*.

— **Resolutions.**—See No. 3862, *ante*.

— **Issue of shares.**—See Nos. 1812–1814, *ante*.

— **Calls on shares.**—See Sect. 21, sub-sect. 8, *ante*.

— **Dividends.**—See Sect. 30, sub-sect. 7, *G. (c)*, *ante*.

— **Directors—Appointment.**—See Sect. 28, sub-sect. 1, *E.*, *ante*.

— **Removal.**—See Sect. 28, sub-sect. 8, *B.*, *ante*.

4108. — Business carried on illegally.—Adjacent to a racecourse & forming part of it was an open inclosure surrounded by rails to which the public were admitted at race meetings on payment of an entrance fee. The greater number of the people who entered the inclosure went there for the purpose of betting with the professional bookmakers whom they found there. The bookmakers were admitted on the same terms as the general public, & had no special rights in the inclosure, & did not confine themselves to any particular part of it. They acted independently & in competition with each other, & independently of the proprietors of the racecourse, & any one might act as a bookmaker. The betting was for the most part ready-money betting, & no betting lists were exhibited, but the bookmakers called out the odds.

Pltf. alleged that *deft. co.*, in addition to its business as keeper of a racecourse, was carrying on a business which was illegal under Betting Act, 1853 (c. 119), & outside the scope of its memorandum of assocn., & was liable to be indicted & fined & to have its property confiscated; & claimed an injunction to restrain the co. from opening or keeping the inclosure for the said purposes:—*Held*: the inclosure was not a "place kept or used for the purpose of betting with persons resorting thereto," within the meaning of the Betting Act, 1853.

No point has been made that an injunction will not lie to restrain the commission of a criminal offence. I believe that it will lie, when its object is to protect the shareholders of a co. from any misapplication of its property, although such application may lie punishable as a criminal offence (*LOPES, L.J.*).—*POWELL v. KEMPTON PARK RACECOURSE CO.*, [1899] A. C. 143; 68 L. J. Q. B. 392; 80 L. T. 538; 63 J. P. 260; 47 W. R. 585; 15 T. L. R. 266; 43 Sol. Jo. 329; 19 Cox, C. C. 265, H. L.; *affg.*, [1897] 2 Q. B. 242, C. A.

Annotations:—*Mentd. Peddie v. Bennett* (1897), 61 J. P. 680; *R. v. Humphrey*, [1898] 1 Q. B. 875; *Belton v. Busby*, [1899] 2 Q. B. 380; *Brown v. Patch*, [1899] 1 Q. B. 892; *Lennox v. Stoddart*, *Davies v. Stoddart*, [1902] 2 K. B. 21; *Mackenzie v. Hawke*, [1902] 2 K. B. 216; *Stoddart v. Hawke*, [1902] 1 K. B. 353; *R. v. Deaville*, *R. v. Deaville*, *R. v. Simpson*, [1903] 1 K. B. 468; *Tromans v. Hodgkinson*, [1903] 1 K. B. 30; *Martin v. Benjamin*, [1907] 1 K. B. 64; *Lee v. Taylor & Gill* (1912), 107 L. T. 682; *Jackson v. Roth*, [1919] 1 K. B. 102; *Johnston v. Maconochie*, *Re*, No. 4 Porchester Gate, Paddington, [1920] 3 K. B. 417.

4109. — Acts likely to incapacitate company from performing another act—Both acts intra vires.—The ct. will not restrain a co. from doing a thing within the scope of its objects, on the ground that, if the co. does that thing, the doing of it may incapacitate the co. from performing something else, which is also within the scope of its objects.

A vendor cannot prevent his purchaser from buying a second estate from some one else, pending

parties be restored to their original rights.—*Re IRISH PROVIDENT ASSURANCE CO., LTD.*, [1913] 1 I. R. 352.—*IR.*

g. — Transfer of controlling interest.—The transfer of a controlling interest in a co. is not a matter of mere internal management. It may involve a complete transformation of the co., & consequently such a transfer may in a proper case be restrained.—*CLARK v. WORKMAN*, [1920] 1 I. R. 107.—*IR.*

h. — Petition to prevent performance of agreement—Purchase of shares by petitioners after agreement.—The ct. will not consider the quantum

of interest of shareholders in a co. who seek for an injunction to restrain a co. from carrying into effect a particular agreement nor whether their interest would entitle them to vote at a meeting of the co.; but when the petitioners had purchased two shares for a nominal consideration, after the agreement which they complained of had been entered into, & with full notice of it, & for the purpose of preventing its completion, the ct. refused an injunction.—*M'DONNELL v. GRAND CANAL CO.* (1853), 3 I. Ch. R. 578; 5 Ir. Jur. 197, 198.—*IR.*

k. — False statements in balance-

sheets—Valuation of stock by directors.—A shareholder in a limited co. brought an action against the co. & the directors, for declarator, that *defenders* were not entitled to issue balance-sheets in which the stock on hand was entered at less than its true value, with the object & result of concealing that profits had been earned in excess of those shown in the balance-sheet, & for interdict against the issuing of such balance-sheets. The pursuer did not charge the directors with fraud & admitted that the balance-sheets had been passed by the auditors & approved by general meetings of the co., but averred that

the first transaction, on the ground that, by making such second purchase, he may be rendered unable to complete his first.—*SYERS v. BRIGHTON BREWERY CO., LTD., WRIGHT v. BRIGHTON BREWERY CO., LTD.* (1864), 11 L. T. 560; 13 W. R. 220.

4110. — On interlocutory motion.]—*HARBEN v. PHILLIPS*, No. 4487, *post*.

— At instance of minority of shareholders.]—*See Sub-sect. 3, C., ante*.

F. Ratification of ultra vires Acts.

(a) *By Acquiescence.*

See, generally, CORPORATIONS, Vol. XIII., pp. 367, 368.

4111. What constitutes acquiescence.]—It was said, "But this transaction was acquiesced in by the shareholders;" & I was referred to a case in the House of Lords, or rather two cases, *Spackman v. Evans*, No. 2779, *ante*, & *Evans v. Smallcombe*, No. 2778, *ante*. In *Smallcombe's* case it was held that a transaction which in itself was *ultra vires*, was binding on the shareholders, because they had acquiesced in it for a great number of years. That distinguishes it from *Spackman's* case upon a ground which would apply to this case, that is to say, in the one case all the facts & circumstances had been distinctly disclosed to the shareholders, & the shareholders with that knowledge had gone on allowing the co. to deal upon the footing of the arrangement which had been made with the shareholders. In that case the noble lords who constituted the majority came to the conclusion that all the shareholders had acquiesced, which I understand to mean they had been acquiescent under such circumstances as to amount to an assent. In *Spackman's* case there had been an interval of time, twenty years or nearly so, after the time the arrangements had been made, & the shareholders did not know, although it is said they might have known it, & then it was held that there was nothing which amounted to acquiescence (*JAMES, V.-O.*)—*BRITISH & FOREIGN RAILWAY PLANT CO., LTD. v. ASHBURY CARRIAGE & IRON CO., LTD., SMITH v. ASHBURY CARRIAGE & IRON CO., LTD.*, No. 4064, *ante*.

4112. —.]—Defts., the promoters of a co., were entitled to receive a sum of money on the conclusion of a transaction with the co. & D. The directors of the co. advanced defts. a sum of £6,500 & some debenture-stock in the co. on the security of the money which would be due to defts. On the conclusion of the transaction with D. The transaction went off, & the directors called upon defts. to repay the money. Defts. being unable to pay, proposed a compromise, which the directors accepted, that they should deliver up 400 shares, which they held in the co., to be cancelled in satisfaction & discharge of their debt. At a general meeting of the co., the fact that the 400 shares had been forfeited was mentioned to the shareholders & published in a circular, & the books of the co. were open for inspection, so that every shareholder had the means of inquiring into the transaction. The arts. of assocn. provided that the co. should not buy or sell its own shares:—*Held*: although the directors, in entering into a compromise with

defts., had exceeded the authority given to them by the arts. of assocn., yet that the shareholders had ratified the directors' acts by not objecting at the right time, & that they could not, after profiting by an increased dividend arising from the forfeiture of the shares, open anew transactions to which they had tacitly assented.

A shareholder is bound by the acts of the directors, if he had the means of knowing that they have acted beyond their authority, and he does not interfere.—*PHOSPHATE OF LIME CO. v. GREEN* (1871), L. R. 7 C. P. 43; 25 L. T. 636.

Annotations:—*Distd. Ashbury Ry. Carriage & Iron Co. v. Riche* (1875), L. R. 7 H. L. 653. *Consd. Trevor v. Whitworth* (1887), 12 App. Cas. 409; *Marsh v. Joseph*, [1897] 1 Ch. 213. *Folld. Ho Tung v. Man On Insee*, [1902] A. C. 232. *Refd. London Financial Asscn. v. Kelk* (1884), 26 Ch. D. 107; *Cullerne v. London & Suburban General Permanent Benefit Bldg. Soc.* (1890), 6 T. L. R. 214; *Hadley v. Hadley* (1897), 77 L. T. 131.

4113. Period of acquiescence.]—The capital of a joint-stock co. was fixed at £10,000 but with power for a general meeting of the shareholders, duly convened according to certain forms, & by a majority of two-thirds of the then shareholders, to increase that amount to £100,000. No such meeting was held, but a false entry was made by the chairman in the minute book of the co., stating that at an extraordinary general meeting of the co. it had been resolved to increase the capital from £10,000 to £100,000. The capital having been *de facto* increased, new shares having been issued & taken, profits having been made upon the increased capital, & dividends paid on such profits among all the shareholders for four years:—*Held*: the shareholders must be taken to have acquiesced, & could not now object to the irregular manner in which the shares had been increased.—*Re ATHENAEUM LIFE ASSURANCE SOCIETY, RICHMOND'S CASE & PAINTER'S CASE* (1858), 4 K. & J. 305; 32 L. T. O. S. 174; 70 E. R. 127.

Annotations:—*Refd. Re Magdalena Steam Navigation Co.* (1860), 8 W. R. 329. *Mentd. Re Bank of Hindustan, China & Japan, Campbell's Case, Hippisley's Case, Alison's Case* (1873), 9 Ch. App. 1.

4114. —.]—By the deed of settlement of a joint-stock co. power was given to a meeting, consisting of two-thirds in number & value of the shareholders to authorise the directors to borrow money upon debentures; & at a meeting of shareholders holding less than two-thirds of the shares, it was resolved that the directors should be authorised to borrow money on debentures. The directors accordingly borrowed on debentures divers sums of money, which were applied in discharging the debts & liabilities of the co. The debenture debts regularly appeared in the reports of the directors, which were confirmed at the annual general meetings of the shareholders, & interest was regularly paid with the consent of the shareholders until the winding up of the co., a period of two years:—*Held*: though the debentures were clearly improperly issued, yet, as the money had been raised & applied for the benefit of the co., & the shareholders had acquiesced for two years, it was too late now to dispute their validity.—*Re MAGDALENA STEAM NAVIGATION CO.* (1860), John. 690; 29 L. J. Ch. 667; 3 L. T. 147; 6 Jur. N. S. 975; 8 W. R. 329; 70 E. R. 597.

Annotation:—*Refd. Re Cork & Youghal Ry.* (1869), 4 Ch. App. 752, n.

the actings complained of were *ultra vires*:—*Held*: the action fell to be dismissed on the ground that valuation of the stock was a matter within the discretion of the directors subject to approval of the shareholders, & that

there was no relevant averment that the co. or the directors had acted *ultra vires*.—*YOUNG v. BROWNE & CO., LTD.*, [1911] S. C. 677; 48 Sc. L. R. 402; 1 S. L. T. 303.—*SCOT*.

PART III. SECT. 31, SUB-SECT. 3.—*F. (a).*

1. *Effect of acquiescence*—*By shareholders*.]—Acquiescence of individual shareholders in an incorporated co. cannot amount to the acquiescence

Sect. 31.—Powers and liabilities of company: Subsect. 3, F. (a) & (b); sub-sect. 4, A. & B. (a).]

4115. Effect of acquiescence—By shareholders—Where they watch for results—Six years' delay.]—GREGORY v. PATCHETT, No. 4102, *ante*.

4116. ——— Ratification of ultra vires acts of directors.]—Although absent shareholders are not bound to do anything more than assume that their directors are doing their duty; yet, if they receive notice that the directors are exceeding their legal powers, &, with that knowledge they remain a long time without actively objecting to what has been done, they must be held, by their acquiescence, to have ratified the irregular transaction.—EVANS v. SMALLCOMBE (1868), L. R. 3 H. L. 249; 37 L. J. Ch. 793; *sub nom.* EVANS v. SMALLCOMBE, *Re* AGRICULTURISTS' CATTLE INSURANCE CO., 19 L. T. 207, H. L.

*Annotations:—*Distd. Murray v. Bush (1873), 22 W. R. 280. *Refd.* *Re* Agriculturist Cattle Insce., Dixon's Case (1869), 21 L. T. 288; Hadley v. Hadley (1897), 77 L. T. 131; Ho Tung v. Man On Insce. (1901), 71 L. J. P. C. 48. *Mentd.* Houldsworth v. Evans (1868), L. R. 3 H. L. 263; Ashbury Ry. Carriage & Iron Co. v. Riche (1875), L. R. 7 H. L. 653.

4117. ——— ———.]—In 1863 pltf. co., R., & the firm of K. & L., entered into an agreement to purchase on joint account the A. P. Estate, K. & L. agreeing to finish the palace, etc., for £200,000, & the co. undertaking to float a subsidiary co. for the purchase of the property. Subsidiary cos. were incorporated; but the shares not being taken up by the public, pltf. co., R., & K. & L., &, after the retirement of R. in 1871, pltf. co. & K. & L., advanced the necessary moneys equally, & completed the palace. The palace & the subsidiary cos. proved failures, & pltf. co. lost large sums. In an action to make the directors & K. & L. liable to the co.:—*Held*: (1) the agreement of 1863 did not constitute a partnership, & the transactions were not *ultra vires*; (2) if they were, still the directors could not be made liable for an honest mistake as to the extent of their powers; (3) under the circumstances, the action was barred by acquiescence & ratification.—LONDON FINANCIAL ASSOCN. v. KELK (1884), 26 Ch. D. 107; 53 L. J. Ch. 1025; 50 L. T. 492.

*Annotations:—*As to (1) *Refd.* Oppenheimer v. Frazer & Wyatt, [1907] 2 K. B. 50. As to (2) *Refd.* *Re* Oxford Bldg. Soc., *Ex p.* Smith (1886), 56 L. J. Ch. 98; *Re* Liverpool Household Stores Asscn. (1890), 59 L. J. Ch. 616. *Generally, Mentd.* *Re* Harrison (1886), 55 L. J. Ch. 768.

4118. ——— Estoppel—Irregular amalgamation—Binding as between companies.]—Although an amalgamation & purchase of the business & liabilities of one joint-stock co. by another established for similar purposes may be *ultra vires*, as a transaction not within the general scope & purposes of the business of such a co., & unauthorised by the deed of settlement, there may have been such an amount of subsequent acquiescence as to render the attempted amalgamation though invalid in its inception, binding as between the two cos.—*Re* ERA ASSURANCE CO., WILLIAMS' CASE, ANCHOR CASE (1862), 1 Hem. & M. 672; 7 L. T. 595; 11 W. R. 204; 71 E. R. 295; *previous proceedings, sub nom.* *Re* SAXON LIFE ASSURANCE CO., ERA CO.'S CASE, 1 De G. J. & Sm. 29, L. JJ.; *subsequent proceedings* (1863), 1 De G. J. & Sm. 172, L. JJ.

4119. ——— Irregular forfeiture of shares—Shareholders benefiting.]—PHOSPHATE OF LIME CO. v. GREEN, No. 4112, *ante*.

of the corp'n.; nor can a corp'n. by acquiescence validate an illegal transaction, or disentitle itself to relief in respect of it.—CRESWICK GRAND TRUNK GOLD MINING CO. v. HASSALL

(1868), 5 W. W. & A'B. 49.—AUS.

PART III. SECT. 31, SUB-SECT. 4.—A. *m. Employment — By unregistered company.]—*In an action of damages

4120. ——— Shareholders receiving dividends paid out of capital.]—(1) Where a co. had, by a *bond fide* mistake of its directors, illegally paid a dividend out of capital, & an action was brought against the co. & the directors by shareholders, purporting to sue on behalf of themselves & all other the shareholders of the co., who had received, & still retained, their shares of that dividend with full knowledge of all the circumstances, it was held that pltf's., having the dividend in their pockets which they knew was wrongfully there, ought not to be allowed to complain, & could not obtain any greater right of complaint because in form their action was an action by themselves & all other the shareholders of the co.

(2) If an act is done by a co. which is *ultra vires* no confirmation by shareholders—not even by every member of the co.—can convert that which was *ultra vires* into something *intra vires*: it always must be *ultra vires* (VAUGHAN WILLIAMS, L.J.).—TOWERS v. AFRICAN TUG CO., [1904] 1 Ch. 558; 73 L. J. Ch. 395; 90 L. T. 298; 52 W. R. 532; 20 T. L. R. 292; 48 Sol. Jo. 311; 11 Mans. 198, C. A.

*Annotations:—*As to (1) Distd. Mosely v. Koffyfontein Mines, [1911] 1 Ch. 73. *Refd.* Lawrence v. West Somerset Mineral Ry., [1918] 2 Ch. 250.

(b) *By Resolution.*

How far possible.]—See Nos. 3856, 4029, 4120, *ante*.

4121. Effect on future ultra vires acts.]—Arts. of assocn. of a co. registered under a Colonial statute, adopting 1862 Act, provided that, subject to powers given at meetings of shareholders, the directors should have power to borrow on the property of the co. any sum "not exceeding in the aggregate one half the paid-up capital." The arts. further provided that one half of the votes of the shareholders called for the purpose should be necessary to enlarge, extend, rescind, or alter all or any of the provisions contained therein. The directors exceeded their borrowing powers:—*Held*: the limitation of the power of borrowing was merely a limitation of the authority of the directors, & was not part of the constitution of the co.; the act of the directors might be ratified by the co. at a half-yearly meeting, but such ratification would not enlarge the borrowing powers of the directors for the future.—IRVINE v. UNION BANK OF AUSTRALIA (1877), 2 App. Cas. 366; L. R. 4 Ind. App. 86; 46 L. J. P. C. 87; 37 L. T. 176; 25 W. R. 682, P. C.

*Annotations:—*Distd. Boschoek Proprietary Co. v. Fuke, [1906] 1 Ch. 148. *Refd.* Grant v. United Kingdom Switchback Rys. (1888), 40 Ch. D. 135; *Re* London & New York Investment Corp'n., [1895] 2 Ch. 860. *Mentd.* Melbourne Banking Corp'n. v. Brougham (1878), 4 App. Cas. 156.

4122. Ratification amounting to alteration of articles.]—GRANT v. UNITED KINGDOM SWITCHBACK RAILWAYS CO., No. 3759, *ante*.

4123. Sufficiency of notice of meeting.]—BOSCHOEK PROPRIETARY CO., LTD. v. FUKU, No. 3855, *ante*.

SUB-SECT. 4.—EMPLOYMENT OF AGENTS AND SERVANTS.

A. In General.

4124. Appointment—Whether valid.]—By the deed of settlement of a joint-stock co. established under 1844 Act, the directors were empowered

against a firm of manufacturing engineers at the instance of a limited co., registered on July 29, 1890, pursuers averred that, on July 11, 1890, D., as agent for the co., entered

to issue bills of exchange & promissory notes, but such bills & notes were only to bind the shareholders to the extent of their interests in the co. The directors, by deed-poll under the common seal of the co., & signed by three directors, appointed an agent in Canada, & empowered him to draw bills of exchange upon the co. To discharge claims against the co. in Canada, the agent drew & gave there two bills of exchange, such bills containing no notice of any restricted liability. Upon the co. being wound up, the holders of these bills put in claims for the amount, together with interest & damages calculated according to certain statutes of Canada:—*Held*: the appointment of the agent was valid, & the bills in question were well drawn by him so as to bind the co., notwithstanding sect. 45 of above Act, & notwithstanding also the provisions in the deed of settlement for limiting the liability of the shareholders; & accordingly the holders of the bills were entitled to prove against the co.—*Re STATE FIRE INSURANCE CO., Ex p. MEREDITH'S & CONVERS' CLAIM* (1863), 1 New Rep. 510; 32 L. J. Ch. 300; 8 L. T. 146; 9 Jur. N. S. 11; 11 W. R. 416.

4125. Employment—Agent personally interested in transaction—Whether acting as agent or on own behalf.—Pltfs. were holders of a bill of exchange drawn by deft. on D. The bill was drawn by deft. as surety for D. in respect of a debt due by D. to pltfs., & was to be met by the proceeds of claims of D. on S., which would accrue due before maturity of the bill. Pltfs. took the bill with notice of these facts to their managing director C. D., in addition to his debt to pltfs., was indebted to C., their managing director. Subsequently, but before maturity of the bill, C. obtained an order from D. upon S. for the amount of the above claims & received the money from S. This money he applied towards payment of his own demand on D. instead of towards pltfs.' bill:—*Held*: the receipt by C. of this money & his application of it to his own purposes did not afford any defence to pltfs.' action, as C. could not be said to have been acting within his authority as managing director when he so received & applied the money.—*McGOWAN & Co. v. DYER* (1873), L. R. 8 Q. B. 141; 21 W. R. 560.

Annotations:—*Refd.* Lloyd v. Grace, Smith, [1912] A. C. 716; Percy v. Glasgow Corpn. (1922), 91 L. J. P. C. 187.

4126. — Subsidiary companies working under orders of principal company.—By the order of two cos. subsidiary to deft. co., traction engines & trucks drawing ballast & sand passed over a road in respect of which pltfs. were the highway authority. Deft. co. had settled claims for extraordinary expenses consequent upon extraordinary traffic in respect of traffic of the same nature carried over other sections of the same road under other highway authorities:—*Held*: the subsidiary cos. were the agents of deft. co., & the traffic was extraordinary, & defts. were liable.—*KENT COUNTY COUNCIL v. KENT COAL CONCESSIONS, LTD.* (1909),

into a contract with defenders for the supply by the latter of certain pieces of machinery, & that the machinery supplied was defective, & had caused great loss to the co.:—*Held*: the co. had not set forth a title to sue, as D. could not have acted as its agent before it was in existence.—*TINNEVELLY SUGAR REFINING CO., LTD. v. MURRELLS, WATSON & YARYAN CO., LTD.* (1894), 21 R. (Ct. of Sess.) 1009.—*SCOT.*

n. Unregistered foreign company—Right to action upon contract against its agent.—An unregistered foreign co. may maintain an action upon a con-

tract with a so-called agent where, although the contract refers to deft. as the co.'s agent, he is in fact a purchaser by correspondence from the co. of goods imported by him into the province.—*STANDARD FASHION CO. v. McLEOD* (1914), 7 Alta. L. R. 145; 17 D. L. R. 403; 6 W. W. R. 939.—*CAN.*

PART III. SECT. 31, SUB-SECT. 4.—B. (a).

o. Authority of agent.—The directors of a co. are not necessarily its only agents. When it is necessary for them to employ other persons to act for the co., such persons also have

73 J. P. 305; 25 T. L. R. 479; 7 L. G. R. 899, C. A.

Annotation:—*Mentd.* Ledbury R. C. v. Somerset (1915), 84 L. J. K. B. 1297.

4127. — Officer of two companies—Payment between companies—Whether agent of paying or receiving company.—The directors of a building society deposited money, in a manner unauthorised by their rules, with a finance co., the manager of which was also manager of the building society. Afterwards the deposit was called in, & the directors of the finance co. gave a cheque for the amount to their manager, to be paid by him to the building society. He appropriated it to his own use:—*Held*: (1) the manager held the money as agent for the finance co. until he should pay it to some person competent to give a receipt on behalf of the building society; & that as he never paid it over, the money must be taken to be still in the hands of the finance co., who were liable to repay it to the building society; (2) as it was trust money a suit to recover it was maintainable.—*HARDY v. METROPOLITAN LAND & FINANCE CO.* (1872), 7 Ch. App. 427; 41 L. J. Ch. 257; 26 L. T. 407; 20 W. R. 425, L. J.

Annotation:—*As to* (2) *Refd.* *Re Coltman, Coltman v. Coltman* (1881), 19 Ch. D. 64.

4128. Powers—Drawing bills of exchange—Specific delegation of authority.—*Re STATE FIRE INSURANCE CO., Ex p. MEREDITH'S & CONVERS' CLAIM, No. 4124, ante.*

4129. — Entering into recognisances—On behalf of company.—When a co. is required to enter into a recognisance, such recognisance may be entered into by a director or member of the co. acting for & on behalf of the co., & this has been the practice for many years.

If the co. be in liquidation, a director or member has no longer authority to enter into a recognisance for the co., & the liquidator cannot afterwards ratify the act of a director or member who so enters into the recognisance after the liquidation.—*SOUTHERN COUNTIES DEPOSIT BANK, LTD. v. BOALER* (1895), 73 L. T. 155; 59 J. P. 536; 11 T. L. R. 568; 15 R. 566, D. C.

— Presentation of bankruptcy petition.—*See* *BANKRUPTCY & INSOLVENCY, Vol. IV., pp. 110, 126, Nos. 992–996, 1149, 1150.*

4130. — Taking proceedings in county court—Need not be solicitor.—*KINNEL (CHARLES P.) & Co. v. HARDING, WACE & Co., No. 4429, post.*

B. Liability of Company for Acts of Agents and Servants.

(a) In Contract.

See, generally, AGENCY, Vol. I., pp. 567 et seq., 620 et seq.

4131. Void contract by directors.—A contract by the directors of one co. to purchase the trade of another co. is not binding, unless it is authorised by the deed of settlement of each co., & is made according to its provisions.

Qu.: whether when directors have entered into

power to bind the co. within the limits of their authority, & as a rule their authority cannot be denied unless their employment was beyond the power of the directors or they had been employed irregularly, & the person dealing with them had notice of the irregularity.—*McGEE v. ROSETOWN ELECTRIC LIGHT & POWER CO., LTD., [1918] 1 W. W. R. 552; 11 Sask L. R. 68.—CAN.*

p. — Engineer—Agreement with sub-contractors.—An agreement was entered into between a gravel road co. & W., to construct a gravel road at a certain price & on a certain

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a covenant which is void, their co. can be liable for acts done in consequence of such covenant.—*ERNEST v. NICHOLLS* (1857), 6 H. L. Cas. 401; 30 L. T. O. S. 45; 3 Jur. N. S. 919; 10 E. R. 1351; *sub nom.* SEA, FIRE, LIFE ASSURANCE SOCIETY *v.* PORT OF LONDON SHIP OWNERS' LOAN & ASSURANCE SOCIETY, 6 W. R. 24, H. L.; *reversg.* S. C. *sub nom.* *Re* SEA, FIRE & LIFE ASSURANCE CO., PORT OF LONDON SHIP OWNERS' LOAN & ASSURANCE CO.'S CASE (1854), 5 De G. M. & G. 465, L. J.J.

*Annotations:—**Reid.* London Dock Co. *v.* Sinnott (1857), 8 E. & B. 347; *Agar v. Athenaeum Life-Assce. Soc.* (1858), 3 C. B. N. S. 725; *Re Athenaeum Life-Assce. Soc., Ex p. Eagle Insce.* (1858), 4 K. & J. 549; *Re Athenaeum Assce. Soc., Ex p. Prince of Wales Life & Educational Assce.* (1859), 28 L. J. Ch. 335; *Browning v. Great Central Mining Co. of Devon* (1860), 5 H. & N. 856; *Re Era Assce. Soc., Williams' Case, Anchor Case* (1860), 2 John. & H. 400; *Re Magdalena Steam Navigation Co.* (1860), John. 690; *Stears v. South Essex Gaslight & Coke Co.* (1860), 9 C. B. N. S. 180; *Re Saxon Life Assce. Soc., Anchor Assce.'s Case, Era Assce. Soc.'s Case, Re Era Assce. Soc., Williams' Case, Anchor Assce.'s Case* (1863), 32 L. J. Ch. 206. *Mentd.* *Hickman v. Cox* (1857), 3 C. B. N. S. 523; *Athenaeum Life Assce. Soc. v. Pooley* (1858), 3 De G. & J. 294; *Prince of Wales Assce. v. Harding* (1858), E. B. & E. 183; *Re London & Eastern Banking Corp'n. Ex p. Longworth's Exors.* (No. 2) (1859), John. 465; *Metropolitan Saloon Omnibus Co. v. Hawkins* (1859), 4 H. & N. 87; *Re Royal British Bank, Nicol's Case* (1859), 3 De G. & J. 387; *Conybeare v. New Brunswick & Canada Ry. & Land Co.* (1860), 1 De G. F. & J. 578; *Re National Patent Steam Fuel Co., Baker's Case* (1860), 1 Drew. & Sm. 55; *Re Phoenix Life Assce., Burges & Stock's Case* (1862), 2 John. & H. 441; *Re State Fire Insce.* (1863), 1 De G. J. & Sm. 634; *Kearns v. Leaf, Aldobert v. Leaf* (1864), 1 Hem. & M. 681; *Re State Fire Insce.* (1865), 34 L. J. Ch. 436; *Fountain v. Carmarthen Ry.* (1868), L. R. 5 Eq. 316; *Mahony v. East Holyford Mining Co.* (1875), L. R. 7 H. L. 869; *Re Norwich Equitable Fire Assce. Soc.* (1887), 58 L. T. 35.

4132. Authority of agent.]—On questions as to the extent of the authority of an agent, the same rules of law & equity apply to boards & public

cos. as to individuals.—*THORN v. PUBLIC WORKS COMRS.* (1863), 32 Beav. 490; 55 E. R. 192.

4133. — Effect of holding out by company.]—(1) Where a co., through their directors, hold out an officer of the co. as their agent for a particular purpose & ratify his acts, they cannot afterwards dispute acts done by him within the scope of such agency.

An officer of a co. had been publicly accustomed to enter into contracts on their behalf, though not authorised under the corporate seal, & his acts had always been sanctioned:—*Held*: a written contract of such a character entered into by him was binding on the co.

(2) A contract for the sale to pltf. of lands of a co. was entered into, without any specific authority, by their manager, & it was afterwards part performed by acts of the co. & its officers:—*Held*: it was binding on the co., & pltf. was entitled to enforce its specific performance.—*WILSON v. WEST HARTLEPOOL RY. CO.* (1865), 2 De G. J. & Sm. 475; 5 New Rep. 289; 34 L. J. Ch. 241; 11 L. T. 692; 11 Jur. N. S. 124; 13 W. R. 361; 46 E. R. 459, L. J.J.; *subsequent proceedings*, 34 Beav. 414.

*Annotations:—**As to* (1) *Reid.* Melbourne Banking Corp'n. *v.* Brougham (1879), 48 L. J. P. C. 12. *As to* (2) *Consd.* *Toebay v. Manchester & Sheffield Ry.* (1883), 52 L. J. Ch. 613. *Reid.* *Prince v. Prince* (1866), 14 L. T. 43; *Hunt v. Wimbledon L. B.* (1878), 4 C. P. D. 48; *Melbourne Banking Corp'n. v. Brougham* (1879), 48 L. J. P. C. 12; *Re Northumberland Avenue Hotel Co., Sully's Case* (1885), 54 L. T. 76; *Re Patent Ivory Manufacturing Co., Howard v. Patent Ivory Manufacturing Co.* (1888), 38 Ch. D. 156; *Davis v. Leicester Corp'n.* [1894] 2 Ch. 208; *Hoare v. Kingsbury U. C.* [1912] 2 Ch. 452. *Generally, Mentd.* *Bateman v. Mid-Wales Ry., National Discount Co. v. Mid-Wales Ry., Overend, Gurney v. Mid-Wales Ry.* (1866), L. R. 1 C. P. 499; *Re National Savings Bank Asscn., Brady's Case* (1867), 15 W. R. 753; *A. G. v. Biphosphated Guano Co.* (1879), 11 Ch. D. 327; *Hart v. Hart* (1881), 18 Ch. D. 670.

—.]— *See, generally*, AGENCY, Vol. I., pp. 295 *et seq.*

route, which route was afterwards deviated from by the co., & their engineer instructed pltf's., who were the sub-contractors of W., to construct the extra portion created by the deviation:—*Held*: pltf's. could not maintain an action against the road co., the co. not having contracted with pltf's., & their engineer having no authority to bind defts. by an agreement with pltf's.—*COWAN v. GODERICH NORTHERN GRAVEL ROAD CO.* (1860), 10 C. P. 87.—CAN.

q. — Contract not under corporate seal of company.]—Declaration, that a certain vessel insured in the P. Co. was sunk, & that deft., who was the agent of the co., in effecting settlements on account of vessels lost or damaged, in consideration that pltf's. would contract with deft. as, & assuming to be, the agent of the co., to raise the vessel for \$3,100, the question of liability to pay the sum to be referred to arbitration, promised pltf's. that he was authorised by the co. to enter into the contract as their agent; that pltf's. entered into such contract with deft. as & assuming to be the agent of the co., & raised the vessel; yet deft. was not authorised by the co. to make such contract, & refused to pay pltf's. the \$3,100, or to refer the question of liability to pay the same to arbitration, by reason whereof pltf's. could not enforce the contract against the co., & were put to expense, etc. Plea, pltf's. were unable to enforce the contract, not because deft. was not authorised to contract, but because the contract was by parol, & as pltf's. well knew, not under the corporate seal of the co.:—*Held*: on demurrer, there was no assertion in the declaration of deft. being the agent inconsistent with the allegation of his want of authority;

the plea showed no defence, for if deft. had been authorised as he represented, the co. could have been compelled in equity to affix their seal to the contract.—*CALVIN v. DAVIDSON* (1871), 31 U. C. R. 396.—CAN.

r. — —.]—Pltf., acting under a written contract, for the delivery of twelve tons of stone for the piers of a bridge which defts. were building over a river on their line of railway, delivered the amount, & was paid by defts. therefor, as well as for an additional ton & a half, & some sand subsequently ordered by the inspector. The inspector then ordered pltf. to deliver some more stone & sand, stating that he did not know what quantity of stone was required, but telling pltf. to go on drawing until told to stop, & pltf. then delivered some 26½ tons of stone & a quantity of sand, defts. having furnished the men & teams to assist pltf. in doing so. On observing about May 8, that defts. had stopped work on the bridge, pltf. ceased delivering. About May 12, he was paid for what had been delivered up to that time. On the work being renewed, & on being ordered by the inspector to continue delivering, he delivered 26 further tons & some more sand. Defts., however, refused to pay for the latter delivery, contending that they were not liable:—*Held*: there was sufficient evidence of authority on the part of the inspector to bind defts., & of their having adopted his acts; the contract was not required to be in writing to satisfy the Stat. Frauds, because the stone & sand now in question had been delivered under the order to go on drawing until told to stop, & part of the stone delivered under that order had been accepted & paid for; the

contract did not require to be under the corporate seal, it being one directly connected in its nature with the purposes of deft. co.—*O'BRIEN v. CREDIT VALLEY RY. CO.* (1875), 25 C. P. 275.—CAN.

s. — —.]—An agreement for fencing of a railway was signed by pltf's. & by F., on behalf of R. Co. F. controlled nine-tenths of the stock, & publicly appeared & acted as manager of R. Co. Pltf's. built the fence, & R. Co. supplied cars as agreed & had the benefit of the work. The jury found that pltf's., when they contracted, considered they were contracting with the co. through F.; that there was no evidence that the co. repudiated the contract till the action was brought; that payments were made as of money which the co. owed, which they were not paying to be charged to F.; & a general verdict was found for pltf's. On appeal:—*Held*: it was properly left to the jury to decide whether the work performed, of which the co. received the benefit, was contracted for by the co. through the instrumentality of F., or whether they adopted & ratified the contract; the verdict could not be set aside on the ground of being against the weight of evidence; although the contract entered into by F. for the co. was not under seal, the action was maintainable.—*CANADA CENTRAL RY. CO. v. MURRAY* (1883), 8 S. C. R. 313.—CAN.

t. — —.]—An agreement, purporting to be made on behalf of deft. co., a corporate body, incorporated under Manitoba Joint-Stock Cos. Act, to re-purchase from pltf. certain shares of stock sold to him by the co. through L., was signed by L., a salesman employed by the co.

4134. — Limited by powers of company.]—The powers of an agent are limited by the limitation of the powers of the principal; contracts which would not be binding on the principal, as *ultra vires*, do not become binding by means of their having been entered into through the medium of an agent.—**MONTREAL ASSURANCE CO. v. M'GILLIVRAY** (1859), 13 Moo. P. C. C. 87; 8 W. R. 165; 15 E. R. 33, P. C.

Annotation.—**Mentd. Singapore (Owners) v. Hebe (Owners)**, *The Singapore & The Hebe* (1866), 4 Moo. P. C. C. N. S. 271.

4135. — Execution of deed—Proof of authority.]—DOE d. MACLEOD v. EAST LONDON WATERWORKS CO., No. 4179, post.

— **Negotiable instruments.]—See Nos. 4230 et seq., post.**

— **Director.]—See Sect. 28, sub-sect. 5, C. (a), ante.**

— **Managing director.]—See Sect. 28, sub-sect. 9, D., ante.**

— **Chairman & vice-chairman.]—See Sect. 28, sub-sect. 10, ante.**

— **Secretary.]—See Sect. 29, sub-sect. 2, C. (b), ante.**

— **].—See, also, Nos. 3501, 3505, 3514, ante.**

Whether agent personally bound—Qualified signature.]—See Sect. 28, sub-sect. 6, F., sub-sect. 9, D., Sect. 29, sub-sect. 2, D., sub-sect. 3, D., ante.

Neither L. nor the vice-president of the co., who, in writing, authorised L. to make such agreement, had authority to bind the co. to the agreement, & it was not under corporate seal:—**Held:** pltf. was entitled to recover \$1,000, upon re-assigning to defts. shares purchased by him, upon the ground that defts., having received the \$1,000 paid by pltf. for the shares, were bound to restore pltf. to his original position, if the agreement to re-purchase made by defts.' agent was not within their corporate powers.—**WHALEY v. O'GRADY, ANDERSON & CO.** (1911), 19 W. L. R. 885; 1 W. W. R. 535; (1912), 21 W. L. R. 617; 2 W. W. R. 663; 4 D. L. R. 485; 22 Man. L. R. 379.—**CAN.**

a. — Effect of acquiescence by company.]—Deft. co., by their charter were given powers to carry on a general mercantile business & to buy & sell & otherwise deal in real & personal property. S., acting as their agent, purchased from pltf. a piece of land paying \$100 on account & giving a mtge. note, or a mtge. secured by a note, for the balance. The co. were notified of the transaction & entered into possession of the land & received rents & profits. In an action on the note:—**Held:** the co. were bound by the act of their agent.—**RYAN v. TERMINAL CITY CO., LTD.** (1893), 25 N. S. R. 131.—**CAN.**

b. — Manager.]—Defts., by resolution of the board of directors, authorised their manager to purchase from pltf., on certain terms of credit, a machine necessary for the carrying on of defts.' business. Defts.' manager bought the machine, but on different terms, pltf. having no knowledge of the board's resolution; defts. received & used the machine:—**Held:** the purchase was within the scope of the manager's authority, & defts. were liable for the price of the machine.—**THOMPSON v. BRANTFORD ELECTRIC & OPERATING CO., LTD.** (1898), 25 A. R. 310.—**CAN.**

c. — Chartered accountant.]—A co. employed a chartered accountant to carry through an amalgamation of their co. with another, & subsequently paid him £200 to cover his charges, expenses & outlays. Without special instructions from the principals & without their knowledge, he em-

ployed a firm of law-agents to prepare a certain deed, & informed them that it was on his principals' behalf. On his failing to pay the law-agents' account, they brought an action against the principals for the amount of that account. Defenders denied having employed pursuers:—**Held:** the agent had no authority from defenders to employ pursuers & defenders absolved.—**ROBERTSON v. BEATSON, M'LEOD & CO., LTD.**, [1908] S. C. 921; 16 S. L. T. 157.—**SCOT.**

d. Parol agreement—Not "relating to the purposes for which the company was incorporated."]—A parol agreement entered into by the duly authorised agents of an incorporated insurance co., to refer to arbitration the question of the legal liability of the co., to bear any portion of the expenses of raising & repairing a vessel insured by them & subsequently lost:—**Held:** not binding upon the co., as not being a contract relating to the purposes for which the co. was incorporated.—**CALVIN v. PROVINCIAL INSURANCE CO.** (1870), 20 C. P. 267.—**CAN.**

e. After transfer of company to syndicate.]—A manufacturing co. transferred to a syndicate, which had lent it money, its works, plant, & material, & in effect its whole business, which the syndicate proceeded to carry on, on the co.'s premises, for its own benefit, & at its own risk. The managing director of the co., who had become the manager of the syndicate, after the above transfer, but pursuant to a correspondence commenced a few days before it, ordered, as in his former capacity, certain goods from pltf., who, subsequent to the transfer, supplied the goods ordered, which were used by the syndicate, & he afterwards took a note of the co. for their price, on which, when dishonoured, he sued & obtained judgment against the co., being, however, all the time, ignorant of the circumstances above mentioned. About a week prior to the judgment a winding-up order was obtained against the co., hearing of which, pltf. at once commenced this action against the syndicate for the price of the goods, & afterwards, before trial, obtained *ex p.* an order vacating the judgment against the co.:—**Held:** pltf. was entitled to recover from the syndicate the price of the goods.—

4136. Whether contract on behalf of company—Directors also members of firm—**Signature in firm name.]—**Shipbuilders contracted with a trading co. to build for them a steamer, to be paid for by instalments, one-tenth of the whole to be paid in fully paid-up shares in the co. at par, on delivery of the ship. At a meeting between the directors of the co. & the shipbuilders on the day that the above contract was signed, the latter having raised an objection to receiving any part of the purchase-money in shares, the chairman & the managing director of the co., who together formed a firm carrying on a separate business as cotton brokers under the title of C. G. & Co., gave them the following letter, dated the same day: "We hereby beg to say that we shall do our best to dispose of the stock we propose that you shall take in payment of the last instalment of the steamer, this day contracted for with you. It is not our expectation that we shall have to call upon you to take up these shares." This was signed "C. G. & Co." Before the delivery of the ship, an individual member of the firm of shipbuilders applied for some shares in the co. on his own account, & the co. declined to allot any to new appcts. except at 5 per cent. premium. No shares were allotted to the shipbuilders until three years after the delivery of the ship, when the co. was about to wind up:—**Held:** in the absence of

KEATING v. GRAHAM (1895), 26 O. R. 361.—**CAN.**

f. Duty of third parties contracting with agents.]—Contracts of agency are construed strictly, & third parties dealing with agents are put upon inquiry to ascertain the extent of their powers.—**GRANDA HERMANOS Y. CA v. AMERICAN ELECTRICAL & NOVELTY MANUFACTURING CO.** (1906), Q. R. 29 S. C. 444.—**CAN.**

g. —.]—Persons dealing *bona fide* with a director & joint business manager of a co. are not entitled to assume that he has all the powers he purports to exercise unless they are powers which, according to the constitution of the co., such director & manager can have.—**WELGEDACHT EXPLORATION CO., LTD. v. TRANSVAAL & DELAGOA BAY INVESTMENT CO., LTD.**, [1909] T. H. 90.—**S. AF.**

h. —.]—A person transacting business with a joint-stock co. in matters within the scope of its business is not bound to inquire whether or not the persons he deals with as directors or managers have been duly appointed. If in any particular transaction persons *de facto* representing the co. might, under the arts. of assocn., have had authority given to them to enter into it, the co. will be bound.—**BLAIR v. DUNTRON & HAKATERAMEA RY. CO., LTD.** (1886), 5 N. Z. L. R. 309.—**N.Z.**

k. Fraudulent misrepresentations by directors.]—Where a person has been drawn into a contract to purchase shares by fraudulent misrepresentations made by the directors, & the directors, for the co. seek to enforce the contract or the party deceived seeks to rescind the contract, the misrepresentations are imputable to the co. & the purchaser cannot be held to his contract, because the co. cannot retain the benefit they have obtained through the fraud of their agents.—**WESTERN BANK OF SCOTLAND v. ADDIE** (1867), 5 Macph. (Cl. of Sess.) 80; L. R. 1 Sc. & Div. 145.—**SCOT.**

l. Bill of exchange signed per procuration—By absconding agent.]—An agent with full powers to carry on his principal's business in another town, & with a written authority to sign receipts, bills, cheques, etc., per procuration of his principals, borrowed money on the representation to the

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express authority or some evidence of ratification, the letter of C. G. & Co. did not bind the co.—*McMILLAN & SON v. LIVERPOOL & TEXAS S.S. CO., LTD. & GRIMSHAW (C.) & CO.* (1877), 38 L. T. 288; 3 Asp. M. L. C. 579.

(b) In Tort.

See, generally, AGENCY, Vol. I., pp. 587 et seq., 685, 686; CORPORATIONS, Vol. XIII., pp. 403 et seq.; MISREPRESENTATION & FRAUD.

4137. Misrepresentation & fraud—General rule.]

—Cos. no less than individuals must be answerable to the ct.'s jurisdiction in cases of fraud; & although the co.'s officer might, in directing certain works, have originally exceeded his powers & authority, the co. permitting them to be proceeded with, & afterwards taking the benefit of them, is precluded from raising a question as to the propriety of the works & the powers of their officer to order them to be done.—*HILL v. SOUTH STAFFORDSHIRE RY. CO.* (1865), 12 L. T. 63; 11 Jur. N. S. 192, L. JJ.

4138. —Representation to shareholders—Acted on by stranger.]—A fraudulent report of the state of the affairs of a bank was made by the directors to a general meeting of the co., & by them adopted. The accounts had been audited by auditors appointed by the shareholders. In pursuance of the desire to have new shares taken, the directors issued a circular, which also contained false & fraudulent representations. N. upon the faith of the report & the circular, & also upon the representation of one of the directors, took shares, & received a dividend upon them. He afterwards employed his broker to dispose of the shares. According to the constitution of the co., the assent of the directors to a transfer of shares was necessary, the evidence of which assent was to be an indorsement on the deed of transfer. The broker employed by the bank purchased these shares, giving the name of E. as the purchaser. The transfer to E. was executed in the form which had been furnished at the bank, with E.'s name inserted as purchaser. E. was not aware of this transfer, but he had given authority to the principal manager to use his name in transfers, & he had accepted some transfers in which his name had been so used. The purchase-money for N.'s shares was paid by the bank. The next dividend was treated as part of the assets of the bank, & the shares were subsequently found in the principal manager's possession, & given up by him to the solr. of the bank as part of their property. The bank having stopped payment, N.'s name was sought to be placed on the list of contributories:—*Held*: N. was not exempted from liability by reason of the false representation in the report & circular, as the directors were not agents of the co. for the purpose of making fraudulent representations, or beyond the scope of their authority as limited by the charter; but the assent of the directors to the transfer of the shares by N. had been sufficiently shown, & therefore his name must be removed from the list of contributories.

lender that it was for the use of his principal's business, & granted the lender a bill of exchange, blank in the drawer's name, but signed by him per procuration of his principals, for the amount. He used the money ultimately in reducing a deficit in his principal's bank account caused by his malversations. The agent absconded leaving heavy defalcations. The holder

of the bill having charged the principals upon it, in a suspension of the charge:—*Held*: in the absence of express power to borrow, the agent was not entitled to do so, & even assuming the money to have been applied for the benefit of the principals that did not make them liable.—*SINCLAIR, MOORHEAD & CO. v. WALLACE & CO.* (1880), 7 R. (Ct. of Sess.) 874;

If directors of a co., acting as such, make fraudulent representations to the shareholders, & afterwards give them unauthorised circulation beyond the limits of the co., a stranger acting on such representations, & suffering loss thereby, has no remedy against the co., unless the co. is party to the fraud (*LORD CHELMSFORD, C.*).—*Re ROYAL BRITISH BANK, ETC., NICOL'S CASE* (1859), 3 De G. & J. 387; 28 L. J. Ch. 257; 33 L. T. O. S. 14; 5 Jur. N. S. 205; 7 W. R. 217; 44 E. R. 1317, L. C. & L. JJ.

Annotations:—Refd. Re Home Counties & General Life Assco. Co. (1859), 33 L. T. O. S. 196; *Re London & Eastern Banking Corp., Ex p. Longworth's Exors.* (1859), 29 L. J. Ch. 55; *Re Mexican & South American Co., Grisewood & Smith's Case, De Pass's Case* (1859), 4 De G. & J. 544; *Re National Patent Steam Fuel Co., Ex p. Worth* (1859), 28 L. J. Ch. 589; *Re Royal British Bank, Mixer's Case* (1859), 4 De G. & J. 575; *Conybeare v. New Brunswick, etc. Co.* (1860), 1 De G. F. & J. 578; *Re Royal British Bank, Ex p. Frowd* (1861), 30 L. J. Ch. 322; *Re National Assce. & Investment Asscn. (Bank of Deposit), Ex p. Davies, Ex p. Abercorn* (1862), 31 L. J. Ch. 828; *Re Scottish & Universal Finance Bank, Ship's Case* (1865), 11 Jur. N. S. 331; *Re Cachar Co., Ex p. Lawrence* (1867), 36 L. J. Ch. 490; *Re Overend, Gurney, Ex p. Oakes & Peek* (1867), L. R. 3 Eq. 576; *Western Bank of Scotland v. Addie, Addie v. Western Bank of Scotland* (1867), L. R. 1 Sc. & Div. 145; *Ex p. London & Colonial Co., Tooth's Case* (1868), 19 L. T. 599; *Spackman v. Evans* (1868), L. R. 3 H. L. 171.

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If reports are made to the shareholders of a joint-stock co. by the directors, and adopted at one of the meetings of the co., & afterwards industriously circulated, the representations in those reports become after this adoption those of the co., & therefore binding on the co., & if those reports, so circulated can be shown to be the proximate & immediate cause of shares being bought by individuals, the co. cannot retain the benefit of the contract & keep the purchase-money which has been paid.

If an incorporated co., acting by its agent, induces a person to enter into a contract for the benefit of the co., that co. can no more repudiate the fraudulent agent than an individual could repudiate him, & the co. are bound by the misrepresentations of their agent. But the principle cannot be carried so far that an action can be brought against the co. on the ground of deceit, because the directors have done an act which might render them liable to such an action.—

17 Sc. L. R. 604.—SCOT.

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4141. Representation within scope of authority—Representation as to credit of another—Effect of Statute of Frauds Amendment Act, 1828 (c. 14), s. 6.—A co. incorporated under the Cos. Acts is a "person" within the meaning of sect. 6 of above Act, & entitled to the benefit of the enactment. Consequently, such a co. is not liable for a fraudulent representation as to the credit of another person not signed by it, but made by its agent acting within the scope of its authority, although the representation is in writing signed by the agent & is made in the interest of the co.—**HIRST v. WEST RIDING UNION BANKING CO.**, [1901] 2 K. B. 560; 70 L. J. K. B. 828; 85 L. T. 3; 49 W. R. 715; 17 T. L. R. 629; 45 Sol. Jo. 614, C. A. *Annotations*:—**Apprvd.** Banbury v. Bank of Montreal, [1918] A. C. 626. **Mentd.** *Re* Royal Naval School, Seymour v. Royal Naval School, [1910] 1 Ch. 806.

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If it is once granted that corpns. are for civil purposes to be regarded as persons, i.e., as principals acting by agents & servants, it is difficult to see why the ordinary doctrines of agency, & of master & servant, are not to be applied to corpns. as well as to ordinary individuals. These doctrines have been so applied in a great variety of cases, in questions arising out of contract, & in questions arising out of torts & frauds; & to apply them to one class of libels & to deny their application to another class of libels on the ground that malice cannot be imputed to a body corporate appears to be contrary to sound legal principles (**LORD LINDLEY**).—**CITIZENS' LIFE ASSURANCE CO. v. BROWN**, [1904] A. C. 423; 73 L. J. P. C. 102; 90 L. T. 739; 53 W. R. 176; 20 T. L. R. 497, P. C.

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4144. Passing off—Servant authorised to sell.—Pltfs. were owners of a brand of cigars known as "Corona." Defts. were restaurant keepers & sold cigars. Pltfs. complained of sale by defts. of a bundle of cigars, on the ribbon of which, the words "Corona del Alfonso" appeared under the words "Aronyes del Rey," & complained also of

PART III. SECT. 31, SUB-SECT. 4.—
B. (b).

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4143 ii. ———.—**MURRAY v. MAIL PRINTING CO.** (1892), 14 P. R. 405.—**CAN.**

n. — Not in course of authorised employment.—The manager of one branch of deft. co. wrote certain letters to another branch, which might have constituted a libel on pltf. There was no evidence that the corpn., or the directors, or the managing board

authorised or had any knowledge of the letters being written:—**Held**: defts. were not liable.—**FREEBORN v. SINGER SEWING MACHINE CO.** (1885), 2 Man. L. R. 253.—**CAN.**

o. ———.—A printed circular purporting to be signed by a certain manufacturing co. contained aspersions on the mode in which pltf. had obtained a patent. In an action for libel, the only proof of publication was an admission by the co.'s manager made in conversation with pltf.:—**Held**: no authority can be inferred in a general manager or other officer of a bank or trading corpn. to render such corpn. liable to actions for libel by his admissions to any person that he had published a libel on another person by their authority; there was, therefore, here no proof of publication. If the manager had been called as a witness & had proved that he was so authorised, & that the act complained of was part of his duty, then the libel could be brought home to the corpn.—**CARROLL v. PENBERTHY INJECTOR CO.** (1889), 16 A. R. 446.—**CAN.**

p. ———.—The manager of deft. co. handed to his stenographer to be typewritten a draft letter written in the interest of the co., but uncon-

nected with its ordinary business, which contained defamatory statements:—**Held**: privilege was taken away by the publication to the stenographer, & deft. co. were liable for the act of the manager.—**PUTERBAUGH v. GOLD MEDAL FURNITURE MANUFACTURING CO.** (1904), 7 O. L. R. 582; 24 C. L. T. 205; 3 O. W. R. 535.—**CAN.**

q. Slander — In direct obedience to orders.—An incorporated co. may be liable if slander is spoken by its servants or agents in direct obedience to its orders.—**RODGER v. NOXON CO.** (1900), 19 P. R. 327.—**CAN.**

r. — In course of employment — & for benefit of company.—A limited co. is liable for a verbal slander uttered by its servant in the course of the servant's employment & for the benefit of the employer.—**FINBURGH v. MOSS EMPIRES, LTD.**, [1908] S. C. 928.—**SCOT.**

s. — Acting outside authority.—In an action for damages for slander brought against a railway co., pursuer averred that a railway police inspector, in defender's employ, acting on instructions & in accordance with a custom known to & authorised by defenders, called at pursuer's house

Sect. 31.—Powers and liabilities of company: Sub-sect. 4, B. (a) & (b).]

express authority or some evidence of ratification, the letter of C. G. & Co. did not bind the co.—*McMILLAN & SON v. LIVERPOOL & TEXAS S.S. Co., LTD. & GRIMSHAW (C.) & Co.* (1877), 38 L. T. 288; 3 Asp. M. L. C. 579.

(b) *In Tort.*

Sec, generally, AGENCY, Vol. I., pp. 587 et seq., 685, 686; CORPORATIONS, Vol. XIII., pp. 403 et seq.; MISREPRESENTATION & FRAUD.

4137. Misrepresentation & fraud—General rule.]

—Cos. no less than individuals must be answerable to the ct.'s jurisdiction in cases of fraud; & although the co.'s officer might, in directing certain works, have originally exceeded his powers & authority, the co. permitting them to be proceeded with, & afterwards taking the benefit of them, is precluded from raising a question as to the propriety of the works & the powers of their officer to order them to be done.—*HILL v. SOUTH STAFFORDSHIRE RY. Co.* (1865), 12 L. T. 63; 11 Jur. N. S. 192, L. J.J.

4138. —Representation to shareholders—Acted on by stranger.]—A fraudulent report of the state of the affairs of a bank was made by the directors to a general meeting of the co., & by them adopted. The accounts had been audited by auditors appointed by the shareholders. In pursuance of the desire to have new shares taken, the directors issued a circular, which also contained false & fraudulent representations. N. upon the faith of the report & the circular, & also upon the representation of one of the directors, took shares, & received a dividend upon them. He afterwards employed his broker to dispose of the shares. According to the constitution of the co., the assent of the directors to a transfer of shares was necessary, the evidence of which assent was to be an indorsement on the deed of transfer. The broker employed by the bank purchased these shares, giving the name of E. as the purchaser. The transfer to E. was executed in the form which had been furnished at the bank, with E.'s name inserted as purchaser. E. was not aware of this transfer, but he had given authority to the principal manager to use his name in transfers, & he had accepted some transfers in which his name had been so used. The purchase-money for N.'s shares was paid by the bank. The next dividend was treated as part of the assets of the bank, & the shares were subsequently found in the principal manager's possession, & given up by him to the solr. of the bank as part of their property. The bank having stopped payment, N.'s name was sought to be placed on the list of contributories:—*Held*: N. was not exempted from liability by reason of the false representation in the report & circular, as the directors were not agents of the co. for the purpose of making fraudulent representations, or beyond the scope of their authority as limited by the charter; but the assent of the directors to the transfer of the shares by N. had been sufficiently shown, & therefore his name must be removed from the list of contributories.

If directors of a co., acting as such, make fraudulent representations to the shareholders, & afterwards give them unauthorised circulation beyond the limits of the co., a stranger acting on such representations, & suffering loss thereby, has no remedy against the co., unless the co. is party to the fraud (*LORD CHELMSFORD, C.*).—*Re ROYAL BRITISH BANK, ETC., NICOL'S CASE* (1859), 3 De G. & J. 387; 28 L. J. Ch. 257; 33 L. T. O. S. 14; 5 Jur. N. S. 205; 7 W. R. 217; 44 E. R. 1317, L. C. & L. J.J.

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lender that it was for the use of his principal's business, & granted the lender a bill of exchange, blank in the drawer's name, but signed by him per procuration of his principals, for the amount. He used the money ultimately in reducing a deficit in his principal's bank account caused by his malversations. The agent absconded leaving heavy defalcations. The holder

of the bill having charged the principals upon it, in a suspension of the charge:—*Held*: in the absence of express power to borrow, the agent was not entitled to do so, & even assuming the money to have been applied for the benefit of the principals that did not make them liable.—*SINCLAIR, MOORHEAD & Co. v. WALLACE & Co.* (1880), 7 R. (Ct. of Sess.) 874;

17 Sc. L. R. 604.—SCOT.

m. Contract before incorporation.]—A co. cannot sue or be sued upon a contract made on its behalf before its incorporation, nor can it after incorporation ratify or adopt such a contract.—*LECOMTE v. W. & B. SYNDICATE OF MADAGASCAR*, [1905] T. S. 696.—S. AF.

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n. — Not in course of authorised employment.—The manager of one branch of deft. co. wrote certain letters to another branch, which might have constituted a libel on pltf. There was no evidence that the corp'n., or the directors, or the managing board

authorised or had any knowledge of the letters being written:—*Held*: defts. were not liable.—*FREEBORN v. SINGER SEWING MACHINE CO.* (1885), 2 Man. L. R. 253.—*CAN.*

o. ——*—*—A printed circular purporting to be signed by a certain manufacturing co. contained aspersions on the mode in which pltf. had obtained a patent. In an action for libel, the only proof of publication was an admission by the co.'s manager made in conversation with pltf.:—*Held*: no authority can be inferred in a general manager or other officer of a bank or trading corp'n. to render such corp'n. liable to actions for libel by his admissions to any person that he had published a libel on another person by their authority: there was, therefore, here no proof of publication. If the manager had been called as a witness & had proved that he was so authorised, & that the act complained of was part of his duty, then the libel could be brought home to the corp'n.—*CARROLL v. PENBERTHY INJECTOR CO.* (1889), 16 A. R. 446.—*CAN.*

p. ——*—*—The manager of deft. co. handed to his stenographer to be typewritten a draft letter written in the interest of the co., but uncon-

nected with its ordinary business, which contained defamatory statements:—*Held*: privilege was taken away by the publication to the stenographer, & deft. co. were liable for the act of the manager.—*PUTERBAUGH v. GOLD MEDAL FURNITURE MANUFACTURING CO.* (1904), 7 O. L. R. 582; 24 C. L. T. 205; 3 O. W. R. 535.—*CAN.*

q. Slander — In direct obedience to orders.—An incorporated co. may be liable if slander is spoken by its servants or agents in direct obedience to its orders.—*RODGER v. NOXON CO.* (1900), 19 P. R. 327.—*CAN.*

r. — In course of employment — & for benefit of company.—A limited co. is liable for a verbal slander uttered by its servant in the course of the servant's employment & for the benefit of the employer.—*FINBURGH v. MOSS EMPIRES, LTD.*, [1908] S. C. 928.—*SCOT.*

s. — Acting outside authority.—In an action for damages for slander brought against a railway co., pursuer averred that a railway police inspector, in defender's employ, acting on instructions & in accordance with a custom known to & authorised by defenders, called at pursuer's house

Sec. 31.—Powers and liabilities of company: Subsect. 4, B. (b) & (c), C. & D.]

two sales one of "Corona" cigars & the other of "La Corona" cigars by a boy employed by defts. in the restaurant to sell cigars:—*Held*: defts. were, in the absence of any explanation, responsible for the passing off by the person entrusted with the sale of cigars & pltf's. were entitled to an injunction.—*HAVANA CIGAR & TOBACCO FACTORIES, LTD. v. TIFFIN* (1905), *LTD.* (1909), 26 R. P. C. 473, C. A.

Annotation:—*Consd. Havana Cigar & Tobacco Factories v. Oddenino*, [1923] 2 Ch. 443.

4145. Maintenance—Improper exercise of servant's authority.—A limited co. may be liable for maintenance where their servant improperly exercises his authority by maintaining an action, although the action is successful. Where the editor of a newspaper, the proprietors & publishers of which were a limited co., successfully maintained an action for fraudulent misrepresentation on behalf of certain members of the public:—*Held*: (in an action for the maintenance against the co.) the measure of pltf.'s damages was such sum as would amount to an indemnity against the costs incurred by him, & he could, therefore, recover costs ordered to be paid by him as deft. to pltf's. in the maintained action, & costs, as between solr. & client, incurred by him in defending that action.—*NEVILLE v. LONDON EXPRESS NEWSPAPERS, LTD.*, [1917] 2 K. B. 564; 86 L. J. K. B.

1055; 117 L. T. 598; 33 T. L. R. 409, C. A.; *reversd.* on other grounds, [1919] A. C. 368, H. L.

Annotations:—*Consd. Weld-Blundell v. Stephens*, [1920] A. C. 956. *Mentd. Wild v. Simpson*, [1919] 2 K. B. 544; *Ellis v. Torrington*, [1920] 1 K. B. 399; *Hickmann v. Kent or Romney Marsh Sheepbreeders' Assn.* (1920), 37 T. L. R. 163.

See, generally, ACTION, Vol. I., pp. 66 et seq.

Arrest & false imprisonment.—*See No. 3507, ante.*

Forged share certificate.—*See Sect. 18, subsect. 3, B., ante.*

Transfer wrongly certified.—*See Sect. 23, subsect. 7, ante.*

Forged transfers.—*See Sect. 23, subsect. 12, D. (a), ante.*

(c) Criminal Offences.

4146. Fraudulent measure in possession of servants—Possession of servant distinguished from possession of company.—On Mar. 15, 1907, two measures were supplied to one of applts.' drivers for use during that day. Each measure was examined by applts.' engineer & found to be absolutely correct. Resp. found the driver in Bermondsey on that day in charge of a tank-waggon belonging to applts. containing oil, & having in his possession two five-gallon measures, one of which was correct, but the other was found to have in the angle formed by the side & bottom thereof, & at the bottom of the measure itself, a quantity of soap, the effect of which was to render

to make investigations with regard to railway tickets used by him, & in the course of the interview made statements with regard to pursuer's use of the tickets which, pursuer averred, implied fraudulent conduct on his part:—*Held*: as it did not appear that it was any part of the inspector's business to express an opinion as to pursuer's character or conduct, etc., defenders were not responsible for such statements made by him; & defenders absolved.—*MANDELSTON v. NORTH BRITISH RY. CO.*, [1917] S. C. 442.—*SCOT.*

t. False imprisonment—Within scope of authority.—A corpn. may be liable for false imprisonment under an order of its agent acting within the scope of his authority.—*LYDEN v. MCGEE* (1888), 16 O. R. 105.—*CAN.*

a. Trespass—While doing act ultra vires the company.—A corpn. is liable for a trespass committed by its servant while conducting its business, although committed in the doing of an act *ultra vires* of the corpn. itself. Where the servant of a corpn. forms an erroneous judgment, & in the supposed scope & discharge of the duty delegated to him commits a trespass, the corpn. is liable for it.—*ADAMS v. NATIONAL ELECTRIC TRAMWAY & LIGHTING CO.* (1893), 3 B. C. R. 199.—*CAN.*

b. — Company having full control of business.—A servant of deft. corpn., employed to cut timber on its lands, knowingly trespassed & cut timber off pltf.'s lands, which adjoined, & defts.' manager, general foreman, & other servants, knowingly took & included it in defts.' boom, & hauled it away. It was afterwards cut up & sold along with defts.' lumber. Evidence was given for pltf. & denied by defts., that the trespass was committed by instructions of the manager. The jury found a verdict for pltf.:—*Held*: defts. were liable for tortious acts of their manager & foreman on the ground that they had the entire control of their business.—*HARRIS v. BRUNETTE SAW MILL CO.* (1894), 3 B. C. R. 172.—*CAN.*

c. Investment of trust-money—In

course of authorised employment.—A co. was, upon the evidence, held liable for moneys intrusted to its officers for investment; the acts of the officers, in regard to pltf.'s affairs, being within the scope of the co.'s corporate powers, & within the scope of the officers' duties, the co. was estopped from denying its liability to pltf.—*MCARTHUR v. IMPERIAL TRUST CO.* (1911), 17 W. L. R. 415.—*CAN.*

d. — — — — ——In Sept. 1913, two persons who formed the local advisory board of deft. co. purchased on deft.'s behalf for \$7,000 the balance unpaid under an agreement for sale of sub-divided property, which amounted to about \$7,000, taking, for convenience of transferring of lots, the assignment in their own names "as trustees." One of these persons, the local manager of deft. co., had an individual private client, pltf., for whom he had invested moneys. Having \$5,000 of pltf.'s money on hand he invested them by buying a part interest in the assignment of agreement for sale, & a declaration of trust was made by the trustees in pltf.'s favour dated Aug. 31, 1914, to the extent of \$5,000 & interest. The investment turned out badly & pltf. sued deft. co. for recovery of his money:—*Held*: pltf. was entitled to recover.—*MCGRINDLE v. LONDON SCOTTISH CANADIAN INVESTMENT SYNDICATE, LTD.*, [1922] 3 W. W. R. 977; 70 D. L. R. 612.—*CAN.*

e. Malicious prosecution—Without authority.—*MARCH v. STIMPSON COMPUTING SCALE CO.* (1913), 24 O. W. R. 591; 4 O. W. N. 1259; 11 D. L. R. 343.—*CAN.*

f. Fraud.—The rule that directors are not a co.'s agents to commit a fraud cannot apply to a case in which the fraud relates to a matter which is of the essence of the contract, & a part of it.—*Re TIPPERARY JOINT STOCK BANK & WINDING UP ACTS, Ex p. GINGER* (1857), 2 Jur. N. S. 221.—*IR.*

g. — — — — ——The trustees of a shareholder of a co., the contract of which

gave the right of pre-emption of any shares to the co., being desirous of selling his shares, offered them in virtue of this provision to the co., which accepted them, & the purchase was completed. The trustees having brought a reduction of the sale on the ground that the price was inadequate, & that the true value of the shares had been fraudulently concealed by the office-bearers of the co.:—*Held*: the fraud of the office-bearers was the fraud of the co., & the action was therefore relevantly directed against the co.—*JARDINE'S TRUSTEES v. CARRON CO.* (1864), 2 Macph. (Ct. of Sess.) 1101; 36 Sc. Jur. 316.—*SCOT.*

h. Misrepresentation—To induce a discounting of bills.—In an action against a bank for payment of the loss sustained by discounting bills for £2,000 accepted by a customer of the bank, pursuer averred that he had discounted the bills on the faith of a letter written, in answer to pursuer, by the agent of the bank at which the customer banked, stating that he considered the customer "perfectly good for £2,000"; that these representations were to the knowledge of the bank agent false, & that "it is the custom of the said bank to furnish information as to the credit of individuals with whom they are doing business." It was within the scope of the agent's duty as agent of the bank to supply the information & to sign the letter. Pursuer averred that the bank was advancing large sums of money to the customer, & it was to the interest of the bank to keep his credit good & to assist him to get advances from third parties; & that the bank had derived benefit from pursuer having been induced to discount the bills:—*Held*: pursuer had not stated a relevant case against the bank either that the agent's letter had been written with the authority of the bank or that the bank had taken benefit through discounting the bills: the local agent has no implied authority to bind the bank by making representations as to the credits of its customers.—*HOCKEY v. CLYDESDALE BANK, LTD.* (1898), 1 F. (Ct. of Sess.) 119.—*SCOT.*

it false & unjust to the extent of three & a half pints. The unjust measure belonged to applts.

The quantity of oil contained in the tank-waggon was measured & booked out against the driver every morning, & similarly checked on his return in the evening of the same day; & the driver did not on Mar. 15, 1907, bring back in his tank-waggon more oil than his deliveries during the day accounted for. It was not proved that applts. were cognisant of the driver's conduct, or that they gave their sanction or approval to the use by him of the unjust measure.

On an information preferred by resp. against applts.:—*Held*: the ct. was at liberty so far to apply the principle which is well settled in reference to civil liability for torts (that an employer is not liable for fraudulent acts of his servant when committed not in the interests of the employer, but for the individual purposes of profit of the fraudulent servant) as to say that, as the fraudulent driver had the fraudulent measure in his own physical possession for his own fraudulent purposes as distinguished from the interests of his employers, his possession must be deemed to be his own possession, & not the possession of his employers, & that, therefore, the offence with which applts. were charged had not been made out.—*ANGLO-AMERICAN OIL CO., LTD. v. MANNING*, [1908] 1 K. B. 536; 77 L. J. K. B. 205; 98 L. T. 570; 72 J. P. 35; 24 T. L. R. 215; 6 L. G. R. 299; 72 J. P. Jo. 4, D. C.

Annotation:—*Refd. Buckingham v. Duck* (1918), 120 L. T. 84.

See, generally, MASTER & SERVANT.

C. Rights and Liabilities of Agents and Servants.

4147. Authority of agent.—*THORN v. PUBLIC WORKS COMRS.*, No. 4132, *ante*.

—*See, generally, AGENCY*, Vol. I., pp. 295 *et seq.*

4148. — Warrant of authority—Signature as “duly authorised agent.”—*FRIARY, HOLROYD & HEALY'S BREWERIES, LTD. v. MARINE HOTEL, (SELSEY), LTD.* (1921), 152 L. T. Jo. 310.

—*Directors.*—*See* No. 3319, *ante*.

—*See, generally, AGENCY*, Vol. I., pp. 657 *et seq.*

4149. Nature of duties—Specific performance.—The duties of the agent of a limited co. being in the nature of personal service, & as such incapable of being enforced in equity, the ct. refused to restrain the directors from acting upon or enforcing the

resignation of A. whose management & agency was made a prominent condition in the prospectus on the formation of the co., & expressly provided for by the arts. of assocn.—*MAIR v. HIMALAYA TEA CO.* (1865), L. R. 1 Eq. 411; 13 L. T. 586; 11 Jur. N. S. 1013; 14 W. R. 165.

4150. Rights—Indemnity for liabilities incurred.—*Re IRISH EXHIBITION IN LONDON* (1894), 10 T. L. R. 215.

4151. Liabilities—To holder of order for goods—Under 1908 Act, s. 63 (3).—By the above sub-sect., if any person, on behalf of a limited co., signs on behalf of the co. any bill of exchange or order for goods, wherein its name is not mentioned, he shall be personally liable to the “holder” of such bill of exchange or order for goods:—*Held*: though the word “holder” was not appropriate to orders for goods, as it was in the case of bills of exchange, it meant in the case of orders for goods the person to whom the orders had been given.—*CIVIL SERVICE CO-OPERATIVE SOCIETY, LTD. v. CHAPMAN* (1914), 30 T. L. R. 679.

—*To principal.*—*See, generally, AGENCY*, Vol. I., pp. 424 *et seq.*

—*To third parties.*—*See, generally, AGENCY*, Vol. I., pp. 620 *et seq.*

—*Breach of warranty of authority.*—*See AGENCY*, Vol. I., pp. 657 *et seq.*

—*Directors.*—*See* Sect. 28, sub-sect. 6, *ante*.

—*Managing directors.*—*See* Sect. 28, sub-sect. 9, D., *ante*.

—*Chairman & vice-chairman.*—*See* Sect. 28, sub-sect. 10, *ante*.

—*Secretary.*—*See* Sect. 29, sub-sect. 2, D., *ante*.

—*Manager.*—*See* Sect. 29, sub-sect. 3, D., *ante*.

—*Solicitors.*—*See* Sect. 29, sub-sect. 4, B., *ante*.

—*Auditors.*—*See* Sect. 29, sub-sect. 5, C., *ante*.

D. Ratification.

See, generally, AGENCY, Vol. I., pp. 396 *et seq.*

4152. What constitutes—Conduct of company—Contract recognised in correspondence.—A co. were incorporated by Royal charter for trading purposes. By the deed of settlement, the directors were to manage the business of a co.; but all contracts, above a certain value, were to be signed by at least three individual directors, or sealed with the seal of the co. under the authority of a

PART III. SECT. 31, SUB-SECT. 4.—C.

k. Liabilities—Agent acting on behalf of unincorporated company.—Deft. was one of the projectors & secretary of a proposed co., & as such before the issue of the letters-patent applied to pltf. to take a share, which pltf. agreed to do on the terms of a receipt then given by him to deft.:—*Held*: deft. was *prima facie* personally liable, there being at the time when he signed the receipt no co., & therefore no principals whom he could bind.—*THOMSON v. FEELEY* (1877), 41 U. C. R. 229.—*CAN.*

l. — Unauthorised agreement — For commission on sale of land.—M., a director of deft. co., in a conversation with pltf., assured him that if he, pltf., would procure a purchaser for the property in question, owned by the co., he felt sure the co. would quote the price at \$550,000, & in the event of a sale, would pay pltf. a commission of \$50,000, but any abatement of the price down to \$500,000 was to be borne by pltf. There was no evidence that M. had any authority to sell the property or employ an agent to find a purchaser. After M. became presi-

dent of the co., the property was sold for exactly \$500,000 by the co. to a purchaser to whom the co. had been introduced by pltf., to the knowledge of M.:—*Held*: the co. were not liable to pltf. either for a commission on the sale or for the value of his services as on a *quantum meruit*; M. was not liable to pltf. for any misrepresentation of authority from the co. to enter into the alleged contract with pltf., or for failing to prevent the co. from selling the property for \$500,000 or less.—*BENT v. ARROWHEAD* (1909), 18 Man. L. R. 632; 8 W. L. R. 594; 10 W. L. R. 339.—*CAN.*

m. — Unauthorised offer of option of purchase.—Deft., L., representing himself as managing director of one of deft. cos., gave an exclusive option to pltf. to purchase the two deft. cos.' properties, the option to remain in force unless vendor gave written notice of cancellation within a reasonable time. The purchaser was to receive a 9 per cent commission in the event of a sale going through. L. in fact was not the managing director of one of the deft. cos. He was, however, president of one of the

cos. & a shareholder in the other. Upon obtaining the option pltf. arranged with brokers, who then communicated with W. W. then entered into an arrangement with two men in Apr. 1910, who eventually brought about a sale of the two properties. L. wrote pltf. on May 27, 1910, cancelling the option:—*Held*: L. had no authority to bind either co.; pltf. brought about the sale; he undertook the work of procuring a purchaser on the strength of the option under which he was to obtain a commission; L. was liable on the implied contract that he had the authority to bind the co., & was not relieved by his notice of cancellation of the option.—*PICARD v. REVELSTOKE SAWMILL CO., LTD.* (1913), 18 B. C. R. 416.—*CAN.*

PART III. SECT. 31, SUB-SECT. 4.—D.

n. What constitutes—Conduct of company.—In an action for damages for breach of an agreement by which defts. appointed pltf. their sales-agent, & gave him, in general terms, the exclusive right to handle & sell the product of defts.' mine for a period of five years, for which pltf. was to

Sect. 31.—Powers and liabilities of company: Sub-sect. 4, D.; sub-sect. 5, A. (a) & (b) i.]

special meeting. Pltf. sued the co. on an agreement above the prescribed value. It was within the scope of the co.'s business, & was made by parol with the chairman, who, with his own hand, entered a memorandum of it in the minute book of the co. It was recognised in correspondence with the secretary; pltf. did work under it, & received payments by cheques for it. These payments passed into the accounts of the co., & were audited & allowed; but there never was any contract signed by three directors, or under the seal of the co.:—*Held*: the contract was ratified, if not authorised, by the co., & binding.—*REUTER v. ELECTRIC TELEGRAPH CO.* (1856), 6 E. & B. 341; 26 L. J. Q. B. 46; 27 L. T. O. S. 167; 2 Jur. N. S. 1245; 4 W. R. 564; 119 E. R. 892.

Annotations:—*Reid. Re Athonsæum Soc., Ex p. Eagle Co.* (1858), 4 K. & J. 549; *South of Ireland Colliery v. Waddle* (1868), L. R. 3 C. P. 463. *Mentd. Frend v. Dennett* (1861), 5 L. T. 73; *Nicholson v. Bradley Union Grdns.* (1866), 7 B. & S. 774; *Hunt v. Wimbledon L. B.* (1878), 3 C. P. D. 208; *Lockhart v. Moldacot Pocket Sewing Machine Co.* (1889), 5 T. L. R. 307.

4153. ——— Part performance.]—WILSON v. WEST HARTLEPOOL RY. CO., No. 4133, ante.

—**Acquiescence & delay.]—See Sub-sect. 3, F. (a), ante.**

4154. Whether valid—Resolution of company—Unless contrary to articles.]—IRVINE v. UNION BANK OF AUSTRALIA, No. 4121, ante.

4155. ——— When court will interfere.]—GRANT v. UNITED KINGDOM SWITCHBACK RAILWAYS CO., No. 3759, ante.

4156. ——— Meeting irregularly convened.]—Re STATE OF WYOMING SYNDICATE, No. 3743, ante.

4157. When presumed—From conduct of company.]—L., a shareholder in the B. co., sold his shares to the co., & the transfer was duly returned to the public registry of joint-stock cos. Some months after the transfer & return, a general meeting was held, & a balance-sheet submitted, containing items relating to this transaction. It was proved that this balance-sheet was adopted, although, through the default of the chairman, there was no legal record of the proceedings of the meeting. The transfer was afterwards, in various ways, acknowledged & acted upon by the co., & remained unquestioned for five years:—*Held*: it was to be presumed, that the assent of a general meeting had been obtained to the transfer.

It was the duty of the co. to keep exact minutes of the proceedings of general meetings, & if no minutes or no complete minutes were forthcoming, it was to be presumed as against the co. that whatever ought to have been submitted at any general meeting, was so submitted in fact (*LORD WESTBURY, C.*).—*Re BRITISH PROVIDENT LIFE & FIRE ASSURANCE SOCIETY, LANE'S CASE* (1863), 1 De G. J. & Sm. 504; 3 New Rep. 50; 33 L. J. Ch. 84; 9 L. T. 461; 27 J. P. 804; 10 Jur. N. S. 25; 12 W. R. 60; 46 E. R. 200, L. C.

Annotations:—*Distd. British Provident Life & Fire Assce. Soc. v. Norton* (1863), 3 New Rep. 147. *Follid. Hadley v. Hadley* (1897), 77 L. T. 131. *Reid. Spackman v. Evans* (1868), L. R. 3 H. L. 171. *Mentd. Holmes v. Milward* (1878), 47 L. J. Ch. 522.

receive fifty cents per ton upon all the coal sold; & upon a counterclaim by defts. for a declaration of rescission of the contract: the chief contention of defts. was that pltf. in entering into the contract was guilty of misrepresentations of facts peculiarly within his own knowledge, & of facts of which he had acquired knowledge or should have acquired knowledge while holding a fiduciary position towards defts. as

general manager:—*Held*: defts., an incorporated co., through their directors, must be considered, by their course of conduct, to have acquiesced in the agreement in question, & were debarred from setting up misrepresentation or breach of trust. As to an alleged substituted contract made between pltf. & defts.' local director & general manager, it was binding upon defts., if pltf. chose to act upon

4158. ——— Knowledge of all members.]—Re IRISH EXHIBITION IN LONDON (1894), 10 T. L. R. 215.

4159. When ratification takes effect—Unauthorised contract by director—Ratification by company after repudiation by other party.]—Subsequently to some negotiations between A., a director of a co., & L., an offer by letter was made by L. to the co. to take from it a lease of its property. On Dec. 9, 1886, A. wrote to L. saying that his offer should be laid before the directors, & on Dec. 13, 1886, A. again wrote to L. to inform him that the directors accepted his offer, & that the co.'s solrs. had been instructed to prepare the necessary documents. On Jan. 13, 1887, L. wrote to the co. alleging that he had discovered that he had been misled as to certain facts, & stating that he therefore withdrew all offers made to the co. An action was thereupon brought by the co. against L. claiming specific performance of the contract, & damages. It appeared that at the time when A. wrote accepting L.'s offer, he, although acting perfectly *bonâ fide*, had not in fact obtained the formal authority of the co. to enter into the contract; & that the contract was not ratified by the co. until after L.'s repudiation thereof:—*Held*: the ratification by the co. related back to the date of the contract, & the repudiation by L. was of no avail, notwithstanding that the co. itself was not bound by the contract until the ratification thereof took place.—*BOLTON PARTNERS v. LAMBERT* (1889), 41 Ch. D. 295; 58 L. J. Ch. 425; 60 L. T. 687; 37 W. R. 434; 5 T. L. R. 357, C. A.

Annotations:—*Follid. Re Portuguese Consolidated Copper Mines, Ex p. Badman, Ex p. Bosanquet* (1890), 45 Ch. D. 16. *Distd. Metropolitan Asylums Board v. Kingham* (1890), 6 T. L. R. 217; *Dibbins v. Dibbins*, [1896] 2 Ch. 348. *Follid. Re Tiedemann & Ledermann*, [1899] 2 Q. B. 66. *Distd. Fleming v. Bank of New Zealand*, [1900] A. C. 577. The decision presents difficulties; & their Lordships reserve their liberty to reconsider it if on some future occasion it should become necessary to do so (*per CUR.*). *Consd. Re Gloucester Municipal Pctn. 1900, Ford v. Newth*, [1901] 1 K. B. 683. *Reid. Re Hemp, Yarn & Cordage Co., Hindley's Case* (1896), 74 L. T. 627. *Mentd. Bristol, Cardiff & Swansea Aerated Bread Co. v. Maggs* (1890), 44 Ch. D. 616; *Cook v. Williams* (1897), 13 T. L. R. 481; *Reynolds v. Atherton* (1921), 125 L. T. 690.

See, generally, AGENCY, Vol. I., pp. 418 et seq.

SUB-SECT. 5.—CONTRACTS.

A. Contracts of Companies generally.

(a) Power to Contract.

See, generally, Sub-sect. 1, ante, & CORPORATIONS, Vol. XIII., pp. 378 et seq.

4160. Under constitution of company—Whether party contracting with company has notice.]—ROYAL BRITISH BANK v. TURQUAND, No. 4094, ante.

4161. ——— Minimum subscription.]—A clause in the arts. of assocn. of a co. registered under 1862 Act, provided that when & so soon as 3,000 shares in the co. should have been subscribed for & allotted, the members of the co. for the time being should be & continue associated for the objects of the co., & the regulations for the management

it; all the directors knew about it for months, & those directors were the only shareholders; while pltf. was never informed that it was not formally accepted by defts. as a co.; it was a contract within the ordinary routine of defts.' business, & they could not repudiate it.—*DENMAN v. CLOVER BAR COAL CO.* (1911), 17 W. L. R. 702; *reversd.* 48 S. C. R. 318.—**CAN.**

thereof should be in force & binding on such members in like manner as if the whole of the shares into which the nominal capital was divided had been subscribed for & allotted. Before 3,000 shares were subscribed for, the directors appointed pltf. engineer to the co. In an action against the co. for pltf.'s salary :—*Held* : the clause was valid & effectual ; until 3,000 shares were subscribed for, the directors had no power to make any contract for carrying on the business of the co. ; &, therefore, pltf. could not maintain the action.—*PEIRCE v. JERSEY WATERWORKS Co.* (1870), L. R. 5 Exch. 209 ; 18 W. R. 838 ; *sub nom.* *PIERCE v. JERSEY WATERWORKS Co., LTD.*, 39 L. J. Ex. 156 ; 22 L. T. 519.

4162. Company formed under 1856 Act—Effect of 1862 Act.]—The power given to a co., by sect. 41 of the above Act, to contract for land by a person acting under its express or implied authority, is not, as regards a co. formed under that Act, taken away by 1862 Act, although it repeals the 1856 Act; for it is a "right or privilege" preserved by sect. 206.—**PRINCE v. PRINCE** (1866), L. R. 1 Eq. 490; 35 Beav. 386; 35 L. J. Ch. 290; 14 L. T. 43; 12 Jur. N. S. 221; 14 W. R. 383; 55 E. R. 945.

4163. With whom—Debenture-holders.]—NEWHOUSE v. NORTHERN LIGHT, POWER & COAL CO., LTD. (1915). 139 L. T. Jo. 540.

4164. Contract of apprenticeship.] — C., an infant, was bound by indenture for seven years to a limited co. to learn the trade or business of a clogger, there being the usual covenants to instruct & to serve:—*Held*: the indenture was equally valid where a limited co. were masters as where an individual was master.—**BURNLEY EQUITABLE CO-OPERATIVE & INDUSTRIAL SOCIETY v. CASSON**, [1891] 1 Q. B. 75; 60 L. J. M. C. 59; 63 L. T. 652; 55 J. P. 166; 39 W. R. 124; 7 T. L. R. 41, D. C.

Ultra vires contracts.—See Sub-sect. 5, A. (f), *post*, &, generally, Sub-sect. 2, *ante*.

(b) Formalities.

i. *Compliance with Formalities.*

4165. Presumption as to—Where contract intra vires.]—ROYAL BRITISH BANK v. TURQUAND, No. 4094, ante.

4166. ———.]—Where arts. of assocn. of an incorporated co. empower the directors to make regulations as to the quorum of directors necessary to authorise the affixing of the common seal, an outside person taking a deed under the co.'s seal signed by two directors & the secretary is entitled to assume that the regulations, if any, made by the directors have been complied with. A plea of *non est factum* cannot be sustained by evidence that regulations have been made requiring a quorum of three directors.—COUNTY OF GLOUCESTER BANK v. RUDRY MERTHYR STEAM & HOUSE COAL COLLIERY CO., [1895] 1 Ch. 629 ; 64 L. J. Ch. 451 ; 72 L. T. 375 ; 43 W. R. 486 ; 39 Sol. Jo. 331 ; 2 Mans. 223 ; 12 R. 183, C. A.

Annotations:—**Fold.** *Re Bank of Syria, Owen & Ashworth's Claim* (1900), 83 L. T. 547; *Duck v. Tower Galvanizing Co.*, [1901] 2 K. B. 314. **Distd.** *Premier Industrial Bank v. Carlton Manufacturing Co., & Crabtree*, [1909] 1 K. B. 106. **Refd.** *Ruben v. Great Fingall Consolidated*, [1904] 1 K. B. 650; *Re Fireproof Doors, Umney v. Fireproof Doors*, [1916] 2 Ch. 142; *Dey v. Pullinger Engineering Co.*, [1921] 1 K. B. 77. **Mentd.** *Poole v. Downes* (1897), 76 L. T. 110; *Stamford Spalding & Boston Banking Co. v. Keeble* (1913), 82 L. J. Ch. 388.

4167. ——— Contracting party without notice of irregularity.]—Persons who *bond fide* contract with *de facto* directors of a co., in a manner authorised by the arts. of assocn., are not affected by any irregularity in the internal management of the co., of which they have no notice, even if the irregularity is such that the directors were never properly appointed.—*Re* COUNTY LIFE ASSURANCE CO. (1870), 5 Ch. App. 288; 39 L. J. Ch. 471; 18 W. R. 390; *sub nom.* *Re* COUNTY LIFE ASSURANCE CO., BRITON ASSURANCE SOCIETY'S CASE, 22 L. T. 537, L. J.

Annotations:—*Reid. Mahony v. East Holyford Mining Co.* (1875), L. R. 7 H. L. 869; *Sharpe v. Brighton & Dyke Ry.* (1884), 1 T. L. R. 28.

4168. — — — — —.]—*Re* BANK OF SYRIA,
OWEN & ASHWORTH'S CLAIM, WHITWORTH'S
CLAIM, No. 3413. *ante*.

See, also, No. 4621, post.

4169. ——— **Contract by director on behalf of company—Due delegation of authority.]—**Seven persons signed a memorandum of assocn. of a co. for making bricks; the memorandum was duly registered. There never were any arts. of assocn. Two of such persons, one professing to act as managing director, the other as chairman of the co., engaged pltf. as foreman of the co. at certain brick works. In an action by pltf. for his wages: —*Held*: in the absence of proof to the contrary, the co. must be taken to have given authority to such two persons to engage pltf.—**TOTTERDELL v. FAREHAM BRICK CO.** (1866), L. R. 1 C. P. 674; 35 L. J. C. P. 278; 12 Jur. N. S. 901; 14 W. R. 919.

*Annotation:—***Refd.** *Riche v. Ashbury Ry. Carriage Co.* (1874), L. R. 9 Exch. 224.

4170. —————.]—Where a director of a co. purports to do as managing director an act, the doing of which it is under the arts. of assocn. of the co., within the power of his co-directors to delegate to him, persons dealing with him *bonâ fide*, & in the ordinary course of business, may assume that he has the power which he professes to have, & are not bound to inquire whether or not it has been in fact delegated to him, & will not be affected by any informality in the delegation of which they had no notice.—**BIGGERSTAFF v. ROWATT'S WHARF, LTD., HOWARD v. ROWATT'S WHARF, LTD.**, [1896] 2 Ch. 93 ; 65 L. J. Ch. 536 ; 74 L. T. 473 ; 44 W. R. 536, C. A.

Annotations:—*Apld.* *Re* Bank of Syria, Owen & Ashworth's Claim, Whitworth's Claim, [1900] 2 Ch. 272. **Distd.** *Premier Industrial Bank v. Carlton Manufacturing Co. & Crabtree*, [1909] 1 K. B. 106. **Foll.** *Dey v. Pullinger Engineering Co.*, [1921] 1 K. B. 77. **Mentd.** *Re Roundwood Colliery Co.*, *Lee v. Roundwood Colliery Co.*, [1897] 1 Ch. 373; *Edward Nelson v. Faber*, [1903] 2 K. B. 367; *Re Fireproof Doors*, *Umney v. Fireproof Doors*, [1916] 2 Ch. 142.

See, generally, Sect. 28, sub-sect. 5, C. (a), ante.

4171. — Compliance with regulations as to quorum — No evidence of alteration.]—SERVAIS BOUCHARD v. PRINCE'S HALL RESTAURANT, LTD. (1904), 20 T. L. R. 574, C. A.

Proof of authority to execute.]—*See* Sub-sect. 5, A. (c), *post*.

4172. Effect of non-compliance—Whether company can set up—No resolution for affixing seal.]—The deed of settlement of a life assurance society, completely registered under 1844 Act, provided, by sect. 20 of the deed, that the common seal should not be affixed to any policies except by the order of three directors, signed by them & countersigned by the manager, & by sect. 28, that every

PART III. SECT. 31, SUB-SECT. 5.—
A. (b) i.

Q. Name of company — Abbreviation in instruments.—There is no law compelling a co. to use its full name

without abbreviation, in any instrument.—THOMPSON v. BIG CITIES REALTY (1910), 16 O. W. R. 425; 21 O. L. R. 394; 1 O. W. N. 933.—CAN.

p. Sale of land — Necessity for

bye-law..]—Pltfs. were a co. incorporated for buying & selling land. Deft. & pltfs.' manager agreed on a sale of a farm to deft. Deft. executed & delivered to pltfs.' manager a

Sect. 31.—Powers and liabilities of company: Sub-sect. 5, A. (b) i. & ii. & (c).]

policy should be given under the hands of not less than three of the directors & sealed with the common seal. By sect. 101, the books containing the proceedings of the general meetings & of the board of directors were to be open to the inspection of shareholders. A policy was executed, sealed with the common seal & signed by three directors, one of whom was manager; but there was no previous order made as required by sect. 20. The co., in discussions with the assured, treated the policy as effective:—*Held*: they could not repudiate their liability on the policy, upon the ground that the execution was not authorised.—*PRINCE OF WALES ASSURANCE CO. v. HARDING* (1858), E. B. & E. 183; 27 L. J. Q. B. 297; 4 Jur. N. S. 851; 120 E. R. 477; *sub nom.* *PRINCE OF WALES ASSURANCE SOCIETY v. ATHENÆUM ASSURANCE SOCIETY*, 3 C. B. N. S. 756, n.; 31 L. T. O. S. 149.

Annotation:—*Refd. Re Magdalena Steam Navigation Co.* (1860), John. 690.

4173. ——— No resolution at special meeting.]

—(1) In an action against a joint-stock co., on a debenture, reciting the borrowing of the money which it secured, it is no defence that there was not a resolution come to at a special general meeting authorising the directors to borrow under the provisions of the deed of settlement—confirming *Royal British Bank v. Turquand*, No. 4094, *ante*.

(2) Sect. 12 of the deed of settlement referred to borrowing money; sect. 27 provided that the directors might effect insurances, & sell reversions & annuities, & grant endowments; & sect. 28 provided that “every policy, endowment, grant of annuity, or other instrument required in the transactions aforesaid, should be under the hands of not less than three directors”:—*Held*: sect. 28 applied only to instruments *ejusdem generis* with those mentioned in sect. 27, & not to debentures.

(3) *Qu.*: whether the directors had power to provide in their deed of settlement that a deed which would be valid under 1844 Act, s. 44 (requiring the signatures of two directors only), shall not be valid unless signed by three directors.—*ACAR v. ATHENÆUM LIFE ASSURANCE SOCIETY (OFFICIAL MANAGER)* (1858), 3 C. B. N. S. 725; 27 L. J. O. P. 95; 30 L. T. O. S. 302; 4 Jur. N. S. 211; 6 W. R. 277; 140 E. R. 927.

Annotations:—*As to* (1) *Distd. Athenæum Life Insee. v. Pooley* (1858), 28 L. J. Ch. 119. *Foll.* *Prince of Wales Assco. v. Harding* (1858), E. B. & E. 183. *Apld.* *Colonial*

document, purporting to be an agreement under seal, which debt. afterwards repudiated:—*Held*: a bye-law authorising the sale was necessary to make the agreement effective.—*HOUGHTON LAND CORPN. v. INGHAM* (1914), 28 W. L. R. 826; 18 D. L. R. 660, 682; 29 W. L. R. 522; 6 W. W. R. 1275; 24 Man. L. R. 497; 10 W. W. R. 1252.—*CAN.*

PART III. SECT. 31, SUB-SECT. 5.—A. (b) ii.

4176 i. Necessity for seal—Contract necessary to carry on business.]—A contract for the sale of land was one in furtherance of the objects of the co., & the president & secretary-treasurer being authorised by the bye-laws to make all contracts & engagements on its behalf, & both having concurred in the agreement, it was sufficiently signed to bind the co., without the corporate seal.—*VANSICKLER v. MCKNIGHT CONSTRUCTION CO.* (1904), 31 O. L. R. 531; 19 D. L. R. 505; 6 O. W. N. 526.—*CAN.*

4176 ii. ———.]—A fire insurance co., in so far as it conducts the business of insurance for profit, is on the same plane as a trading corporation, & is bound by contracts, although not under its corporate seal, entered into for the purposes for which it was incorporated.—*FOSTER v. BRITISH COLONIAL FIRE INSURANCE CO.* [1917] 3 W. W. R. 598; 37 D. L. R. 404; 28 Man. L. R. 211.—*CAN.*

4176 iii. ———.]—A co. will be liable for wrongful dismissal of a person employed to act as general foreman by the manager of the co., although the contract is not under its seal.—*ARMSTRONG v. TYNDALL QUARRY CO.* (1910), 20 Man. L. R. 254.—*CAN.*

q. ——— Contract of hiring.]—*MURDOCH v. MANITOBA SOUTH WESTERN COLONISATION RY. CO.* (1881), Man. R. temp. Wood. 334.—*CAN.*

r. ———.]—*Semble*: a contract of hiring as master of a ship, made orally with the president of debt. co., might be binding.—*ELLIS v.*

Bank of Australasia v. Willan (1874), L. R. 5 P. C. 417. *Refd. Re Magdalena Steam Navigation Co.* (1860), John 690.

4174. ——— Non-compliance with directors' regulations for affixing seal.]—*COUNTY OF GLOUCESTER BANK v. RUDRY MERTHYR STEAM & HOUSE COAL COLLIERY CO.*, No. 4166, *ante*.

4175. ——— Transfer irregularly sealed—Transfer registered.]—*Re BARNED'S BANKING CO., Ex p. CONTRACT CORPN.*, No. 4054, *ante*.

ii. The Seal.

Necessity for seal.]—*See, generally, CORPORATIONS, Vol. XIII., pp. 380 et seq.*

4176. ——— Contract necessary to carry on business.]—A trading corp. may contract without seal for all matters necessary to carry on their business in the ordinary manner.—*SOUTH OF IRELAND COLLIERY CO. v. WADDLE* (1869), L. R. 4 O. P. 617; 38 L. J. C. P. 338; 17 W. R. 896, Ex. Ch.

Annotations:—*Distd. Hunt v. Wimbledon Local Board* (1878), 3 C. P. D. 208. *Refd. Wells v. Kingston-upon-Hull* (1875), L. R. 10 C. P. 402.

—*See, generally, CORPORATIONS, Vol. XIII., pp. 388–390.*

4177. Effect of seal—Whether instrument constituted a deed—Rescission by parol.]—By an agreement between plts., a solvency guarantee co., & debts., in consideration of a certain sum, it was agreed that the funds of the co. should be subject & liable to make good to debts. the loss occasioned to them during the term of two years by reason of any of the purchasers of their goods becoming bkpt., etc., within such time, & during any future period in respect whereof the co. should consent to receive further payments, but subject to certain conditions indorsed on the instrument. The agreement was signed by three directors, on behalf of the co., & by debts., & also sealed with the co.'s seal:—*Held*: the seal was only a statutory authentication of the contract, & the instrument declared on was therefore not a deed, & consequently the agreement might be rescinded by parol.—*SOLVENCY MUTUAL GUARANTEE CO. v. FROANE* (1861), 7 H. & N. 5; 31 L. J. Ex. 193; 7 Jur. N. S. 899.

Annotation:—*Refd. Re Solvency Mutual Guarantee Co. Hawthorne's Case* (1862), 6 L. T. 574.

—**Where contract ultra vires.]**—*See* No. 4184 *post*.

—**On necessity for consideration.]**—*See, generally, DEEDS & OTHER INSTRUMENTS, Vol. XVII. pp. 190, 191.*

MIDLAND RY. CO. (1882), 7 A. R. 464.—*CAN.*

s. ——— Executory contract.]—There is no need that the corporate seal of the co. should be attached to an executory contract. Such a contract may be validly entered into by the managing director on behalf of the co.—*NATIONAL MALLEABLE CASTINGS CO. v. SMITH'S FALLS MALLEABLE CASTINGS CO.* (1906), 7 O. W. R. 436; 14 O. L. R. 22.—*CAN.*

t. ——— Agreement to pay compensation.]—M. was aware of a valuable mining location on Lak Superior, & was regarded by other explorers in that region as entitled to it. He made known this location to an incorporated mining co., under an agreement that he should be compensated for the communication, but the mode of compensation was not determined. The communication having proved valuable to the co.:—*Held*: M. was entitled to compensation in the manner usual in such cases, & although the agreement was under seal the want of it was

4178. Proof of seal—Attendance of secretary.]—A deed having on it the seal of the Bank of England, & immediately round the seal the words "Sealed by order of the Governor & Directors of the Co. of the Bank of England," & the signature "James Knight, Secretary," was produced in evidence. The seal was verified; but Knight was not called, nor his absence accounted for:—*Held*: the above words were not to be considered as an attestation of the execution; & it was not necessary to call Knight as an attesting witness.—*DOE d. BANK OF ENGLAND v. CHAMBERS* (1836), 4 Ad. & El. 410; 1 Har. & W. 749; 6 Nev. & M. K. B. 539; 5 L. J. K. B. 123; 111 E. R. 841.

Annotation:—*Folld. Doffell v. White* (1866), L. R. 2 C. P. 144.

Compare *BILLS OF SALE*, Vol. VII., p. 82, Nos. 468, 469, & *see, generally*, *EVIDENCE*.

(c) *Contracts by Agents on behalf of Company.*

See, generally, Sub-sect. 4, B. (a), *ante*.

4179. Proof of authority—General authority of agent sufficient.]—If a deed be produced purporting to bind a trading co., proof that the person executing it was their general law agent is *prima facie* sufficient, without showing that he was authorised to execute the particular deed.—*DOE d. MACLEOD v. EAST LONDON WATERWORKS CO.* (1828), *Mood. & M.* 149.

4180. —.]—In an action *ex contractu* against a joint-stock co., completely registered under 1844 Act, pltf. must prove that the contract was made by persons having authority from all the shareholders to bind them by such a contract; & this may be done by proving that the contract was sanctioned by the persons authorised by the deed of the co. to conduct the affairs of the co. Pltf. is not confined to proof of authority conferred by the deed, if he can in any other way show that the whole of the shareholders have mediately or directly given authority to those making the contract to bind them; but it is not enough to show that the contract was made or sanctioned by some of the directors, without proving that by

the deed or otherwise the shareholders had authorised that number to act for them.

Therefore, where the deed of a co. appointed eleven directors & declared that five should be a quorum:—*Held*: the co. were not bound by contracts made at a board meeting by three only of the directors.

Semble: acts & admissions by a competent number of the governing body of the co. are admissible as evidence against the co., & have the same legal effect as if made by the co. itself, & consequently, a verbal statement made by the chairman, at a board meeting of the directors, to pltf., that a distress made on his goods had been rightfully made by the landlord of the co., & that the co. were bound by a contract made with pltf. in their name, to indemnify him against it, would have operated as a ratification of the contract with pltf., & have been original evidence of the rightfulness of the distress (without producing or accounting for the absence of the lease to the co., under which the rent distrained for became due though shown to be in writing), if there had been a competent number of the directors present at the board meeting, when the statement was made.

—*RIDLEY v. PLYMOUTH GRINDING & BAKING CO., KINGSBRIDGE FLOUR MILL CO. v. PLYMOUTH GRINDING & BAKING CO.* (1848), 2 Exch. 711; 17 L. J. Ex. 252; 11 L. T. O. S. 107; 12 Jur. 542.

Annotations:—*Distd. Smith v. Hull Glass Co.* (1849), 8 C. B. 668. *Consd. Re Sea, Fire & Life Assce., Greenwood's Case* (1854), 3 De G. M. & G. 459; *Prince of Wales Assce. v. Harding* (1858), E. B. & E. 183. *Refd. East Anglian Ry. v. Eastern Counties Ry.* (1851), 11 C. B. 775; *Hallett v. Dowdall* (1852), 13 Q. B. 2; *Royal British Bank v. Turquand* (1856), 6 E. & B. 327; *Charles v. National Guardian Assce. Soc.* (1857), 29 L. T. O. S. 246; *Ernest v. Nicholls* (1857), 6 H. L. Cas. 401; *Balfour v. Ernest* (1859), 5 C. B. N. S. 601. *Mentd. Metropolitan Saloon Omnibus Co. v. Hawkins* (1859), 4 H. & N. 87.

4181. — Within Statute of Frauds—& 1867 Act, s. 37.]—An agreement to sell property to pltf. was signed for a co. by the secretary, who was alleged to be their authorised agent. The agreement was made subject to the conditions of sale, & it was alleged that the vendors therein described referred to the co. The conveyance was prepared for execution when the co. was ordered to be

defence.—*MCDONALD v. UPPER CANADA MINING CO.* (1868), 15 Gr. 551.—*CAN.*

a. — *Agreement to refer disputes to arbitration.]—*Indian Cos. Act, 1882, s. 96, did not require that an agreement entered into by a co. with a person who held a contract for the working of a portion of the co.'s business, to refer dispute which might arise between the parties to arbitration, should be under the seal of the co.—*GANGES SUGAR WORKS, LTD. v. NURI MIAH* (1915), 1 L. R. 37 All. 273.—*IND.*

b. *Effect of seal.]—**RUNDLE v. MIRAMICHI LUMBER CO.* (1922), 70 D. L. R. 713.—*CAN.*

c. *Proof of seal—Attendance of secretary.]—**Re WRIGHT (DAVID) & CO., LTD.* (1905), 39 I. L. T. 204.—*IR.*

d. *Company registered in United Kingdom—Affixing of seal by colonial agents.]—*Under Cos. Seals Act, 1864, the affixing in the colony of the official seal for use in the colony, by duly appointed agents of a co. registered in the United Kingdom, is equivalent to the affixing of the seal by the board of directors.—*Re BRITISH & NEW ZEALAND MORTGAGE & AGENCY CO., LTD.* (1886), 4 N. Z. L. R. 228.—*N.Z.*

PART III. SECT. 31, SUB-SECT. 5.—
A. (c).

1. *Proof of authority—General authority of agent sufficient.]—**COMMON LAND CORPN. v. INGHAM*

(1913), 25 W. L. R. 962; *reversd.* 24 Man. L. R. 447; 10 W. W. R. 1252.—*CAN.*

4179 ii. —.]—A statute, providing that every contract made on behalf of the co. by any officer of the co., in general accordance with his powers as such officer under the by-laws of the co., shall be binding upon the co., does not obviate the necessity of proof that the contract is one in general accordance with the powers of the officer.—*JONES v. HENDERSON* (1885), 3 Man. L. R. 433.—*CAN.*

4179 iii. —.]—Pltf. sold a buggy to the G. Co., which was incorporated under Manitoba Joint-Stock Cos. Act, for the purpose of carrying on, amongst other things, a retail business in the sale of oysters, fish & poultry in Winnipeg. The sale was a conditional one, & pltf. took a note for the amount of the purchase-money signed "G. Co., T. H. Jones, Sec.-Treas." The buggy was used in the business of the co. for the delivery of goods & soliciting of orders, although it was sometimes used by the manager of the co. for pleasure driving. The note contained the provision that the property in the buggy & the right of possession should not pass from pltf. until payment of the amount in full. Deft. afterwards purchased the buggy from J., the manager of the co. He did not know that pltf. had any claim on it:—*Held*: (1) the purchase of the buggy & the giving of the note for it, were within the

corporate powers of the co.; (2) in the absence of evidence to the contrary it should be presumed that the manager of the co. had authority to purchase the buggy & to sign the note therefor; & the defence of purchase for value without notice could not prevail against pltf.'s title.—*BOYCE v. MCDONALD* (1893), 9 Man. L. R. 207.—*CAN.*

e. *Contract ultra vires—Parol agreement of agent—Necessity for contract under seal.]—**DORAN v. GREAT WESTERN RY. CO.* (1857), 14 U. C. R. 403.—*CAN.*

f. —.]—The manager of a lumber co. gave written instructions to a logging superintendent to make contracts & hire assistants for cutting & delivering logs at their mill. The logging superintendent then contracted with pltf. for the cutting & taking out of lumber:—*Held*: the instructions received by the logging superintendent from the manager did not authorise the contract made with pltf., & the logging superintendent as such had no power to make the contract.—*HEDICAN v. CROW'S NEST PASS LUMBER CO., LTD.* (1913), 19 B. C. R. 416.—*CAN.*

g. — *Agreement to sell company's assets—Power of directors to make—Delegation of power to committee.]—*A selling committee appointed at a meeting of directors of a co., entered into an agreement, to which they affixed the co.'s seal, purporting to sell the co.'s assets to

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wound up, & the liquidator repudiated the contract on the ground that the secretary was not an authorised agent for the purpose of sale:—*Held*: the allegations in the bill were sufficient to show that the secretary was the authorised agent for the purpose of executing the contract, within both the above Acts.—**BEER v. LONDON & PARIS HOTEL Co.** (1875), L. R. 20 Eq. 412; 32 L. T. 715.

Annotations:—*Refd.* Cartwright v. Miller (1877), 36 L. T. 398; Rossiter v. Miller (1877), 5 Ch. D. 648.

4182. Contract ultra vires—Liability of directors.]—Directors having entered into a contract, *ultra vires*, & which was not binding on the co.:—*Held*: it could be neither specifically performed, nor could the ct. order them to make good their representations.—**ELLIS v. COLMAN, BATES & HUSLER** (1858), 25 Beav. 662; 27 L. J. Ch. 611; 31 L. T. O. S. 144; 4 Jur. N. S. 350; 6 W. R. 360; 53 E. R. 790.

See, now, 1908 Act, s. 76.

Contract by managing director with power to bind company—Contract in own name—Whether contract on behalf of company.]—See No. 3505, ante.

(d) Proof of Contract.

Statement in prospectus.]—See No. 445, ante.

Entry in minutes of directors' meetings.]—See Nos. 3429, 3430, ante.

Within Statute of Frauds.]—See, generally, CONTRACT, Vol. XII., pp. 118 et seq.

(e) By What Law Governed.

4183. Company registered in England—Carrying on business abroad.]—By an agreement in writing executed at Johannesburg, in the South African Republic, & made between a co. having its registered office in London, but carrying on business in South Africa, & a British subject resident at Johannesburg, the latter agreed to serve the co. as brewer or otherwise in its business carried on at Johannesburg & in the Colony of Natal & else-

where, who was given possession of the property. In an action brought for a declaration that the alleged sale did not bind the co., & for the delivery up of the assets, judgment was given as asked by pltf.:—*Held*: the agreement was understood to be subject to certain conditions which were not satisfied, & even assuming that it was a completed agreement, the directors themselves had no power to make such an agreement, & even if they had such power they had no power to delegate it to a committee.—**PETERSON & CANWOOD CO-OPERATIVE ASSOCN., LTD. v. COOK**, [1923] 1 W. W. R. 1212; 16 Sask. L. R. 281.—**CAN.**

h. — Extent of statutory authority.]—E. was the agent of a co. in India, & he entered, it was alleged on their behalf, into a contract with pltf. for sixty sets of ironwork for low-sided waggons. There was nothing to show that E. had been appointed under 20 & 21 Vic. c. 160, s. 54, nor was there any evidence of the extent of his power or authority. A specification of the contract differed from it, in that it stated the waggons to be covered waggons, & not low-sided waggons. The contract was not made under the seal of the co., nor was the ironwork ever accepted by the co.:—*Held*: assuming that E. had been appointed under sect. 54, with powers as large as in the ordinary course could be conferred upon him under that sect., the contract was not

one by which, acting as such agent, he had power to bind the co.—**STEWART v. SCINDE, PUNJAB & DELHI RY. CO.** (1870), 5 B. L. R. 195.—**IND.**

PART III. SECT. 31, SUB-SECT. 5.—A. (f).

k. Trading corporation acquiring land—Without licence of Crown.]—In an action on a warranty of title brought by applts. as vendees of mining property in Lower Canada, against respts. as the representatives of the vendor of applts. vendor:—*Held*: applts., as a trading corp., were incapable by the law of the colony of acquiring lands without the licence of the Crown, which it was not alleged that applts. had obtained; & therefore the sale having been invalid, the right to sue on the warranty did not arise.—**CHAUDIERE GOLD MINING CO. OF BOSTON v. DESBARATS** (1873), 29 L. T. 377; L. R. 5 P. C. 277.—**CAN.**

l. Construction of charter—Right of sawmill company to hire out tug—For towage purposes.]—Where there is nothing in the charter of a co. incorporated for the purposes of a sawmill manufacturing business which would prevent it purchasing & owning a steam tug for use incidental to such business, the co. can validly enter into contracts for towage to be done by the tug & hire it for such purposes.—**SEWELL v. BRITISH COLUMBIA TOWING & TRANSPORTATION CO.** (1884), 9 S. C. R. 527.—**CAN.**

where in South Africa, & provision was made for his residence in Johannesburg. The agreement was framed in the English language & was in English form:—*Held*: the rights of the parties under the agreement ought to be governed by the law of the South African Republic.—**SOUTH AFRICAN BREWERIES, LTD. v. KING**, [1900] 1 Ch. 273; 69 L. J. Ch. 171; 82 L. T. 32; 48 W. R. 289; 16 T. L. R. 172; 44 Sol. Jo. 228, C. A.

See, generally, **CONFLICT OF LAWS**, Vol. XI., pp. 387 et seq.

(f) Contracts ultra vires.

See, generally, **CORPORATIONS**, Vol. XIII., pp. 354 et seq.

4184. Contract under seal—No specific performance.]—Primâ facie all corporate bodies are bound by contracts under their common seal; but this *primâ facie* power to contract cannot be insisted on as to matters where from the nature of the corporate body or the object of its incorporation, it is expressly or impliedly "by reasonable inference," prohibited from contracting. A contract as to such matters is *ultra vires*.—**SHREWSBURY & BIRMINGHAM RY. CO. (DIRECTORS) v. NORTH WESTERN RY. CO. (DIRECTORS)** (1857), 6 H. L. Cas. 113; 26 L. J. Ch. 482; 29 L. T. O. S. 186; 3 Jur. N. S. 775; 10 E. R. 1237, H. L.; *affg.* (1853), 4 De G. M. & G. 115, L. JJ.

Annotations:—*Consd.* Eastern Counties Ry. v. Hawkes (1855), 5 H. L. Cas. 331; Hare v. L. & N. W. Ry. (1861), 2 John. & H. 80; Riche v. Ashbury Ry. Carriage & Iron Co. (1874), L. R. 9 Exch. 224; Sun Bldg. Soc. v. Western Suburban Bldg. Soc., [1921] 2 Ch. 83. *Refd.* Lancaster & Carlisle Ry. v. N. W. Ry. (1856), 2 K. & J. 293; L. B. & S. C. Ry. v. L. & S. W. Ry. (1859), 4 De G. & J. 362; Charlton v. Newcastle & Carlisle & N. E. Ry. (1860), 34 L. T. O. S. 22; Taylor v. Chichester & Midhurst Ry. (1867), L. R. 2 Exch. 356; A.-G. v. G. E. Ry. (1879), 11 Ch. D. 449. *Mentd.* Richmond Waterworks Co. & Southwark & Vauxhall Waterworks Co. v. Richmond Vestry (1876), 34 L. T. 480; Hire Purchase Furnishing Co. v. Richens (1887), 20 Q. B. D. 387.

4185. Contract ex facie regular—Concealed payment for unauthorised purposes.]—Where by contract, *ex facie* legal & regular, applt. co. purported to incur liability to resp. for railway construction in an amount which was in reality calculated to cover the amount of bonus & of price of issued

m. Contract not within "general scope of company's objects."]—Therefore a contract entered into by the managing director of a co. to carry on a new & different business from that being carried on by the co. is *ultra vires* the co.; but a contract will not be *ultra vires* simply because it involves an increased plant for its full performance.—**NATIONAL MALLEABLE CASTINGS CO. v. SMITH'S FALLS MALLEABLE CASTINGS CO.** (1906), 7 O. W. R. 436; 14 O. L. R. 22.—**CAN.**

n. Deed under seal—In what circumstances invalid.]—In order to invalidate a deed under the seal of an incorporated co. it must appear that it was prohibited by the Act or instrument incorporating the co., or is so foreign from or inconsistent with the purposes for which the co. was incorporated that it is to be deemed as if it had been so prohibited.—**POWER v. HOBY** (1871), 19 W. R. 916.—**IR.**

o. Bond fide contract—Terms of rescission.]—A *bond fide* transaction with a co., impeachable only on the ground of being *ultra vires*, will be set aside only on the terms that both parties be restored to their original rights.—*Re IRISH PROVIDENT ASSURANCE CO., LTD.*, [1913] 1 I. R. 352.—**IR.**

p. Consent of special general meeting not obtained.]—Deft. co. was formed in pursuance of an agreement

shares payable by agreement between resp. & all the shareholders of the co. irrespective of either actual or estimated cost of construction:—*Held*: (1) the contract was *ultra vires* the co.; (2) a consent judgment obtained on the contract declaring resp.'s lien on the co.'s railway & other property, the question of *ultra vires* not having been raised either in the pleadings or on the facts stated, was of no greater validity than the contract.

In a suit by the co. to set aside the contract & judgment:—*Held*: they must be set aside on terms which were consented to of paying to resp. the balance due to him for construction on a *quantum meruit*, securing the amount thereof by bonds of the co. if & when issued, the whole to be taken by him subject to first & other charges in favour of sub-contractors & banks in advance to them who had acted on the faith of the judgment to which they were not parties without notice of the illegalities of the contract.—*GREAT NORTH-WEST CENTRAL RY. CO., v. CHARLEBOIS*, [1899] A. C. 114; 68 L. J. P. C. 25; 79 L. T. 35, P. C.

Annotations:—*As to* (1) *Refd.* A.-G. for Canada v. Standard Trust Co. of New York, [1911] A. C. 498. *As to* (2) *Appld.* St. Mary Islington, Vestry v. Hornsey U. C., [1900] 1 Ch. 695. *Refd.* Cullen v. Elwin (1904), 20 T. L. R. 490.

4186. Effect on judgment based on contract.]—*GREAT NORTH-WEST CENTRAL RY., CO. v. CHARLEBOIS*, No. 4185, *ante*.

See, generally, JUDGMENTS & ORDERS.

(g) *Contracts in which Directors Interested.*

Contracts by directors with company.]—*See, generally*, Sect. 28, sub-sect. 4, D., *ante*.

Limitation of voting rights on contract in which interested—At directors' meeting.]—*See* Sect. 28, sub-sect. 7, C. (c), *ante*.

— **At company meeting.]—***See* No. 3802, *ante*.

As disqualification.]—*See* No. 3479, *ante*.

Where director takes secret profits—Liability of director.]—*See* Sect. 28, sub-sect. 6, D. (d), *ante*.

4187. — Liability of company—Specific performance.]—Pltf. agreed to sell a colliery to a joint-stock co. for £8,000 in paid-up shares; but there was a private arrangement, not communicated to the shareholders, that £2,500 of these should be given as a bonus to the directors:—*Held*: pltf. could not sustain a bill for specific performance.—*MAXWELL v. PORT TENNANT PATENT STEAM FUEL & COAL CO.* (1857), 24 Beav. 495; 53 E. R. 449.

4188. — Liability of contracting party—Where ignorant of director's relation to company.]—In order to render a person who has entered into a contract with, but who stands in no fiduciary relation to a co., liable to the co. for giving a share of the profit he makes out of the contract to one of its directors, fraud must be proved.

A director of a co. agreed with A. to find a purchaser for an estate which A. had agreed to buy if A. would give him half the profit, & then induced the co. to buy the estate without disclosing his interest in the transaction. A. at the time of this arrangement did not know who the purchaser was likely to be, & had no reason

to believe, after he ascertained who the purchaser was, that the director had concealed from the co. the fact of his sharing in the profit. An action by the co. against A. to recover the profit failed.—*LANDS ALLOTMENT CO., LTD. v. BROAD* (1895), 2 Mans. 470; 13 R. 699.

Annotation:—*Consd.* Grant v. Gold Exploration & Development Syndicate, [1900] 1 Q. B. 233.

(h) *Rescission of Contract.*

Sec, generally, CONTRACT, Vol. XII., p. 332 *et seq.*

4189. Power of majority of shareholders—Shares acquired after valid contract entered into.]—An agreement, not in itself invalid, made by the majority of the shareholders, cannot be rescinded by resolutions passed by persons afterwards becoming shareholders, although they may then constitute the majority.—*GREAT WESTERN RY. CO. v. BIRMINGHAM & OXFORD JUNCTION RY. CO.* (1848), 2 Ph. 597; 5 Ry. & Can. Cas. 241; 17 L. J. Ch. 243; 12 Jur. 106; 41 E. R. 1074, L. C.

Annotations:—*Refd.* Eastern Counties Ry v. Hawkes (1855), 5 H. L. Cas. 331; *Bourgoin v. Compagnie du Chemin de fer de Montréal, Ottawa et Occidental* (1880), 5 App. Cas. 381. *Mentd.* West Cornwall Ry. v. Mowatt (1848), 12 Jur. 407; *Shrewsbury & Chester v. Shrewsbury & Birmingham Ry.* (1851), 1 Sim. N. S. 410.

4190. On ground of fraud—Of directors—Who may set up.]—A person entering into a contract with a co. cannot set up the fraud of the directors to which he was a party against the co.

M. agreed in writing to take shares in a co., the directors at the same time by a separate instrument agreed to pay M. £4,000 for services rendered. In an action for calls against M., the defence stated that the two transactions were made in pursuance of an agreement to issue shares, in breach of the co.'s arts., below par:—*Held*: the defence was untenable.—*ODESSA TRAMWAYS CO. v. MENDEL* (1878), 8 Ch. D. 235; 47 L. J. Ch. 505; 38 L. T. 731; 26 W. R. 887, C. A.

—.]—*Sec, generally*, MISREPRESENTATION & FRAUD.

On ground of mistake.]—*See, generally*, MISTAKE.

4191. Lack of independent advice.]—A syndicate formed a co. to buy certain property of the syndicate. The directors of the co. were the directors of the syndicate, & before a prospectus was issued, they entered into an agreement with the syndicate to buy the property. A prospectus was subsequently issued, which disclosed the fact that the directors were vendors, but contained misrepresentations of fact. The co. bought & worked the property. Subsequently fresh directors were appointed, & they commenced an action against the syndicate for misrepresentation. The co. continued to work the property after the action had commenced:—*Held*: the co. were not entitled to rescission merely on the ground that the contract had been entered into without independent advice, & the working of the property by the co. had so altered the position of the parties as to deprive the co. of its right to rescission on the ground of misrepresentations contained in

into which its members had entered, & for the purpose of acquiring certain inventions & patents which they had thereby agreed to purchase. It was provided by the agreement that its provisions should apply between & for the benefit of the parties as shareholders of the intended co., that Table A. of the Cos. Act, 1908, should be adopted as the co.'s arts. of assocn. subject to certain modifications, of which one was that the inventions & patent rights should not be sold until

a special general meeting had been called to determine the price. The memorandum of assocn. referred to the agreement & stated where it was deposited. Pltf. wrote to the co. asking for "an option of the whole of the foreign patent rights" of the co., & two days later the co.'s secretary replied that the directors accepted the offer. The co. afterwards repudiated the contract on the ground that some of those who had dealt with pltf.'s offer were not directors. In an action

for specific performance:—*Held*: pltf. must be taken to have had notice of the contents of the memorandum & arts. of assocn., including the requisites of a special general meeting of the co., & also of the fact that in accepting pltf.'s offer two days after he had made it the directors had acted without the necessary authority; pltf. must be non-suited.—*NICHOLSON v. NEW ZEALAND GUM MACHINES CO., LTD.*, [1919] N. Z. L. R. 1.—N.Z.

Sect. 31.—Powers and liabilities of company: Sub-sect. 5, A. (h), (i), (j) & (k) & B. (a).]

the prospectus.—LAGUNAS NITRATE Co. v. LAGUNAS SYNDICATE, [1899] 2 Ch. 392; 68 L. J. Ch. 699; 81 L. T. 334; 48 W. R. 74; 15 T. L. R. 436; 43 Sol. Jo. 622; 7 Mans. 165, C. A.

Annotations:—Mentd. Re National Bank of Wales, [1899] 2 Ch. 629; Merchants Fire Office v. Armstrong (1901), 17 T. L. R. 709; Exploring Land & Minerals Co. v. Kolkemann (1905), 94 L. T. 234; Ammonia Soda Co. v. Chamberlain, [1918] 1 Ch. 266; Piercy v. Mills, [1920] 1 Ch. 77.

4192. Contract ultra vires—Contracting party with notice.]—TRANSVAAL LANDS Co. v. NEW BELGIUM (TRANSVAAL) LAND & DEVELOPMENT Co., No. 3111, ante.

(i) Effect of Appointment of Receiver.

See Sect. 34, sub-sect. 1, D. (d), post.

(j) Effect of Winding up.

See, generally, Sect. 36, sub-sect. 4, B. (g), post.

On contracts of service.]—See Nos. 3528–3532, 3588, ante.

(k) Assignment of Contracts.

4193. Personal contract—On formation of company.]—Deft. contracted with K., a cake manufacturer, to supply him with all the eggs of a specified quality "that he shall require for manufacturing purposes for one year," K. undertaking not to purchase eggs from any other merchant during the year so long as deft. was ready to supply them. During the year K. transferred his business to a co., whereupon deft. claimed to be discharged from his contract, & refused to supply any more eggs either to K. or to the co. In an action brought by K. & the co., as co-pltfs., for breach of the contract:—*Held*: deft.'s contract was with K. personally, the benefit of it was not assignable, & deft. was discharged from his obligation.—KEMP v. BAERSELMAN, [1906] 2 K. B. 604; 75 L. J. K. B. 873; 50 Sol. Jo. 615, C. A.

Annotations:—Refd. Hubbard v. Weldon (1909), 25 T. L. R. 356; Russell v. Fryers (1909), 25 T. L. R. 414.

On reconstruction of company.]—See No. 7116, post.

—.]—See, generally, CONTRACT, Vol. XII., pp. 588 et seq., & No. 4028, ante.

B. Contracts before Incorporation or Commencement of Business.

(a) Whether Company Bound.

Compare Part IX., Sect. 12, sub-sect. 4, A., post; Part XIV., Sect. 2, sub-sect. 8, B., post.

4194. Where company not incorporated—Advances by bank for purchase of property—Lien of bank.]—A co. was formed by provisional agreement

under six directors, for the purchase of certain salt-works, & for manufacturing & selling salt & other minerals. No deed of settlement was ever executed. The deed of purchase recited that £13,000, part of the amount arising from the paid-up shares of the co., had been paid as the purchase-money. That sum was applied to other purposes, & £11,000 was advanced by M. & Co., bankers, in respect of the purchase. They also made other advances. By a memorandum signed by five out of six of the directors, it was agreed on behalf of the co. that the advances should be repaid, & the title-deeds deposited with M. & Co., as an additional security:—*Held*: (1) M. & Co. had a lien upon the estate of the co., & the shareholders could not claim the benefit of the purchased property without discharging its burdens; (2) under the circumstances the memorandum, though signed by five directors only, was binding upon the co.—*Re IMPERIAL SALT & ALKALI Co., Ex p. MORRELL* (1853), 22 L. T. O. S. 194; 2 W. R. 122.

4195. — Contract before provisional registration.]—A joint-stock co. completely registered under 1844 Act, is not liable upon contracts entered into by the promoters before provisional registration.

Pltf. was the principal promoter of the co., & his salary had been settled by himself & two others, before the co. was provisionally registered, at £500 *per annum*, & the dispute was, whether the co., after complete registration, was bound to pay that sum. There was plea of payment of £50 into ct. to cover the services rendered to the co. after its formation, which the jury found to be sufficient.—*HUTCHISON v. SURREY CONSUMERS GAS Co.*, (1851) 11 C. B. 689; 3 Car. & Kir. 45; 7 Ry. & Can. Cas. 158; 21 L. J. C. P. 1; 18 L. T. O. S. 78; 138 E. R. 646.

Annotations:—Refd. Sheffield Gas Consumers Co. v. Harrison (1853), 17 Beav. 294; Gunn v. London & Lancashire Fire Insce. (1862), 12 C. B. N. S. 694.

4196. — Contract before complete registration.]—A declaration stated that pltfs. were the promoters of a joint-stock co. within 1844 Act, which was provisionally registered, & within twelve months of its provisional registration an agreement was entered into between pltfs. & P. & L. whereby pltfs. agreed to transfer to P. & L. on behalf of the co., all the interest of pltf.'s therein, & P. & L. on behalf of the co., agreed conditionally, on the co. being completely registered, that if pltfs. should, within six months, after the arrival in Australia, of the first steam-vessels, to be despatched by the co., commence business as ship-brokers at Sydney, pltfs. should be the ship-brokers of the co. at Sydney, & also that the co. should provide pltfs. with a free passage to the said colony by the first steam-vessel despatched by them. Averments—that the co. was com-

PART III. SECT. 31, SUB-SECT. 5.—B. (a).

q. Where company not incorporated—Conveyance of property.]—Where property was conveyed to a co. under the name by which it was afterwards incorporated, but which had no legal existence at the time:—*Held*: nothing passed by the conveyance.—LOYD v. EUROPEAN & NORTH AMERICA RY. CO. (1878), 2 P. & B. 191.—CAN.

r. — Confirmatory agreement after incorporation—Company not a party.]—Prior to the granting of defts. charter, S., who afterwards became its manager, made a verbal agreement with pltf. with reference to the land of pltf. Subsequently, & after a charter, a written agreement was

prepared. The parties to it were pltf., of the one part, & B. & D., who were shareholders in the co., of the other part. It was signed, "D. C. B. Co., A. S., manager," but the co.'s name appeared in no other part of the document:—*Held*: the co. was not bound by the verbal agreement, because made previous to its charter, & therefore incapable of ratification: the co. was no party to, & was not liable under, the written agreement.—WADDELL v. DOMINION CITY BRICK CO. (1888), 5 Man. L. R. 119.—CAN.

s. — Contract of employment—By provisional director—Acting within authority.]—Pltf. was employed by one of the provisional directors of deft. co. to do certain work on behalf of the co. in advertising & promoting its undertaking. The evidence established that

this director was entrusted by the co. with the performance of the various duties necessary for the purpose of promoting & furthering the undertaking, & that he did this, from time to time, without any specific instructions from his co-directors at formal meetings of the board, everything being done in the most informal manner; but that they were fully cognizant of what he did, & of his manner of doing it, & vested in him, either tacitly or by direct authorisation, the right & authority to transact the business of the co.:—*Held*: pltf. was entitled to recover from the co. the value of his work.—ALLEN v. ONTARIO & RAINY RIVER RY. CO. (1898), 29 O. R. 510.—CAN.

t. — Loan to promoter.]—A promoter of a joint-stock co. borrowed

pletely registered; that during the provisional registration of the co., the first steam-vessel was despatched by the directors to Australia; that pl'ts. were willing to have gone by it, but that the co. & their directors refused to permit pl'ts. to go by that vessel:—*Held*: on demurrer, the completely registered co. was not liable on such a contract made by the provisionally registered co.—*PAYNE v. NEW SOUTH WALES COAL & INTERCOLONIAL STEAM NAVIGATION CO.* (1854), 10 Exch. 283; 24 L. J. Ex. 117; 156 E. R. 450.

Annotation:—*Folld. Kelner v. Baxter* (1866), L. R. 2 C. P. 174.

4197. — Contract ultra vires company.]—A co. will not be bound by the contract of its promoters, where the thing contracted to be done is *ultra vires* the co.; & to that extent LORD COTTENHAM'S doctrine, that a co. is bound by the engagements of its promoters, must be taken to be overruled.

An agreement by the promoters of a railway to pay a sum of money to a landowner, through whose estate their line is to pass, for his countenance & support to the scheme, is *ultra vires* the co. when incorporated, & though adopted & acted on, will not be enforced against the co.—*SHREWSBURY (EARL) v. NORTH STAFFORDSHIRE RY. CO.* (1865), L. R. 1 Eq. 593; 35 L. J. Ch. 156; 13 L. T. 648; 30 J. P. 435; 12 Jur. N. S. 63; 14 W. R. 220.

Annotations:—*Distd. Taylor v. Chichester & Midhurst Ry.* (1867), L. R. 2 Exch. 356. *Refd. Mann v. Edinburgh Northern Tram. Co.*, [1893] A. C. 69.

4198. — Contract part performed.]—A written agreement was entered into between W. of the one part & D., as trustee for an intended co., to be called the N. Co., of the other part, that W., who was entitled to an agreement for a building lease from the Metropolitan Board of Works, should grant an underlease to the co., & that the co. should erect the buildings. The co. was registered on the following day. The memorandum did not mention the agreement, but the arts. adopted it & provided that the co. should carry it into effect. No fresh agreement with W. was signed or sealed on behalf of the co., but the co. took possession of the land, expended money in building, & acted on the agreement, which they considered to be binding on them. The co. failed to complete the buildings, & the Metropolitan Board re-entered. The co. being in course of winding up, the trustee in bk'p'cy of W. took out a summons to be allowed to prove for damages against the co. for their breach of the agreement:—*Held*: the agreement having been entered into before the co. was in existence, was incapable of confirmation, & the acts of the co., having evidently been done under the erroneous belief that the agreement between W. & D. was binding on the co., were not evidence of a fresh agreement having been entered into between W. & the co.

money for the purposes of the co., giving his own note as security. The lender was informed at the time of the manner in which the loan was to be, & was applied:—*Held*: as the co. did not exist at the time of the loan, it could not be the principal debtor, nor the borrower a mere guarantor; the latter was, therefore, primarily liable for repayment of the loan.—*CLERGUE v. HUMPHREY* (1900), 31 S. C. R. 66.—CAN.

a. — Promissory notes signed by promoters—On behalf of projected company.]—Promissory notes, payable to pl'ts., were signed by defts., L. & F., in this way: "F. Co., Ltd., F. X. L., President, D. F., Manager." At the time of the making of the notes,

there was no such co. as "The F. Co., Ltd." Afterwards, a co. was incorporated under that name. Deft., F., & another man had been in business as partners, & became indebted to pl'ts. Shortly before the above-mentioned notes were given, F. approached the accountant of pl'ts., & intimated, as the fact was, that he, F., & others, including L., were about to form the F. Co., & desired that pl'ts. should accept the obligations of that co. to meet the account against the partnership. Pl'ts. agreed to that course; & shortly afterwards, before the incorporation, pl'ts. received the notes:—*Held*: the co. could not, after incorporation, ratify the notes or become liable for the indebtedness in

on the same terms as the written agreement, there was therefore no agreement between W. & the co., & the summons must be dismissed.—*Re NORTHUMBERLAND AVENUE HOTEL CO.* (1886), 33 Ch. D. 16; 2 T. L. R. 636; *sub nom. Re NORTHUMBERLAND AVENUE HOTEL CO., LTD., SULLY'S CASE*, 54 L. T. 777, C. A.

Annotations:—*Distd. Howard v. Patent Ivory Manufacturing Co., Re Patent Ivory Manufacturing Co.* (1888), 38 Ch. D. 156. *Folld. Bagot Pneumatic Tyre Co. v. Clipper Pneumatic Tyre Co.*, [1901] 1 Ch. 196; *Steel Manufacturers' Nickel Syndicate v. Soc. Generale d'Explorations Coloniales & Consolidated Nickel Mines* (1903), 48 Sol. Jo. 178. *Refd. Re Johannesburg Hotel Co.* (1890), 6 T. L. R. 360; *Bagot Pneumatic Tyre Co. v. Clipper Pneumatic Tyre Co.*, [1902] 1 Ch. 146; *Barker v. Stirkney*, [1918] 2 K. B. 356. *Mentd. Lavery v. Pursell* (1888), 39 Ch. D. 508.

4199. —.]—STEEL MANUFACTURERS' NICKEL SYNDICATE, LTD. v. SOCIETE GENERALE D'EXPLORATIONS COLONIALES & CONSOLIDATED NICKEL MINES, LTD. (1903), 48 Sol. Jo. 178, C. A.

4200. — Contract fraudulent—Company abortive.]—The owner of certain property agreed with a solr. & an accountant that if they should succeed in forming a co. to purchase the property at a valuation, he would pay them £1,500, besides their costs & expenses to be received from the co. The co. was formed, but proved abortive, & the purchase was never carried out, nor the £1,500 paid. The agreement had not been disclosed to the subscribers of the memorandum, who were the only contributories. In the winding up:—*Held*: (1) though a co. is generally bound in equity to pay the expenses of its formation, & though, if the co. had adopted & carried out the purchase, they might, notwithstanding the fraud, have been bound to discharge such expenses, & their only remedy might have been to recover the £1,500, yet the co. having proved abortive, the fraud absolved them from any liability to pay the preliminary expenses, & also was a defence in equity to their legal liability for professional services rendered by the promoters after the co.'s formation; (2) the claim of the valuer, against whom there was no imputation, for the valuation made by him by direction of the promoters, was legally only a claim against them, & as a claim against the co. it failed with theirs.—*Re HEREFORD & SOUTH WALES WAGGON & ENGINEERING CO.* (1876), 2 Ch. D. 621; 45 L. J. Ch. 461; *sub nom. Re HEREFORD & SOUTH WALES WAGGON & ENGINEERING CO., HEAD & WALTER'S CLAIMS*, 35 L. T. 40; *sub nom. Re HEREFORD & SOUTH WALES WAGON & ENGINEERING CO., WALTER & HEAD'S CLAIM*, 24 W. R. 953, C. A.

Annotations:—*As to* (1) *Folld. Re Rotherham Alum & Chemical Co.* (1883), 25 Ch. D. 103. *Expld. Re English & Colonial Produce Co.*, [1906] 2 Ch. 435. *Refd. Re Empress Engineering Co.* (1880), 16 Ch. D. 125. *Generally, Re Hume v. Record Reign Jubilee Syndicate* (1899), 80 L. T. 404.

4201. — Benefit enjoyed by company—Services of solicitor.]—M. employed P. as solr. in

any way short of a new contract.—*CRANE v. LAVOIE* (1912), 21 W. L. R. 319; 2 W. W. R. 429; 22 Man. L. R. 330.—CAN.

b. Where company not registered—Right to recovery of damages for breach.]—In a suit brought by a joint-stock co., after registration, to recover damages for breach of a contract made with defts. before registration:—*Held*: the contract was illegal under sect. 2 of Act XIX. of 1857, & not having registered prior to carrying on business, could not sue upon it.—*GÜJERÁT TRADING CO., LTD. v. TRIKAMJÍ VELJÍ* (1866), 3 Bom. O. C. 45.—IND.

c. —.]—In an action of

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the formation of a limited co. for the purpose of taking over M.'s business. The co. was formed, & the arts. provided that all expenses incurred about the formation of the co. should be paid by the co. After the co. was formed P. acted as its solr., & M. was one of the directors. At a meeting of the directors, at which M. was present, P. asked for payment of his costs incurred about the formation of the co., & a conversation took place tending to show that the co. would undertake to pay them, but nothing appeared on the minutes. At a subsequent meeting a resolution was passed on the proposal of M. that a cheque for £39 should be given to P. in discharge of a certain part of these costs. The co. having been ordered to be wound up, P. carried in a claim for his bill of costs:—*Held*: (1) P. could not maintain his claim on the ground that the co. having had the benefit of his services was bound to pay for them, as his services had been rendered on the retainer of M.; (2) P. could not maintain his claim on the ground of novation, the conversation at the first meeting not being supported by anything in the minutes, & the subsequent giving of the cheque being capable of being referred to the obligation of the co. to indemnify M. against the costs incurred in its formation, & so not being sufficient evidence of an agreement by the co. with P. to pay him.—*Re ROTHERHAM ALUM & CHEMICAL CO.* (1883), 25 Ch. D. 103; 53 L. J. Ch. 290; 50 L. T. 219; *sub nom. Re ROTHERHAM ALUM & CHEMICAL CO., LTD., Ex p. PEACE & CO.*, 32 W. R. 131, C. A.

Annotations:—As to (1) *Consd. Re English & Colonial Produce Co.*, [1906] 2 Ch. 435. *Reid. Hume v. Record Reign Jubilee Syndicate* (1899), 80 L. T. 404. *Generally, Mentd. Re Fireproof Doors, Umney v. Fireproof Doors*, [1916] 2 Ch. 142.

4202. — Preparation of memorandum & articles—Registration fees.—A solr. on the instructions of persons who afterwards joined the board of a co. then about to be formed, prepared the memorandum & arts. of assocn. of the co. & paid the fees for its registration:—*Held*: (1) he was not entitled to recover from the co. the costs of the preparation of the memorandum & arts. of assocn.; (2) inasmuch as the co. was under a statutory liability to pay the registration fees, he was entitled to recover those fees from the co.; (3) the fact that a co. adopts & takes the benefit of services rendered under a contract entered into before its formation does not make the co. liable in equity to pay for those services.—*Re ENGLISH & COLONIAL PRODUCE CO., LTD.*, [1906] 2 Ch. 435; 75 L. J. Ch. 831; 95 L. T. 850; 22 T. L. R. 669; 50 Sol. Jo. 595; 13 Mans. 387, C. A.

Annotation:—As to (2) *Overd. Re National Motor Mail Coach Co., Clinton's Claim*, [1908] 2 Ch. 515.

4203. — Whether contract implied.—A person who pays the registration & other statutory fees on the registration of a co. is in no better position than a person who has made any ordinary

payment on behalf of the co., & is not entitled in the absence of some request by the co. to be repaid by the co.

Re English & Colonial Produce Co., No. 4202, *ante*, *overd.*—*Re NATIONAL MOTOR MAIL-COACH CO., LTD., CLINTON'S CLAIM*, [1908] 2 Ch. 515; 77 L. J. Ch. 790; 99 L. T. 632; 15 Mans. 362, C. A.

See, generally, CONTRACT, Vol. XII., pp. 532, 533.

4204. — Credit given to company for work executed.—The promoters of a co. agreed to pay all expenses up to the first allotment of shares. The promoters ordered certain work to be done for the co., which was duly executed. The persons who performed the work sought to make the co. liable upon the ground that credit had been given to the co. for the work executed:—*Held*: the co. had not authorised the work to be done, & the claim must, therefore, fail, & there was no reason why the co. should not have the benefit of the work for which some one else had agreed to pay.—*Re PHOENIX ELECTRIC LIGHT & POWER CO., LTD., TUCK'S CLAIM* (1884), 1 T. L. R. 57.

4205. — Agreement to assign patent — Patent assigned after formation with notice of agreement.—A patentee assigned letters patent to A. & B., who covenanted with him that they, their exors., administrators, & assigns would use their best endeavours to introduce the invention by granting licences or working the patent or selling it, & that the patentee should be entitled to receive £5 per cent. of all net profits, whether arising from royalties, sale, or otherwise, which should be received by A. & B. or the survivor of them, or the exors. or administrators of the survivor, their or his assigns, & that an account of profits should be rendered yearly to the patentee, & his share of profits paid to him by A. & B. & the survivor of them, & the exors. or administrators of such survivor, their or his assigns, with a proviso that after a sale had been made of the patent the interest of the patentee in the profits should cease, & a final account be come to. A. & B. had taken the assignment with a view to forming a co. to work the patent. The co. was formed & the patent made over to them. The patentee sued the co. for an account of profits. The co. demurred, on the ground that there was no privity between them & pltf., & that pltf.'s right, if any, was against A. & B. only:—*Held*: pltf. could sue the co. for an account of profits, for that the stipulations of the assignment to A. & B. amounted to a contract that the owners for the time being of the patent should account for & pay to pltf. a share of profits unless a sale within the meaning of the deed was effected, & no person taking the patent with notice of this contract could refuse to give effect to it.—*WERDERMAN v. SOCIÉTÉ GÉNÉRALE D'ÉLECTRICITÉ* (1881), 19 Ch. D. 246; 45 L. T. 514; 30 W. R. 33, C. A.

Annotations:—*Expld. Bagot Pneumatic Tyre Co. v. Clipper Pneumatic Tyre Co.*, [1902] 1 Ch. 146. *Consd. Barker v. Stickney*, [1919] 1 K. B. 121. *Reid. Dansk Rekybuffel*

damages against a firm of manufacturing engineers at the instance of a co., pursuers averred that prior to the date of registration of the co. an agent of the co., had contracted with defenders for the supply by the latter of certain machinery, & that the machinery supplied was defective & had caused great loss to the co.:—*Held*: there was no title to sue as the contracting party could not have acted as agent of the co. before it was in existence.—*TINNEVELLY SUGAR REFINING CO., LTD. v. MIRRELES WATSON & YARYAN CO., LTD.* (1894), 21 R.

(Ct. of Sess.) 1009.—SCOT.

d. Contract by incorporated co. — "Acting for itself & on behalf of" unincorporated subsidiary companies—Right of subsidiary company on incorporation to enforce contract.—In 1908 an agreement was made between pltf. & C. co., "acting for itself & on behalf of any cos. which are, or may, during the period of this agreement come, under their control or management," whereby C. co. undertook to purchase the total quantity of explosives required by them from pltf.

at certain prices. This agreement was renewed from time to time & was in force at the date of the action. At the time when the agreement was made, there were several subsidiary cos. which entered into agreements with pltf. in identical terms. Deft. co. was incorporated in Nov. 1919, & was the only new venture coming under the control of the C. co. since 1908. In Jan. 1921, the C. co. sent an order to pltf. on deft.'s behalf for certain explosives at the fixed price. In Apr. 1921, deft. co. passed a resolution adopting the above agreement. Pltf.

Syndikat Akt. v. Snell, [1908] 2 Ch. 127. *Mentd. Abouloff v. Oppenheimer* (1882), 47 L. T. 702; *Pilley v. Robinson* (1887), 20 Q. B. D. 155.

4206. — Agreement by secretary—Purporting to be made with company.]—*STAR CORN MILLERS' SOCIETY v. MOORE & Co.* (1886), 2 T. L. R. 751, C. A.

4207. Where company not entitled to commence business—Provisional contract—1900 Act, s. 6 (3).]—The word "provisional" in the above sect. means that the contracts made by a co. before the date at which it is entitled to commence business are to be read as if they contained a provision that they shall not be binding on the co. unless & until it becomes entitled to commence business. It makes no difference whether a contract is preliminary or final or one in the course of carrying on the co.'s business; & if a co. never becomes entitled to commence business no contract entered into by it is binding on it, & no one can sue in respect of any such contract.—*Re OTTO ELECTRICAL MANUFACTURING Co.* (1905), LTD., *JENKINS' CLAIM*, [1906] 2 Ch. 390; 75 L. J. Ch. 682; 95 L. T. 141; 54 W. R. 601; 22 T. L. R. 678; 50 Sol. Jo. 616; 13 Mans. 301.

Annotations:—*Reid. Re Blair Open Hearth Furnace Co.*, [1914] 1 Ch. 390. *Mentd. Meyers v. Honnell*, [1912] 2 Ch. 256.

4208. — — — — —.]—A co. incorporated under the Cos. Acts issued a prospectus inviting applications for shares in the co. & the moneys subscribed were paid into the co.'s bank. The co. neither then nor since had obtained a certificate from the Registrar under sub-sect. 2 of the above sect., that they were entitled to commence business & never were so entitled. The bank claimed to be paid out of the moneys in their hands a certain sum for services rendered:—*Held*: as the bank must rely upon some contract with the co. & as by the above sect., a contract made by a co. before the date at which it was entitled to commence business was provisional only & not binding until that date, the bank were not entitled to be paid.—*NEW DRUCE-PORTLAND Co., LTD. v. BLAKISTON* (1908), 24 T. L. R. 583.

See, now, 1908 Act, s. 87 (3).

objected to supplying at these prices on the ground that the agreement referred only to cos. existing at the date thereof & claimed a larger sum:—*Held*: the agreement meant that the C. co. undertook that deft. co. when it came into existence would enter into the contract, & pltf. undertook to enter into such a contract with deft. co. When deft. co. came into existence the right to claim from pltf. a contract in terms of that entered into with the C. co., & having adopted that contract, was entitled to the benefit thereof.—*KYNOC'S, LTD. v. TRANSVAAL SILVER & BASE METALS, LTD.*, [1922] W. L. D. 71.—S. AF.

PART III. SECT. 31, SUB-SECT. 5.—
B. (b).

4209 i. *Whether contract can be ratified.*]—*VULCAN IRON WORKS v. LEARY* (1905), 1 W. L. R. 453.—CAN.

4209 ii. —.]—A co. cannot ratify anything that is done or any contracts made before it comes into existence.—*FOLEY'S CREEK EXTENDED Co. v. CUTTEN & FAITHFUL* (1903), 22 N. Z. L. R. 759.—N.Z.

4209 iii. —.]—Persons cannot contract on behalf of a co. which has not yet been formed, nor can such a contract become binding upon the co., nor can the co. sue upon it by reason of ratification after the formation of the co.

An agreement was made between agent & the guarantors of a projected co. for the cession of a mining lease

to the nominees of the guarantors. It was stipulated in the agreement that the guarantors should form themselves into a limited liability co., which was done. The trustees of the co. sued for specific performance of the agreement, the declaration after setting forth the above facts, further alleging that the agreement had been incorporated in the memorandum & arts. of assocn. of the co., which had been signed & executed by deft., & that "by reason of the premises the co. upon its formation became entitled to all the rights & benefits to which the guarantors were entitled under the agreement." On exception:—*Held*: pltf. must show on the face of the declaration how they became entitled to the rights & benefits of the guarantors & in the absence of any allegation that pltf. were either the cessionaries or nominees of the guarantors, it did not appear that they were the proper persons to sue.—*O'LEARY v. HARBORD* (1888), 5 H. C. 1.—S. AF.

4209 iv. —.]—A co. is not liable on a contract purporting to be made on its behalf before its incorporation, nor can it validly ratify such a contract. To render it liable a fresh contract must be entered into after incorporation.

Prior to the incorporation of a co. a lease was executed purporting to be on behalf of the co. After incorporation the co. believing the lease to be binding on it took possession under the lease:—*Held*: the original contract was not binding on the co., & the fact

Liability of promoter—On contract made before incorporation.]—*See* Sect. 1, sub-sect. 5, B., *ante*.

(b) *Ratification and Adoption.*

4209. *Whether contract can be ratified.*]—Where a contract is signed by one who professes to be signing "as agent," but who has no principal existing at the time, & the contract would be wholly inoperative unless binding upon the person who signed it, he is personally liable on it: & a stranger cannot by a subsequent ratification relieve him from that liability.

A co. being projected for carrying on the business of an hotel, & purchasing the premises & stock of pltf., the following agreement was entered into,—*"Jan. 27, 1866. To A., B., & C., on behalf of the proposed Gravesend Royal Alexandra Hotel Co. I hereby propose to sell the extra stock as per schedule hereto, for the sum of £900, payable on Feb. 28, 1866"* (signed by pltf.). "We have received your offer to sell the extra stock as above, & we hereby agree to accept the terms proposed." (Signed) "A. B., & Co., on behalf of the Gravesend Royal Alexandra Hotel Co." The goods were handed over to the representatives of the proposed co., & were consumed in the business. The co. obtained a certificate of incorporation under 1862 Act, on Feb. 20, but collapsed before the money was paid:—*Held*: A. B., & C. were personally liable on their agreement, as for goods sold & delivered; no subsequent ratification by the co. could relieve them from that liability without the assent of pltf.—*KELNER v. BAXTER* (1866), L. R. 2 C. P. 174; 36 L. J. C. P. 94; 15 L. T. 213; 15 W. R. 278; *sub nom. KELMER v. BAXTER*, 12 Jur. N. S. 1016.

Annotations:—*Folld. Cullen v. O'Meara* (1867), 15 W. R. 1174. *Apld. Melhado v. Porto Alegre Rty.* (1874), L. R. 9 C. P. 503. *Distd. Spiller v. Paris Skating Rink Co.* (1878), 7 Ch. D. 368; *Hollman v. Pullin* (1884), Cab. & El. 254. *Apprvd. Natal Land, etc., Co. v. Pauline Colliery Syndicate*, [1904] A. C. 120. *Reid. Scott v. Ebury* (1867), L. R. 2 C. P. 255; *McCaul v. Strauss* (1883), Cab. & El. 106; *Re Northumberland Avenue Hotel Co.* (1886), 33 Ch. D. 16; *Howard v. Patent Ivory Manufacturing Co., Re Patent Ivory Manufacturing Co.* (1888), 38 Ch. D. 156; *Nichols v. Regent's Canal Co.* (1894),

that the directors had erroneously acted under the belief that it was did not constitute sufficient ground for establishing the formation of a new contract after incorporation; & an admission of ratification & adoption on the pleadings was immaterial.—*RAND TRADING CO., LTD. v. LEWKOWITZ*, [1908] T. S. 108.—S. AF.

4209 v. —.]—*E. Bakery, Ltd.*, now in liquidation, was formed in 1917 with a capital of £2,000, of which £1,910 was issued in fully paid-up shares to A. who owned the bakery before it became a co., ostensibly in payment of valuable rights or property said to have been given by A. to the co. The official manager in liquidation placed A. upon the list of contributories for £1,910 in respect of his shares. A. replied by producing a contract between himself & M., purporting to act on behalf of the co. which was at the time not in existence; later the co. was said to "ratify & empower" this contract. The official manager now applied for an order directing him to make the call in terms of Law 19, 1866, s. 27:—*Held*: the co. was unable to ratify a contract entered into on its behalf before its existence.—*Re EXCELSIOR BAKERY, LTD. (IN LIQUIDATION)* (1919), 40 N. L. R. 364.—S. AF.

4209 vi. —.]—A co. can by adoption or ratification obtain the benefit of a contract made on its behalf before it came into existence where such contract has been made by a person acting individually & not as the agent of

certain co., & offered to accept £2,000 for remuneration. The co. was formed, & by the arts. of agreement it was recited that pliffs. had incurred labour & expense in organising the exhibition rooms, & that it had been arranged with one of the promoters that he should pay them £2,000 when & so soon as the co. should be in a position to commence business. It was agreed that no expense should be incurred until 10,000 shares had been subscribed, & at least £2 a share paid thereon, & that if the co. was not in a position to carry on the undertaking before a certain day, then neither the promoters nor the officers of the co. should have any claim upon the funds of the co. & it was provided that when the shares were subscribed for & paid upon to the amount aforesaid, the directors should pay the above-mentioned promoter the sum of £2,000. Copies of the arts. of assocn. were sent to pliffs. The shares in the co. were subscribed for & the deposits were paid, but the co. was unable to obtain a site, & never actually commenced business:—*Held*: (1) on the evidence, the co. had adopted the agreement as to the payment of £2,000 to pliffs. through the promoter; (2) the performance of the agreement was not contingent on the actual commencement of business by the co.; (3) pliffs. could maintain a suit against the co. & the directors, amongst whom was the promoter to whom the £2,000 was to be paid, & were not obliged to sue in the name of the promoter.—*TOUCHE v. METROPOLITAN RAILWAY WAREHOUSING Co.* (1871), 6 Ch. App. 671.

Annotations:—As to (1) *Refd.* *Spiller v. Paris Skating Rink Co.* (1878), 7 Ch. D. 368. As to (3) *Refd.* *Melhado v. Porto Alegre Ry.* (1874), L. R. 9 C. P. 503; *Re Empress Engineering Co.* (1880), 16 Ch. D. 125. *Generally, Refd.* *Bagot Pneumatic Tyre Co. v. Clipper Pneumatic Tyre Co.*, [1902] 1 Ch. 146. *Generally, Mentd.* *Gandy v. Gandy* (1885), 30 Ch. D. 57.

4219. — Payment of solicitor's out-of-pocket expenses.]—*Re ROTHERHAM ALUM & CHEMICAL Co.*, No. 4201, *ante*.

4220. — Former contract acted on—In belief of validity.]—*Re NORTHUMBERLAND AVENUE HOTEL Co.*, No. 4198, *ante*.

4221. Contract for sale of business—Modification of terms.]—J. entered into an agreement with W., who purported to act on behalf of a co. about to be formed, to sell certain property to the co. The co. was formed shortly afterwards with a memorandum & arts. of assocn. containing provisions for the adoption of the agreement by the directors on behalf of the co. with or without modification. At meetings of the directors at which J. was present, resolutions were passed adopting the agreement, accepting an offer of J. to take payment of part of the purchase-money in debentures instead of in cash, & directing that the seal of the co. should be affixed to an assignment by J. to the co. of leasehold property comprised in the agreement, & to debentures to be issued to J. The assignment was executed by J. & sealed by the co.; the debentures were issued to him, & the co. took possession of the leaseholds & carried on their business thereon. The co. was afterwards wound up, & the liquidator took from J. an assignment of other property comprised in the agreement:—*Held*: there was evidence that a contract was entered into by the co. with J. to the effect of the previous agreement as subsequently modified by the acceptance of debentures instead of cash, & there was, therefore, at the time when the debentures were issued, an existing debt due from the co.—*HOWARD v. PATENT IVORY*

MANUFACTURING Co., *Re PATENT IVORY MANUFACTURING Co.* (1888), 38 Ch. D. 156; 57 L. J. Ch. 878; 68 L. T. 395; 36 W. R. 801.

Annotations:—*Distd.* *Bagot Pneumatic Tyre Co. v. Clipper Pneumatic Tyre Co.*, [1902] 1 Ch. 146. *Refd.* *Bagot Pneumatic Tyre Co. v. Clipper Pneumatic Tyre Co.*, [1901] 1 Ch. 196; *Barker v. Stickney*, [1918] 2 K. B. 356. *Mentd.* *Re Pyle Works* (1890), 44 Ch. D. 534; *Page v. International Agency & Industrial Trust* (1893), 62 L. J. Ch. 610; *Newton v. Anglo-Australian Investment Co.'s Debenture-Holders, etc.*, [1895] A. C. 244; *Seligman v. Prince*, [1895] 2 Ch. 617; *Re Russian Spratts Patent*, *Johnson v. Russian Spratts Patent*, [1898] 2 Ch. 149.

Novation.]—*See, generally*, CONTRACT, Vol. XII., pp. 596 *et seq.*

(c) *Effect of Articles.*

4222. Contract confirmed in original articles.]—A contract made between the projector & the directors of a joint-stock co. provisionally registered, but not in terms made conditional on the completion of the co., is not binding upon the subsequently completely registered co., although ratified & confirmed by the deed of settlement.—*GUNN v. LONDON & LANCASHIRE ASSURANCE Co.* (1862), 12 O. B. N. S. 694; 142 E. R. 1315.

Annotations:—*Apld.* *Kelner v. Baxter* (1866), L. R. 2 C. P. 174. *Refd.* *Star Corn Millers Soc. v. Moore* (1886), 2 T. L. R. 620.

4223. — Appointment of secretary.]—*Re DALE & PLANT, LTD.*, No. 4214, *ante*.

Contract contained in original articles—Whether binding contract.]—*See Sect. 7, sub-sect. 5, ante*.

4224. Provision in articles for new contract—Liability of promoters.]—Promoters cannot avoid the general equitable obligations recognised & enforced by provisions inserted in the arts. of assocn.; & where, though a co. is formed as a private co., the intention throughout is to bring in outside cash shareholders, the situation is essentially identical with one in which the co. is a public co.

In Jan. 1912, defts. entered into negotiations for the acquisition of a lease of certain premises, with a view to selling them to a co. which they were promoting, & which was registered as a private co. in Mar. 1912. The arts. of assocn., which were prepared on the instructions of defts., provided that the co. should forthwith enter into the agreement for purchase; & this it did. The board of directors at the time was not an independent one, & defts. had not a legally binding agreement for the lease. The lease was, however, subsequently executed & assigned to the co. Outside cash shareholders were brought in, & ultimately an independent board was constituted. On Oct. 30, 1912, the co. commenced an action against defts. for a declaration that they were liable as promoters to make good to the co. such part of the purchase-money of the property as was attributable to the benefit of the lease agreed to be granted to them, with consequential relief:—*Held*: the provisions of the arts. & the registration of the co. as a private co. did not protect defts. against claims by it.—*OMNIUM ELECTRIC PALACES, LTD. v. BAINES*, [1914] 1 Ch. 332; 83 L. J. Ch. 372; 109 L. T. 964; 30 T. L. R. 213; 58 Sol. Jo. 218; 21 Mans. 94, C. A.

(d) *Liability of Person Contracting for Company.*

4225. Personally liable—Ratification by company no relief.]—*KELNER v. BAXTER*, No. 4209, *ante*.

4226. — Loan raised for company.]—Defts., the promoters & directors of a railway co., obtained

lation between company & vendor created.]—A co. does not by its adoption of a contract of purchase made

before its formation by persons purporting to act on its behalf incur any contractual relation with or obliga-

tion to the vendor.—*NORTH SYDNEY INVESTMENT & TRAMWAY Co., LTD. v. HIGGINS*, [1899] A. C. 263.—AUS.

Sect. 31.—Powers and liabilities of company: Sub-sect. 5, B. (d) & C.]

an advance of £500 from a bank, upon terms expressed in a letter, by which the bank were requested to allow the directors of the railway co. to draw to the extent of £1,000, to be repaid out of the calls on shares. At that time the Act constituting the railway co. had not been passed, & the £500 was borrowed to pay the fees necessary to its passing. The Act contained a clause providing for the payment by the co. of its expenses. After the Act was passed there was a resolution of the directors confirming the loan of £500, & the bank debited the railway co. in their accounts with the loan, & brought an action for it against the co., in which judgment was obtained; but there being no property of the co. to satisfy such judgment, the bank sued defts. for the repayment of the loan. No shares in the co. had ever been allotted, nor any call made, though more than three years had elapsed since the passing of the Act:—

Held: as the railway co. were not in existence when the money was advanced, the £500 was advanced on the personal liability of defts., & defts. had not been exonerated from such liability by what had been done after the passing of the Act, or by the fact that no call had been made.—**SCOTT v. EBURY (LORD) (1867), L. R. 2 C. P. 255; 36 L. J. C. P. 161; 15 L. T. 506; 15 W. R. 517.**

Annotations:—**Consd.** *Coutts v. Irish Exhibition in London (1890), 63 L. T. 489.* **Mentd.** *Blyth v. Fladgate, Morgan v. Blyth, Smith v. Blyth, [1891] 1 Ch. 337.*

4227. — Advertising on behalf of company—Prospectus.]—E. W. P., the secretary of a co. not yet registered, gave an order signed “E. W. P., secretary *pro tem.*,” for advertising the prospectus of the co. in a newspaper:—Held:** as the co. was non-existent till registered, the secretary was personally liable for the expenses of advertising.—**HOPCROFT v. PARKER (1867), 16 L. T. 561; 15 W. R. 842.****

Compare Part IX., Sect. 12, sub-sect. 4, A., post.

C. Negotiable Instruments.

See, now, 1908 Act, ss. 63 (3), 77.

4228. Power to issue—General rule.]—(1) A co. was formed under 1862 Act, for the purpose of purchasing a concession from a foreign govt. for the construction of a railway, & forming a *société anonyme* to make the railway. The memorandum stated that in order to attain their main object the co. might do in England, or Peru, or elsewhere, whatever they thought incidental or conducive thereto. The arts. gave the directors power to do all things, & make all contracts which in their judgment were necessary & proper for the purpose of carrying into effect the object mentioned in the memorandum:—Held:** the 1862 Act does not confer on all cos. registered under it a power of issuing negotiable instruments; such a power exists only where, upon a fair construction of the memorandum & arts. of assocn. it appears that it was intended to be conferred. Such a power existed in the present case, for although it could not be inferred from the nature of the business of the co., it was conferred by the above general words in the memorandum & arts. .**

(2) The knowledge of a director that bills

indorsed for value to his co. were bills which had been accepted for the accommodation of the drawer, the director not having been concerned on behalf of his co. in the transaction in which the bills were indorsed to them, did not affect the co. with the notice of the fact of their being accommodation bills.—**PERUVIAN RYS. CO. v. THAMES & MERSEY MARINE INSURANCE CO., Re PERUVIAN RYS. CO. (1867), 2 Ch. App. 617; 36 L. J. Ch. 864; 16 L. T. 644; 15 W. R. 1002, L. J.J.**

Annotations:—**As to (1) Distd.** *Atkins v. Wardle (1889), 58 L. J. Q. B. 377.* **Refd.** *Guinness v. Land Corp. of Ireland (1882), 22 Ch. D. 349.* **Generally, Mentd.** *Re Imperial Silver Quarries Co. (1868), 16 W. R. 1220; Re General Co. for the promotion of Land Credit (1870), 5 Ch. App. 367, n.; Kenny's Patent Button-Holeing Co. v. Somervell & Lutwyche (1878), 38 L. T. 878.*

4229. — Under constitution of company—Construction.]—The deed of settlement of a registered joint-stock co. contained a provision that the directors might issue a promissory note or accept a bill of exchange for the balance of a certain debt, not exceeding £1,000. The directors accordingly issued a note for £1,000, but afterwards accepted & gave several bills, in place of the note, for smaller sums amounting together to £1,000 & interest up to the time at which they were to become due:—Held:** the accepting of the bills was within the authority given by the deed.—**THOMPSON v. WESLEYAN NEWSPAPER ASSOCN. (1849), 8 C. B. 849; 19 L. J. C. P. 114; 14 L. T. O. S. 487; 137 E. R. 742.****

— Bill payable at less than two months—Whether infringement of monopoly of Bank of England.]—See BANKERS & BANKING, Vol. III., pp. 132, 133, Nos. 76–78.

4229a. — Debenture notes.]—By the deed of settlement of a co., unregistered, it was provided that the trade or business of the co. should be that of bankers or of banking, including the making & issuing of bank notes & bills payable on demand, after sight, after date, or otherwise; & the making of loans & advances on real & personal estate in very full terms; & the discounting of bills of exchange, etc.; & the borrowing or taking up money at interest on receipts on inland or foreign bills of exchange or promissory notes, bonds, debentures, deposit receipts, or other obligations as should from time to time be deemed expedient; with very large powers to the directors of conversion, reinvestment, & varying of securities, in acting as agents for other companies, & private individuals, at home or abroad, & in doing & performing any other business or acts of agency which the directors might direct or approve. The capital of the co. was to consist of 20,000 shares of £50 each. After the execution of the deed of settlement, one of the directors, having obtained powers of attorney & commission from the others, went to Australia, & entered into very large speculations with moneys raised by means of debenture notes of the bank. These notes were in this form: “We, the directors of the R. Bank, etc., for ourselves, & the other shareholders, jointly & severally promise to pay to W. or bearer the sum of £—, for value received on account of the co.” The notes were signed by the secretary, by one of the directors, who was chairman, & by two other directors. Prior to & during the issue of these notes three calls only of £5 each were

PART III. SECT. 31, SUB-SECT. 5.—C.

g. Power to indorse — Guarantor company an interested party.]—A co. indorsed a promissory note guaranteeing the payment of goods already delivered to a second co., in which the first co. held shares, of which it was a

large creditor, & upon whose effects it held a blanket mtge. The memorandum of assocn. of the first co. did not specifically include power to guarantee the payment of the obligations of others, or to undertake primary liability therefor. In an action against the first co. for the balance due on the

promissory note:—**Held:** even in the event of deft. co.'s interests being served by indorsing the note, the indorsement was *ultra vires* of the co.—**CARTER DEWAR CROWE CO., LTD. v. COLUMBIA BITULITHIC CO., LTD. (1914), 20 B. C. R. 37.—CAN.**

paid up, & those only on a small portion of the shares. In their statement to the shareholders the directors stated that large sums had been remitted to Australia, & that large sums were outstanding on the security of sheep, cattle, horses, & agricultural produce in the colony. The co. being in a course of winding up, & the claims of holders of the above debenture notes to the amount of nearly £300,000 having been allowed by the master, his decision was appealed from:—*Held*: (1) the directors had power under the deed to bind the co. by the issue of the notes; (2) the notes were so framed as to form a contract binding on the co.; (3) there was no proof of misstatement to or fraud upon the shareholders.—*Re ROYAL BANK OF AUSTRALIA, Ex p. WALKER* (1854), 23 L. T. O. S. 74; 2 W. R. 383; *sub nom. Re ROYAL BANK OF AUSTRALIA, Ex p. WALKER, GALLOWAY'S CASE*, 18 Jur. 885.

4230. Whether company bound—Acceptance of bill by directors—Authority of directors.—A bill was drawn by one of the directors of a co., upon himself & the other directors, payable to his order, & accepted by another director as chairman to the co.:—*Held*: the body of directors were not liable to be sued on the bill; the right of one director to draw a bill upon the rest, & the power of one director to accept a bill for himself & the others, is not a right or power implied by law, like that which belongs to a member of an ordinary partnership; but the right must depend upon the powers given by the charter or deed or agreement, under which the co. is established, or some other agreement between the parties; & further, the pltf. who seeks to enforce payment of the bill must show the existence of such a power.—*BRAMAH v. ROBERTS* (1837), 3 Bing. N. C. 963; 3 Hodg. 191; 5 Scott, 172; 6 L. J. C. P. 346; 132 E. R. 682.

4231. ————*]*—A bill of exchange was drawn by Richard Parker, addressed "To the directors of the Imperial Salt & Alkali Co.," & accepted in the following form, "Accepted, payable at, etc. Richard Parker, manager. J. R., J. P., R. G., directors." The payee brought *assumpsit* against the three defts., who were directors of this joint-stock trading co., but did not sign the acceptance; J. R. & J. P., who were directors, & signed; & Richard Parker. J. R., J. P., & Richard Parker, suffered judgment to go by default. Richard Parker was a shareholder & officer of the co. The jury found that Richard Parker did not sign as acceptor, but only as "manager":—*Held*: (1) the action could not be maintained against defts. individually; (2) nor against the five defts. who were directors, & Richard Parker as shareholder; there being no implied authority in the directors to bind the co.—*BULT v. MORRELL* (1840), 12 Ad. & El. 745; 10 L. J. Q. B. 52; 5 J. P. 224; 113 E. R. 996.

Annotations:—As to (2) *Distd. Bottomley v. Fisher* (1862), 1 H. & C. 211. *Refd. Lindus v. Bradwell* (1848), 17 L. J. C. P. 121; *Owen v. von Ulster* (1850), 16 L. T. O. S. 194.

4232. ————*]*—The directors of a general trading co., part of whose business was to accept bills of exchange, & whose arts. conferred the most extensive powers of management on the directors, passed a resolution authorising the chairman to accept bills drawn on the co. by L., upon L.'s depositing securities to a certain amount. The chairman accordingly accepted the bills, & L. deposited some securities, but not nearly to the specified amount. The directors by resolution affirmed the transaction, but it did not appear that they knew that the requisite amount of

securities had not been deposited. The bills were entered in the books of the co., & treated as binding on them. On the co. being wound up, a *bonâ fide* holder of some of the bills claimed to prove:—*Held*: the proof ought to be admitted, for that the bills were binding on the co., as they had been accepted *modo et formâ* by the authority of the board of directors, & the provision as to the deposit of securities was a collateral matter, into the observance of which a holder of the bills was not bound to inquire.—*Re LAND CREDIT CO. OF IRELAND, Ex p. OVEREND, GURNEY & Co.* (1869), 4 Ch. App. 460; 39 L. J. Ch. 27; 20 L. T. 641; 17 W. R. 689, L. J. J.

Annotations:—*Consd. & Distd. Premier Industrial Bank v. Carlton Manufacturing Co. & Crabtree*, [1909] 1 K. B. 106. *Appld. Dey v. Pullinger Engineering Co.*, [1921] 1 K. B. 77. *Refd. Re County Palatine Loan & Discount Co., Cartmell's Case* (1874), 9 Ch. App. 691.

——— **Directors acting ultra vires.**—*See AGENCY*, Vol. I., p. 663, No. 2782.

See, also, No. 4236, *post*.

4233. ——— **Promissory note—Signed by directors & secretary.**—In an action against a joint-stock co. upon a promissory note, the declaration stated, that the co. was completely registered; that one P. & one L., then being two of the directors of the co., made their promissory note, & thereby promised, on behalf of the co., to pay to pltf., or his order, £32 4s. 9d., the balance of pltf.'s account due from the co.; which note was then signed by P. & L., & was then made by them, & in their names, & on behalf of the co., & then was & is expressed by them to be made on behalf of the co., & was then countersigned by the secretary of the co.; & thereupon the co., in consideration of the premises, then promised pltf. to pay him the amount of the note according to the tenor & effect thereof:—*Held*: bad on general demurrer.—*THOMPSON v. UNIVERSAL SALVAGE CO.* (1848), 1 Exch. 694; 5 Dow. & L. 380; 17 L. J. Ex. 118; 154 E. R. 295.

4234. ——— **Compliance with company's regulations.**—An instrument issued by a co., completely registered pursuant to 1844 Act, in this form, "Sea, Fire, Life Assurance Co. To the cashier, Thirty days after date credit Mrs. A., or order, with the sum of £311 9s. 6d., claims per 'Susan King,' in cash, on account of this corp'n.," & signed by two of the directors of the co.:—*Held*: to be a promissory note, & binding on the co., notwithstanding it might not have been drawn strictly pursuant to the provisions of the deed of settlement, so as to be binding upon the shareholders.—*ALLEN v. SEA, FIRE & LIFE ASSURANCE CO.* (1850), 9 C. B. 574; 19 L. J. C. P. 305; 15 L. T. O. S. 91; 14 Jur. 870; 137 E. R. 1015.

Annotations:—*Refd. Lindus v. Melrose* (1858), 27 L. J. Ex. 326. *Mentd. R. v. Kay* (1870), L. R. 1 C. C. R. 257.

——— **Banking company.**—*See BANKERS & BANKING*, Vol. III., p. 145, Nos. 158–160.

4235. ——— **Compliance with statutory requirements.**—A bill of exchange, drawn on a completely registered joint-stock co. by its corporate name, was accepted by two of the directors of the co., as follows:—"Accepted J. B. & E. N., Directors of the C. Co. appointed by resolution to accept this bill." The bill was sealed with the corporate seal, having the corporate name of the co. circumscribed, & was countersigned by the secretary. In an action upon the bill against the co.:—*Held*: the bill sufficiently expressed upon the face of it that it was accepted on behalf of the co., within 1844 Act, s. 45, & the co. were liable upon the bill.—*EDWARDS v. CAMERON'S COALBROOK STEAM COAL*

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& SWANSEA & LOUGHOR RY. CO. (1851), 6 Exch. 269; 16 L. T. O. S. 465; 155 E. R. 542.

— — — — —.]—*See, further, AGENCY, Vol. I., pp. 647, 648.*

4236. — Person acting under authority—Director without authority.]—Certain bills of exchange drawn on a limited co. were accepted by one of its directors in the co.'s name, the bills being signed by the director. The co. received no part of the proceeds of the bills nor any consideration for the acceptances, which, although the director had no fraudulent intention, were in fact in fraud of the co. Pltfs. were holders in due course of the bills. Among the objects of the co. as defined by its memorandum were the drawing, making, accepting, indorsing, & discounting of bills & promissory notes, & the directors were authorised to delegate any of their powers to committees consisting of such members of their body as they thought fit. Before the date of the acceptances a resolution had been passed by the directors requiring all bills of exchange to be signed by one director & countersigned by the secretary. In an action against the co. as acceptors to recover the amount of the bills:—*Held*: as the director had no authority in fact to accept the bills of exchange, he was not, in accepting them, "acting under the authority of the co." within 1862 Act, s. 47, & therefore the co. was not liable upon the bills.—**PREMIER INDUSTRIAL BANK, LTD. v. CARLTON MANUFACTURING CO., LTD., & CRABTREE, LTD.,** [1909] 1 K. B. 106; 78 L. J. K. B. 103; 99 L. T. 810; 25 T. L. R. 17; 16 Mans. 22.

Annotation:—Dtd. Dey v. Pullinger Engineering Co., [1921] 1 K. B. 77

See, also, Sect. 28, sub-sect. 5, C. (i), ante; AGENCY, Vol. I., p. 663, No. 2782.

4237. — Managing director.]—The arts. of assocn. of a co. empowered the directors to authorise one of their body as managing director to draw bills of exchange on behalf of the co. The managing director drew a bill on behalf of the co. without having in fact received any authority from the directors to draw bills. In an action on the bill against the co. as drawers:—*Held*: the managing director, in drawing the bill on behalf of the co., was a "person acting under its authority" within 1908 Act, s. 77, & the co. was liable. As by the constitution of the co. the managing director might have been authorised to draw the bill, a person taking the bill in due course was entitled to assume that he had authority in fact.—**DEY v. PULLINGER ENGINEERING CO.,** [1921] 1 K. B. 77; 89 L. J. K. B. 1229; 124 L. T. 534; 37 T. L. R. 10, D. C.

See, further, AGENCY, Vol. I., pp. 309 et seq.; BILLS OF EXCHANGE, PROMISSORY NOTES & NEGOTIABLE INSTRUMENTS, Vol. VI., pp. 96-98.

— **Or signatory.]—***See AGENCY, Vol. I., pp. 643 et seq.*

— **Signature by procuration.]—***See BILLS OF EXCHANGE, PROMISSORY NOTES & NEGOTIABLE INSTRUMENTS, Vol. VI., pp. 109 et seq.*

4238. Signature—Cheque—Regulations of company—Whether directory or mandatory.]—By the deed of settlement of a joint-stock co., all cheques on the bankers were to be signed by three directors:—*Held*: this was directory & not imperative, & therefore, the directors were entitled to be allowed any sums drawn from the bankers by cheques not properly signed, if *bonâ fide* applied for the purposes of the trade.—*Re NORWICH YARN CO., Ex p. BIGNOLD* (1856),

22 Beav. 143; 25 L. J. Ch. 601; 27 L. J. T. O. S. 323; 2 Jur. N. S. 940; 4 W. R. 619; 52 M. R. 1062.

Annotations:—Reid. Re Catholic Publishing & Bookselling Co. (1864), 3 New Rep. 551. Mentd. Darke v. Williamson (1858), 22 J. P. 705; Re Electric Telegraph Co. of Ireland, Troup's Case (1860), 29 Beav. 353; Re Professional Life Assoc. (1867), L. R. 3 Eq. 668.

— — — — —.]—*See, generally, BANKERS & BANKING, Vol. III., pp. 230 et seq.*

4239. — Authority—Whether bank bound to inquire.]—Bankers who have funds of a co., formed under 1862 Act, in their hands may, acting *bonâ fide*, lawfully honour the cheques of the directors of the co., signed according to a form previously sent into the bank, without being bound, previously, to inquire whether the persons pretending to sign as directors have been duly appointed to office, in conformity with the provisions of the memorandum & arts. of assocn.—W., in concert with some friends & dependents of his, started a co. called a mining co. The memorandum & arts. of assocn. were registered. Subscriptions were obtained from persons becoming shareholders, & these subscriptions were paid into a bank, which had been described in the prospectuses of the co. as the bank for the co. The bankers received a formal notice, signed by a person who described himself as the secretary of the co., that they were to pay the cheques signed by "either two of the following three directors," & countersigned by himself, in accordance with a "Resolution passed this day;" & the names of the three persons described as directors, & their signatures, were enclosed with the "Resolution." The bankers from time to time, while the business of the co. appeared to be going on, received cheques signed & countersigned as described, & duly honoured them. When the fund had been almost entirely drawn out, the co. was ordered to be wound up. It then appeared that there never had been a meeting of shareholders, nor any appointment of directors, or of a secretary, but that the persons who had got up the co. had treated themselves as directors & secretary, & appropriated the money obtained from the subscriptions:—*Held*: the official liquidator could not recover from the bankers the amount of the cheques which, under the circumstances disclosed in the case, they had thus *bonâ fide* paid.—**MAHONY v. EAST HOLYFORD MINING CO. (1875),** L. R. 7 H. L. 869; 33 L. T. 383, H. L.

Annotations:—Apld. County of Gloucester Bank v. Rudry Merthyr Steam & House Coal Colliery Co., [1895] 1 Ch. 629. *Consd. Pacific Coast Coal Mines v. Arbuthnot,* [1917] A. C. 607. *Reid. Sharpe v. Brighton & Dyke Ry. (1884),* 1 T. L. R. 28; *Duck v. Tower Galvanizing Co.,* [1901] 2 K. B. 314; *Whitechurch v. Cavanagh,* [1902] A. C. 117; *Ruben v. Great Fingall Consolidated,* [1904] 2 K. B. 712; *Dey v. Pullinger Engineering Co.,* [1921] 1 K. B. 77. *Mentd. Re Staffordshire Gas & Coke Co., Ex p. Nicholson* (1892), 66 L. T. 413; *Tyne Mutual Steamship Insee. Assocn. v. Brown & Partners* (1896), 1 Com. Cas. 345.

4240. — Alteration.]—*Semble*: where a co.'s cheques require the signature of two of the directors & the secretary, a bank which pays one of the co.'s cheques on which an alteration has been initialled by two only of the signatories does so at its peril.—**KEPITIGALLA RUBBER ESTATES, LTD. v. NATIONAL BANK OF INDIA, LTD.,** [1909] 2 K. B. 1010; 78 L. J. K. B. 964; 100 L. T. 516; 25 T. L. R. 402; 53 Sol. Jo. 377; 14 Com. Cas. 116; 16 Mans. 234.

Annotations:—Mentd. Morison v. London County & Westminster Bank (1913), 108 L. T. 379; *Walker v. Manchester & Liverpool District Banking Co. (1913),* 108 L. T. 728; *London Joint Stock Bank v. Macmillan & Arthur,* [1918] A. C. 777.

4241. Liability of signatory—Regulations of com-

pany not complied with—Cheque improperly signed.]—*Re* NORWICH YARN CO., *Ex p.* BIGNOLD, No. 4238, *ante*.

—Whether signatory or company bound.]—*See* AGENCY, Vol. I., pp. 643 *et seq.*

4242. Liability of director—Cheque drawn for lawful purpose—Subsequent misappropriation.]—A director is not liable for misfeasances committed by his co-directors without his knowledge at board meetings at which he is not present; nor is he liable to make good the amount of a cheque, drawn with his sanction for a lawful purpose, which gets into the hands of the wrong person, & the proceeds of which are misappropriated.—*Re* MONTROTIER ASPHALTE CO., PERRY'S CASE (1876), 34 L. T. 716.

—Cheques forged by secretary—Negligence.]—*See* No. 3576, *ante*.

4243. Director party to bill for purposes of company—Loan by member of company to director—Whether credit given to company or director.]—Where a member of a joint-stock co. advanced money to a director of the co. knowing that it was to be applied in taking up a bill of exchange which such director had become a party to, for the purposes of the co., it is a question for the jury whether the member advanced the money on the credit of the co. at large, or on that of the director individually.—COLLEY *v.* SMITH (1838), 4 Bing. N. C. 285; 2 Mood. & R. 96; 5 Scott, 700; 132 E. R. 798.

Annotation:—*Mentd.* Thorpe *v.* Barber (1848), 5 C. B. 675.

Debenture-note—Whether negotiable instrument.]—*See* BILLS OF EXCHANGE, PROMISSORY NOTES & NEGOTIABLE INSTRUMENTS, p. 448, No. 2876.

4244. Deposit note of company—In hands of holder for value without notice—Whether holder takes subject to deliveror's liability for calls.]—WOODHAMS *v.* ANGLO-AUSTRALIAN & UNIVERSAL FAMILY LIFE ASSURANCE CO. (1861), 3 Giff. 238; 5 L. T. 628; 8 Jur. N. S. 148; 10 W. R. 290; 66 E. R. 397.

Effect of winding up—Power of liquidator.]—*See* Sect. 36, sub-sect. 8, C. (e), *post*.

—Joint liquidators.]—*See* Sect. 37, sub-sect. 4, A. (c), *post*.

D. Bills of Sale.

4245. Power to give.]—Deft., the execution creditor, with a judgment against the Glucose Sugar & Colouring Co., seized property of the co. of which a bill of sale had been given to pltf. in payment of machinery supplied by him to them. There was no special clause in the arts. of assocn. empowering them to give bills of sale. The affidavit filed with the bill of sale gave the full registered title of the co. without further specifying the objects of formation. To the bill of sale was affixed the seal of the co. & the names of two directors opposite, & there was evidence that it was the practice for two directors to attest the sealing of any instrument by the co.:—*Held*: (1) the co., as a trading co., had power to give a bill of sale; (2) the title of the co., as registered, contained a sufficient description of the objects of formation; (3) the directors signed, not as attesting witnesses, but in their ordinary way of business.

(4) If a co. give a bill of sale it is unnecessary to mention in the affidavit filed pursuant to 17 & 18 Vict., c. 36, its residence & occupation, & it is not requisite that the directors, who executed it as directors, & not as attesting witnesses, should add descriptions of their residences & occupations.

—SHEARS *v.* JACOB (1866), L. R. 1 C. P. 513; Har. & Ruth. 492; 35 L. J. C. P. 241; 14 L. T. 286; 12 Jur. N. S. 785; 14 W. R. 609.

Annotations:—*As to* (1) *Consd.* G. N. Ry. *v.* Coal Co-op. Soc., [1896] 1 Ch. 187. *Refd.* *Re* Standard Manufacturing Co., *Ex p.* Lowe (1891), 39 W. R. 369. *As to* (3) *Fold.* Deffell *v.* White (1886), L. R. 2 C. P. 144.

4246. Execution.]—SHEARS *v.* JACOB, No. 4245, *ante*.

4247. —.]—A co. gave a bill of sale of all its property to trustees for certain debenture holders. By a resolution of the directors of the co., it had been provided that the seal of the co. should be affixed to documents only in the presence of two directors, who were to attest it by their signatures. The deed was sealed with the seal of the co., & adjoining the seal were the words: "Seal of the said co., affixed at a board meeting this 23rd day of June, 1865, in the presence of O., Chairman; C., Director. Countersigned—D., Secretary *pro tem.*" There was no other attesting witness. The bill of sale was duly registered, but the affidavit filed with it contained only the address of D., & not that of O. or of C.:—*Held*: the latter were not attesting witnesses, because they did not attest an execution of the deed already completed, their signatures forming part of such execution; & the affidavit was therefore sufficient, & the bill of sale good.—DEFFELL *v.* WHITE (1866), L. R. 2 C. P. 144; 36 L. J. C. P. 25; 15 L. T. 211; 12 Jur. N. S. 902; 15 W. R. 68.

Annotations:—*Refd.* *Re* Standard Manufacturing Co., *Ex p.* Lowe (1891), 39 W. R. 369; G. N. Ry. *v.* Coal Co-op. Soc., [1896] 1 Ch. 187.

4248. Registration—Compliance with statutory requirements.]—SHEARS *v.* JACOB, No. 4245, *ante*.

4249. Application of Bills of Sale Act, 1882 (c. 43).]—Bills of sale given by joint-stock cos. are within the above Act.—*Re* CUNNINGHAM & CO., LTD., ATTENBOROUGH'S CASE (1885), 28 Ch. D. 682; 54 L. J. Ch. 448; 52 L. T. 214; 33 W. R. 387; 1 T. L. R. 227.

Annotations:—*Consd.* G. N. Ry. *v.* Coal Co-op. Soc., [1896] 1 Ch. 187. *Refd.* Dublin City Distillery *v.* Doherty, [1914] A. C. 823. *Mentd.* *Re* Hardwick, *Ex p.* Hubbard (1886), 17 Q. B. D. 690; *Re* Townsend, *Ex p.* Parsons (1886), 16 Q. B. D. 532.

4250. Company a grantee—Description.]—A bill of sale is not in accordance with the statutory form, & is therefore void, if the address & description of the grantee be not inserted in the bill of sale, and it makes no difference in this respect that the grantee is a limited co. registered under the Cos. Acts.—ALTREE *v.* ALTREE, [1898] 2 Q. B. 267; 67 L. J. Q. B. 882; 78 L. T. 794; 47 W. R. 60; 14 T. L. R. 460; 42 Sol. Jo. 573; 5 Mans. 235.

See, generally, BILLS OF SALE, Vol. VII., pp. 3 *et seq.*

SUB-SECT. 6.—NOTICE.

A. Notice to Company.

(a) Knowledge of Directors.

4251. General rule.]—SOCIÉTÉ GÉNÉRALE DE PARIS *v.* TRAMWAYS UNION CO., No. 4264, *post*.

4252. Acquired in course of business—Verbal notice—No entry in company's books.]—A verbal notice to an insurance co. of the assignment of a policy of insurance is sufficient to give priority over subsequent assignees. Where verbal notice was given by the assignor of a policy to the resident director of the co. as such:—*Held*: the priorities of the parties were not affected by the fact of his having made no entry of it in the books, or any communication respecting the notice to the

Sect. 31.—Powers and liabilities of company: Subsect. 6, A. (a), (b), (c) & (d).]

co.—NORTH BRITISH INSURANCE CO. v. HALLETT (1861), 7 Jur. N. S. 1263; 9 W. R. 880.

Annotation:—Refd. Re Worcester, Ex p. Agra Bank (1868), 3 Ch. App. 555.

4253. ————.]—A shareholder in a joint-stock co. made an assignment of certain paid-up shares by way of mtge. The assignee gave no notice to the co. The assignor had also unpaid shares in the same co., & in the course of discussions at the board of directors respecting the unpaid shares the assignor verbally informed the directors of the assignment of his paid-up shares; but no entry was made on the minutes of this notice. The assignor afterwards became bkpt. :—*Held*: inasmuch as the directors received the information in the course of the transaction of the business of the co., the notice was sufficient to make the assignment complete in equity; & the shares did not remain in the order & disposition of the bkpt.—*Re WORCESTER, Ex p. AGRA BANK (1868), 3 Ch. App. 555; 37 L. J. Bcy. 23; 18 L. T. 866; 16 W. R. 879, L. JJ.*

Annotations:—Apld. Alletson v. Chichester & Wake (1875), 44 L. J. C. P. 153. Consd. Soc. Générale de Paris v. Tramways Union Co. (1884), 14 Q. B. D. 424. Refd. Bradford Banking Co. v. Briggs (1886), 12 App. Cas. 29. Mentd. Colonial Bank v. Whinney (1886), 11 App. Cas. 426.

4254. ——— Managing director.]—Notice to a managing director in that character, affecting the business of the co. under his management, is notice to the co. itself, for, in the absence of any provision to the contrary of the arts. of assocn. of the co. or any other contract, it would be the duty of the managing director to communicate that notice to the proper authority, whether it be the board of directors or the co. in general meeting (KEKEWICH, J.).—*JAEGER'S SANITARY WOOLLEN SYSTEM CO., LTD. v. WALKER & SONS (1897), 77 L. T. 180; 41 Sol. Jo. 695, C. A.*

4255. Knowledge acquired in private capacity.]—*PERUVIAN RYS. CO. v. THAMES & MERSEY MARINE INSURANCE CO., Re PERUVIAN RYS. CO., No. 4228, ante.*

4256. ———.]—K., who was a director of co. A. & was also interested in co. B., having ascertained in his private capacity that co. B. proposed to borrow a sum of money for a purpose outside the scope of its business, induced co. A. to advance the money to co. B. on the security of a debenture of that co., & the money was applied by co. B. in the manner proposed. Co. B. had a general power of borrowing under its memorandum & arts. of assocn. for the purposes of its business. No other director of co. A. except K. knew how the money was intended to be applied :—*Held*: K.'s knowledge ought not to be imputed to co. A. inasmuch as K. owed no duty to that co. either to receive or to disclose information as to how the borrowed money was to be applied.—*Re PAYNE (DAVID) & CO., LTD., YOUNG v. PAYNE (DAVID) & CO., LTD., [1904] 2 Ch. 608; 73 L. J. Ch. 849; 91 L. T. 777; 20 T. L. R. 590; 48 Sol. Jo. 572; 11 Mans. 437, C. A.*

Annotations:—Refd. Rainford v. Keith & Blackman Co. (1905), 74 L. J. Ch. 531; Sun Bldg. Soc. v. Western Suburban & Harrow Road Bldg. Soc., [1920] 2 Ch. 144.

See, also, No. 4261, post.

4257. Knowledge of director-promoter—Contract adopted by company—Statement in pro-

spectus.]—A co. was formed to carry out an agreement for the purchase of certain property made by the vendors, the promoters of the co., with a trustee for the co. The arts. provided that the agreement was ratified & binding, & the directors were required to carry it into effect. The directors adopted the contract. The agreement contained a clause providing that it was not to be impeached, on the ground that the vendors as promoters or otherwise were in a fiduciary relation to the co.; & that the vendors were not to be required to account for any profit made by them in buying up certain charges on the property to be bought by the co., & which were to be satisfied out of the purchase-money to be paid by the co. The prospectus, which was issued to the public, referred to the agreement, but not specifically to the subject-matter of the above clause, though it referred to the fact that the vendors were selling at an advanced price on what they gave, & stated that any other profits made from interim investments were excluded from the sale. The four directors of the co. were all promoters & trustees of the syndicate, who were the vendors to the co. :—

Held: knowledge of the subject-matter of the above clause could not be imputed to the co.; & the adoption of the contract by the directors did not, under the circumstances, make it binding on the co., who could recover from the directors & promoters the profit they had made in buying up the charges on the property sold to the co.—*Re OLYMPIA, LTD., [1898] 2 Ch. 153; 67 L. J. Ch. 433; 14 T. L. R. 451; 5 Mans. 139; sub nom. Re OLYMPIA, LTD., Ex p. GLUCKSTEIN, 78 L. T. 629; 42 Sol. Jo. 290; affd. sub nom. GLUCKSTEIN v. BARNES, [1900] A. C. 240, H. L.*

Annotations:—Distd. Re Lady Forrest (Murchison) Gold Mine, [1901] 1 Ch. 582. Consd. Re Darby, Ex p. Brougham, [1911] 1 K. B. 95; Re Jubilee Cotton Mills, [1922] 1 Ch. 100. Refd. Re Leeds & Hanley Theatres of Varieties (1902) 72 L. J. Ch. 1; Watts v. Bucknall (1903), 88 L. T. 845; Omnium Electric Palaces v. Baines, [1914] 1 Ch. 332. Mentd. Re Haycraft Gold Reduction & Mining Co., [1900] 2 Ch. 230.

4258. Director personally guilty of fraud—Whether company affected with notice of fraud—Director & local manager of bank.]—Knowledge of a particular fact relating to the accounts by one director of a banking co., is not notice to the co., where that director had no voice in the management of the accounts, & the money transactions of the co. were conducted exclusively by a manager under three directors, of whom the director possessing the knowledge was not one.

W. fraudulently obtained possession of acceptances of C., & he got them discounted, & carried to his account by a banking co. to whom he was greatly indebted, & of which he was a director & local manager :—*Held*: under the circumstances, the bank had notice, & could not be considered *bona fide* owners.—*Re CAREW'S ESTATE ACT (No. 2) (1862), 31 Beav. 39; 54 E. R. 1051.*

Annotation:—Refd. Greenwell v. National Provincial Bank (1883), Cab. & Fl. 56.

4259. ——— Sole director.]—P. having money at his banking account belonging to O., purchased with it & other money of his own standing to the same account, some overdue bills. Very shortly afterwards he sold them at an advanced price to the E. co., of which he was the sole director, & he paid himself the price out of the assets of the E.

PART III. SECT. 31, SUB-SECT. 6.—
A. (a).

4254 i. Acquired in course of business—Managing director.]—Notice to the managing director of a co. is notice to the co.—*NORTHERN CREAMERIES,*

LTD. v. ROSSINGTON PRODUCE CO., [1922] 1 W. W. R. 1150; 66 D. L. R. 548; 17 Alta. L. R. 478.—CAN.

h. ———.]—Notice to a director may be sufficient notice to the co.—*BANK OF IRELAND v. COGRI SPINNING CO., LTD., [1900] 1 L. R. 219.—IR.*

4255 i. Knowledge acquired in private capacity.]—The private knowledge of one or two directors, the full number being at least six :—*Held*: not to be knowledge of the co.—*LAZARUS & JACKSON v. WESSELS, [1903] T. S. 499.—S. AF.*

co.:—*Held*: the E. co. was not affected by constructive notice of the fraud committed by P.—*Re EUROPEAN BANK, Ex p. ORIENTAL COMMERCIAL BANK* (1870), 5 Ch. App. 358; 39 L. J. Ch. 588; 22 L. T. 422; 18 W. R. 474, L. J.

Annotations:—*Consd. Re Marseilles Extension Ry. & Land Co., Ex p. Credit Foncier & Mobilier of England* (1871), 25 L. T. 858. *Refd. Waldy v. Gray* (1875), 44 L. J. Ch. 394.

4260. Director personally guilty of misfeasance—Presumption of concealment.—An application was made in the winding up of a co. seeking to recover from a director the value of shares allotted to him under circumstances which amounted to a misfeasance. It appeared that the transaction in question had been disclosed at a board meeting of the directors in 1873, but that two of the three directors then present had taken part in the transaction in question, & the third had received shares under a similar arrangement:—*Held*: disclosure to the directors could not, under these circumstances, be considered disclosure to the co., as it was certain that the directors in question would not inform the shareholders of the transaction, & therefore, the claim was not barred by Stat. Limitations.—*Re FITZROY BESSEMER STEEL CO.* (1885), 33 W. R. 312, L. J.

Annotation:—*Refd. Ladywell Mining Co. v. Brookes; Ladywell Mining Co. v. Huggons* (1886), 55 L. T. 284.

4261. Banking company—Director not taking active part in management.—C. was a director of a banking co. & a member of a trading firm of A. Co. Although a director, C. had nothing to do with the actual management of the accounts of the bank, which were under the management of three managing directors. A. having retired from the firm of A. & Co.:—*Held*: C.'s knowledge of this fact was not constructive notice to the banking co.—*POWLES v. PAGE* (1846), 3 C. B. 16; 15 L. J. C. P. 217; 7 L. T. O. S. 257; 10 Jur. 526; 136 E. R. 7.

Annotations:—*Consd. Re Carew's Estate Act* (No. 2) (1862), 31 Beav. 39. *Refd. Swift v. Winterbotham* (1873), L. R. 8 Q. B. 244. *Mentd. Re Fenwick, Ex p. Brown* (1849), 13 L. T. O. S. 468.

4262. ———.—*Re CAREW'S ESTATE ACT* (No. 2), No. 4258, *ante*.

Director common to two companies.—*See* No. 4269, *post*.

(b) *Knowledge of Secretary.*

4263. Acquired in course of business—Verbal notice.—In 1845 R. effected a policy for £1,000 upon his life, & assigned it by way of mtge. to G. In 1858, W., who was G.'s attorney, went to the office to pay a premium & to confer with the secretary upon other business connected with the office, & then informed him of the assignment. In 1862 R. became a bkpt., & he died in 1871. After the death of R. the office for the first time had notice of his bkpcy. Upon a special case, the ct. to draw inferences of fact:—*Held*: the conversation between W. & the secretary in 1858 was a sufficient notice to the office that the policy had been assigned & was not in the order & disposition of R., the statute requiring such notices to be in writing not being at that time in existence.—*ALLETSON v. CHICHESTER* (1875), L. R. 10 C. P. 319; 44 L. J. C. P. 153; 32 L. T. 151; 23 W. R. 393.

4264. Not acquired in course of business—Casually as an individual.—In order that a notice to a co. may be effectual, either it must be given

to the co. itself through its proper officers, or it must be received by the co. in the course of the transaction of its business. Casual knowledge, acquired by the secretary as an individual & not whilst he is engaged in transacting the business of the co., cannot be deemed notice to the co.—*SOCIÉTÉ GÉNÉRALE DE PARIS v. TRAMWAYS UNION CO.* (1884), 14 Q. B. D. 424; 54 L. J. Q. B. 177; 52 L. T. 912; 1 Cab. & El. 296, C. A.; *affd. sub nom. SOCIÉTÉ GÉNÉRALE DE PARIS v. WALKER* (1885), 11 App. Cas. 20, H. L.

Annotations:—*Refd. Bradford Banking Co. v. Briggs* (1886), 12 App. Cas. 29; *Rainford v. Keith & Blackman Co.*, [1905] 1 Ch. 296; *Re Seymour, Fielding v. Seymour*, [1913] 1 Ch. 475; *Wells v. Smith*, [1914] 3 K. B. 722; *Mackereth v. Wigan Coal & Iron Co.*, [1916] 2 Ch. 293. *Mentd. Colonial Bank v. Whinney* (1886), 11 App. Cas. 426; *Colonial Bank v. Hepworth* (1887), 36 Ch. D. 36; *Magnus v. Queensland National Bank* (1887), 36 Ch. D. 25; *Nanney v. Morgan* (1887), 35 Ch. D. 598; *Roots v. Williamson* (1888), 38 Ch. D. 485; *Williams v. Colonial Bank, Williams v. London Chartered Bank of Australia* (1888), 38 Ch. D. 388; *Re Cawley* (1889), 42 Ch. D. 209; *Moore v. North Western Bank*, [1891] 2 Ch. 599; *Balkis Consolidated Co. v. Tomkinson*, [1893] A. C. 396; *Re Ottos Kopje Diamond Mines*, [1893] 1 Ch. 618; *Powell v. London & Provincial Bank*, [1893] 1 Ch. 610; *Ireland v. Hart*, [1902] 1 Ch. 522; *Burgis v. Constantine*, [1908] 2 K. B. 484.

Secretary common to two companies.—*See* Nos. 4267, 4272, *post*.

(c) *Knowledge of Agents.*

4265. Knowledge acquired while transacting business of company—Authorised by company to receive notice.—D. having agreed to lend £1,000 to W., upon a policy of insurance on his life, gave directions for effecting it to his attorney, L., who was agent of the W. Insurance Co. L. accordingly transmitted proposals for a policy to the head office, without mentioning that D. was the beneficial owner, & obtained it therefrom, & delivered it to D. L. was authorised by the co. to receive notices of assignments of policies on their behalf. W. became bankrupt:—*Held*: there was sufficient notice to take the policy out of the order & disposition of W., & to give the assignment validity as against his assignees, inasmuch as notice to L. was notice to the co., & notice communicated to him in his character of attorney to D., for the purpose of being transmitted to the co., was effectual as a notice to him in his capacity as agent to the co.—*GALE v. LEWIS* (1846), 9 Q. B. 730; 16 L. J. Q. B. 119; 8 L. T. O. S. 158; 11 Jur. 730; 115 E. R. 1455.

Annotations:—*Appld. Alletson v. Chichester* (1875), L. R. 10 C. P. 319. *Distd. Re Hampshire Land Co.*, [1896] 2 Ch. 743.

4266. ——— Company dealing with own shares.—*RAINFORD v. KEITH (JAMES) & BLACKMAN CO., LTD.*, No. 4062, *ante*.

(d) *Knowledge of Officer Common to Two Companies.*

4267. General rule—Whether duty to communicate.—Where one person is an officer of two cos. his personal knowledge is not necessarily the knowledge of both the cos. The knowledge which he has acquired as officer of one co. will not be imputed to the other co. unless he has some duty imposed on him to communicate his knowledge to the co. sought to be affected by the notice, & some duty imposed on him by that co. to receive the notice; & if the common officer has been guilty of fraud, or even irregularity, the

PART III. SECT. 31, SUB-SECT. 6.—
A. (c).

k. *Knowledge acquired while transacting business of company.*—The general agents doing business in

Canada of a foreign co. must be regarded in the same light as the co. themselves, & the knowledge & information brought home to the general agents in Canada must be regarded in

the same light as if it was possessed by & brought home to the head office in the foreign country.—*CAMPBELL v. NATIONAL LIFE INSURANCE CO.* (1874), 24 C. P. 133.—CAN.

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ct. will not draw the inference that he has fulfilled these duties.

The directors of a co. were empowered to borrow money on its behalf, but not beyond a certain limit without the consent of a general meeting. A general meeting gave the required consent, but the notices summoning the meeting did not, as required by the regulations of the co., specify that borrowing beyond the limit was to be authorised by the meeting. The money was borrowed from a society the secretary of which was also the secretary of the co., & he knew of the irregularity:—*Held*: the knowledge of the secretary could not be imputed to the society, & the money lent could not be proved for in the winding up of the co.—*Re HAMPSHIRE LAND CO.*, [1896] 2 Ch. 743; 75 L. T. 181; 45 W. R. 136; 12 T. L. R. 517; 40 Sol. Jo. 654; 3 Mans. 269; *sub nom. Re HAMPSHIRE LAND CO., LTD., Ex p. PORTSEA ISLAND BUILDING SOCIETY*, 65 L. J. Ch. 860.

Annotation:—*Folld. Re Payne, Young v. Payne*, [1904] 2 Ch. 608. *Refd. Rainford v. Keith & Blackman Co.* (1905), 74 L. J. Ch. 531.

See, also, No. 4272, *post*.

4268. Director—Loan by company without power to lend—By company without power to borrow.]—Two railway cos. had the same boards of directors, except that one had two additional; but the finance committee of each was composed of the same persons. Both cos. were, in 1849, ordered to be wound up, E. being appointed official manager of one, & C. official manager of the other co. In 1845 the E. co., though it had no power to lend, transferred from its funds to the C. co., which had no power to borrow, a large sum of money, to enable the latter co. to purchase a canal. £10,000, part of this money, was handed over to the Canal Co. A shareholder in the C. co. filed a bill in 1850, & in that suit the decree made in 1853 directed the £10,000 to be repaid to the C. co., & the greater part was repaid accordingly. E. now instituted a suit against C. for the recovery of the balance of the money so lent in 1845:—*Held*: the loan of the money was a breach of trust, of which the borrowing co. was cognisant, & the money paid back by the Canal Co. was still affected with the original trust, & the balance still due must be refunded, with interest at £4 per cent. from the time when the advance to the Canal Co. was recovered.—*ERNEST v. CROYSBILL* (1860), 2 De G. F. & J. 175; 29 L. J. Ch. 580; 2 L. T. 616; 6 Jur. N. S. 740; 8 W. R. 736; 45 E. R. 589, L. J.

Annotations:—*Refd. Hardy v. Metropolitan Land & Finance Co.* (1872), 41 L. J. Ch. 257. *Mentd. Ernest v. Weiss* (1862), 2 Drew. & Sm. 561; *Re Eyre-Williams, Williams v. Williams* (1923), 129 L. T. 218.

4269. —Negotiating transaction between both companies.]—The M. Co. being in want of money for a particular purpose, having large borrowing powers, applied to the C. co. for a loan. The negotiations for the loan were conducted by a director of the M. co., who was also director of the C. co. The object for which the loan was required by the M. co. was not fully disclosed by the negotiating director to the board of the C. co. It was alleged that this object was an illegal one:—*Held*: even if the object of the loan was an improper one, still the C. co. were not affected by notice of the impropriety, & a claim by the C. co. in the winding-up of the M. co. founded upon the loan, was allowed.—*Re MARSEILLES EXTENSION RY. CO., Ex p. CRÉDIT FONCIER & MOBILIER OF*

ENGLAND (1871), 7 Ch. App. 161; 41 L. J. Ch. 345; 25 L. T. 858; 20 W. R. 254, L. J.

Annotations:—*Consd. Re Hampshire Land Co.*, [1896] 2 Ch. 743. *Folld. Re Payne, Young v. Payne*, [1904] 2 Ch. 608. *Refd. Hardy v. Metropolitan Land & Finance Co.* (1872), 26 L. T. 407; *Panama & South Pacific Telegraph Co. v. India Rubber, Gutta Percha, & Telegraph Works Co.* (1875), 10 Ch. App. 520, n.; *Kenny's Patent Button-Holeing Co. v. Somervell & Lutwyche* (1878), 38 L. T. 878.

4270. —Knowledge acquired in private capacity—Borrowing for improper purpose.]—*Re PAYNE (DAVID) & CO., LTD., YOUNG v. PAYNE (DAVID) & CO., LTD.*, No. 4628, *post*.

See, also, No. 4261, *ante*.

4271. Secretary.]—*Re HAMPSHIRE LAND CO.*, No. 4267, *ante*.

4272. —Where a man acts as secretary of two cos., it is not true as a general proposition that a fact which comes to his knowledge as secretary of one co. is notice to him as secretary of the other co. from the mere existence of the common relationship. In order to make it notice, it must be shown that it was his duty to the first co. to communicate his knowledge to the second co.—*Re FENWICK, STOBART & CO., LTD., DEEP SEA FISHERY CO.'S (LTD.) CLAIM*, [1902] 1 Ch. 507; 71 L. J. Ch. 321; 86 L. T. 193; 9 Mans. 205.

(e) *Service of Notice on Clerk.*

4273. In charge in absence of secretary—Authority—Company affected.]—In the absence of evidence to the contrary, the ct. will infer that a clerk in the registered office of a co. is, during business hours, & whilst the secretary is absent, so far in charge of the office that he has authority to receive a notice, so as to make it a communication to the co.—*Re BREWERY ASSETS CORPN., TRUMAN'S CASE*, [1894] 3 Ch. 272; 63 L. J. Ch. 635; 71 L. T. 328; 43 W. R. 73; 38 Sol. Jo. 602; 1 Mans. 350; 8 R. 508.

4274. Former clerk to company.]—*R. v. DARTMOUTH FLOATING BRIDGE CO.* (1856), 26 L. T. O. S. 200; 20 J. P. Jo. 36.

(f) *Notice of Trust.*

See Sect. 12, sub-sect. 5, B. (d), ante.

B. Notice by a Company.

4275. Effect on provision in articles—Application—To legal proceedings.]—A clause in the arts. of assocn. of a joint-stock co. providing that notices may be served on members by leaving the same at their registered place of abode, will not extend to legal proceedings, & an order for substituted service of a debtor summons at such address, that not being his last known place of abode, is bad.—*Re STUDER, Ex p. CHATTERIS* (1875), 10 Ch. App. 227; 44 L. J. Bcy. 90; 32 L. T. 290; 23 W. R. 760, L. J.

4276. —Where the arts. of a co. contain provisions with respect to the service of notices similar to those contained in 1862 Act, Table A, arts. 95, 97, those provisions refer only to notices relating to the ordinary business of the co. Where, therefore, a notice was sent by the directors of a co. governed by such arts. informing the shareholders that the directors had discovered that the prospectus which they had issued contained a serious misrepresentation, & evidence of actual notice to a particular shareholder was wanting:—*Held*: the arts. as to notice did not apply, & the shareholder in question was not deprived of his rights arising from the misrepresentation by reason of some time having elapsed, after the notice was sent, before he applied to enforce those rights.—*Re LONDON & STAFFORDSHIRE FIRE INSURANCE CO.* (1883), 24 Ch. D. 149;

31 W. R. 781; *sub nom. Re LONDON & STAFFORDSHIRE FIRE INSURANCE CO., WALLACE'S CASE*, 53 L. J. Ch. 78; 48 L. T. 955.

Annotation:—Reid. Re Metropolitan Coal Consumers' Assn., Karberg's Case, [1892] 3 Ch. 1.

Notice of offer of shares.]—See No. 832, ante.

Notice of allotment.]—See Sect. 17, sub-sect. 3, E., ante.

Notice of call.]—See Sect. 21, sub-sect. 3, ante.

Notice of intention to forfeit shares.]—See Nos. 2145, 2754, 2755, ante.

Compare Nos. 8500, 8615, post.

Notice of meetings—Shareholders' meeting.]—See Sect. 30, sub-sect. 3, ante.

For election of directors.]—See Nos. 2853, 2854, ante.

Directors' meetings.]—See Sect. 28, sub-sect. 7, B., ante.

Debenture-holders' meetings.]—See Sect. 34, sub-sect. 3, post.

The share certificate as notice.]—See Sect. 18, sub-sect. 4, ante.

SUB-SECT. 7.—TORTS.

A. Liability of Company.

See, generally, CORPORATIONS, Vol. XIII., pp. 398 et seq.

4277. Malicious prosecution—Whether action lies.]—An action for a malicious prosecution will lie against a co.—KEMP v. COURAGE & Co., LTD., CROFT v. COURAGE & Co., LTD. (1890), 7 T. L. R. 50; *sub nom. KENT v. COURAGE & Co., LTD., CROFT v. COURAGE & Co., LTD.*, 55 J. P. 264.

Annotation:—Folld. Cornford v. Carlton Bank, [1899] 1 Q. B. 392.

4278. Libel—Whether action lies—Publication in furtherance of company's objects.]—On the trial of an action for libel against an incorporated co. in respect of a statement contained in a circular composed by the secretary of the co. & sent by him to certain of their customers, the judge having ruled that the occasion was privileged, the jury found that the statement complained of was in excess of the privilege, but did not find actual malice on the part of deft.'s secretary:—*Held*: (1) the occasion being privileged, in the absence of a finding of actual malice the defence of privilege was not rebutted, & there appearing on the facts of the case to be no evidence of actual malice in the publication of the statement complained of, the action was not maintainable.

(2) It is clear that an incorporated co. is liable to an action for a libel contained in a writing the publication of which is authorised by the co., & which is in furtherance of the objects & business for which the co. was incorporated (POLLOCK, B.).—NEVILL v. FINE ARTS & GENERAL INSURANCE Co., [1895] 2 Q. B. 156; 64 L. J. Q. B. 681; 72 L. T. 525; 59 J. P. 371; 11 T. L. R. 332; 14 R. 587, C. A.; *affd.*, [1897] A. C. 68.

Annotations:—As to (1) Folld. Adam v. Ward, [1917] A. C. 309. *Reid. Mapey v. Baker* (1909), 73 J. P. 289. *As to (2) Reid. Cornford v. Carlton Bank*, [1899] 1 Q. B. 392. *Generally, Mentd. British Empire Typesetting Machine Co. of New York v. Linotype Co.* (1898), 79 L. T. 8; *Stollery v. Maskelyne* (1898), 15 T. L. R. 79; *Dauncey v.*

Holloway (1901), 84 L. T. 649; *Floyd v. Gibson* (1909), 100 L. T. 761; *Banbury v. Bank of Montreal*, [1918] A. C. 626; *Ware & De Freville v. Motor Trade Assn.*, [1921] 3 K. B. 40; *Yorkshire Insce. v. Craine* (1922), 128 L. T. 77.

Publication by agent.]—See No. 4143, ante.

See, further, CORPORATIONS, Vol. XIII., p. 403, Nos. 1244, 1245.

4279. Whether publication privileged—Statement at board meeting.]—A director of a co. having learned, in his capacity of director of another co., that pltf. had been dismissed from the office of secretary of the co., on the ground of gross misconduct, stated this at the board of the first-mentioned co., & in answer to a question from the chair, said that the charges were for obtaining money under false pretences, & for giving an I.O.U. for a petty cash debt. At a subsequent meeting, held for the purpose of investigating the conduct of pltf., he refused, in the presence of pltf. & his attorney, to state the charges against him. An action had been commenced against the other co., of which he was a director, by pltf.:—*Held*: the communication was privileged.—HARRIS v. THOMPSON (1852), 13 C. B. 333; 20 L. T. O. S. 99; 138 E. R. 1228.

Annotation:—Apprvd. Laughton v. Sodor & Man Bp. (1872), L. R. 4 P. C. 495.

4280. Reports by auditors—Circulated to shareholders.]—Pltf. was employed as manager of the factories of a joint-stock co. & the auditors of the co. in auditing pltf.'s accounts appended to their report the following statement: "The shareholders will observe that there is a charge of £1,306 for deficiency of stock, which the manager is responsible for. His accounts have been badly kept & have been rendered to us very irregularly." The directors submitted their own report, together with that of the auditors to the ordinary general meeting of the shareholders of the co., according to the usual practice, & it was resolved by the meeting that the reports should be printed & sent to the shareholders. The reports, including the above statement, were accordingly sent to a printer, printed & circulated among the shareholders & used at an adjourned meeting of the shareholders. Pltf. having brought an action for libel against the co.:—*Held*: as it was the duty of the directors to communicate the report of the auditors to the shareholders & it was for the interest of all the shareholders to be informed of the report, the printing & publication of the reports were *prima facie* privileged.—LAWLESS v. ANGLO-EGYPTIAN COTTON & OIL Co. (1869), L. R. 4 Q. B. 262; 10 B. & S. 226; 38 L. J. Q. B. 129; 33 J. P. 693; 17 W. R. 498.

Annotations:—Apld. Edmondson v. Birch & Horner, [1907] 1 K. B. 371. *Reid. Henwood v. Harrison* (1872), L. R. 7 C. P. 606.

4281. Statement at meeting of shareholders—Reported in newspaper.]—PONSFORD v. "FINANCIAL TIMES," LTD. & HART (1900), 16 T. L. R. 248.

4282. Publication to clerk—Letter dictated by manager to shorthand clerk.]—The manager of a limited co. dictated a letter to a

PART III. SECT. 31, SUB-SECT. 7.—A.

1. Libel—Whether statement privileged—Instructions to agents.]—An assocn. of sawmillers had some dispute with one of its members with regard to its account with such member, & issued the following circular to the other members of the assocn: "There is a matter in dispute between G. & Co. & the assocn. with regard to their account, & until this is settled we are not prepared to sanction any further

supplies to this firm. We ask you to decline any further orders for this firm until you are advised by us that the dispute has been settled." The said firm alleged that the issue of the above circular had injured their trade reputation, & claimed £1,000:—*Held*: issue of the circular was not actionable being only a direction from assocn. to its agents not to do any business on behalf of assocn. with G. & Co.—GOLDFINCH & Co. v. RANGITIKER

SAWMILLERS' CO-OPERATIVE ASSOCN., LTD. (1914), 33 N. Z. L. R. 666.—N.Z.

m. Tort of predecessor in title.]—A co. is not liable for the tort of its predecessor in title unless it adopts it.—CENTRE STAR MINING Co., LTD. v. ROSSLAND-KOOTENAY MINING Co. LTD. (1905), 2 M. M. Cas. 232.—CAN.

n. Negligence of manager.]—If a mtge. co. through their manager

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shorthand clerk, who typewrote it & handed it to another clerk, who press-copied it. It was then sent by post addressed to the firm of which the person to whom it was written was a member, & opened & read by the clerks of the firm. In an action for libel:—*Held*: assuming the letter to be defamatory, there was publication both to the clerks of deft. co., & to the clerks of pltf., & notwithstanding that a co. can only act by agents, the occasion of the communication to the clerks of the co. was not privileged.—**PULLMAN v. HILL & Co.**, [1891] 1 Q. B. 524; 60 L. J. Q. B. 299; 64 L. T. 691; 39 W. R. 263; 7 T. L. R. 173, C. A.

Annotations:—**Consd.** *Stuart v. Bell*, [1891] 2 Q. B. 341. **Distd.** *Boxsius v. Goblet*, [1894] 1 Q. B. 842; *Edmondson v. Birch & Horner*, [1907] 1 K. B. 371; *Roff v. British & French Chemical Manufacturing Co. & Gibson*, [1918] 2 K. B. 677. **Refd.** *Sharp v. Skues* (1909), 25 T. L. R. 336.

4283. ————.]—Where a business communication containing defamatory statements concerning pltf. was made by defts., a co., to another co., on a privileged occasion, & for the purpose of, & incidentally to, the making of the communication, the defamatory statements were, in the reasonable & ordinary course of business, published to clerks of deft. co.:—*Held*: the privileged occasion covered such a publication of those statements, which was therefore not actionable.—**EDMONDSON v. BIRCH & Co., LTD. & HORNER**, [1907] 1 K. B. 371; 76 L. J. K. B. 346; 96 L. T. 415; 23 T. L. R. 234; 51 Sol. Jo. 207, C. A.

Annotation:—**Folld.** *Roff v. British & French Chemical Manufacturing Co. & Gibson*, [1918] 2 K. B. 677.

—————.]—*See, further*, **LIBEL & SLANDER**.

4284. ————.]—Letter to customers in relation to conduct of business—Loss of privilege.]—**NEVILL v. FINE ARTS & GENERAL INSURANCE CO.**, No. 4278, *ante*.

—————.]—Official reports in winding up.]—*See* Nos. 5885, 5890, *post*.

See, generally, **LIBEL & SLANDER**.

Misrepresentation in prospectus.]—*See* Sect. 8, sub-sect. 3, *ante*.

—————.]—Liability of directors, promoters, etc.]—*See* Sect. 8, sub-sect. 3, D., *ante*.

Liability for acts of agents.]—*See, generally*, Sub-sect. 4, B., *ante*.

—————.]—Misrepresentation by directors—Inducing purchase of shares.]—*See* Sect. 17, sub-sect. 1, G. (c), *ante*.

B. Rights of Company.

4285. Libel—Whether action lies—Against shareholder.]—A joint-stock co., registered under 1856 Act, can maintain an action for libel against one of its shareholders. Therefore, to a declaration for libel by a co., a plea that deft. is a shareholder in the co. is no answer to the action.—**METROPOLITAN SALOON OMNIBUS CO. v. HAWKINS** (1859), 4 H. & N. 87; 28 L. J. Ex. 201; 32 L. T. O. S. 283; 5 Jur. N. S. 226; 7 W. R. 265.

Annotations:—**Consd.** *South Hetton Coal Co. v. North-Eastern News Assocn.*, [1894] 1 Q. B. 133; *Willmott v. London Road Car Co.*, [1910] 2 Ch. 525. **Refd.** *Manchester Corpn. v. Williams*, [1891] 1 Q. B. 94; *Homing Pigeon Publishing Co. v. Racing Pigeon Publishing Co.* (1913), 29 T. L. R. 389.

4286. ————.]—In respect of statements con-

cerning business—Proof of special damage.]—An action of libel will lie at the suit of an incorporated trading co. in respect of a libel calculated to injure its reputation in the way of business without proof of special damage.—**SOUTH HETTON COAL CO. v. NORTH-EASTERN NEWS ASSOCN.**, [1894] 1 Q. B. 133; 63 L. J. Q. B. 293; 69 L. T. 844; 58 J. P. 196; 42 W. R. 322; 10 T. L. R. 110; 9 R. 240, C. A.

Annotations:—**Consd.** *Willmott v. London Road Car Co.*, [1910] 2 Ch. 525. **Refd.** *Empire Typesetting Machine Co. of New York v. Linotype Co.* (1898), 79 L. T. 8; *Homing Pigeon Publishing Co. v. Racing Pigeon Publishing Co.* (1913), 29 T. L. R. 389. **Mentd.** *Adam v. Ward* (1915), 31 T. L. R. 299; *Pratt v. British Medical Assocn.*, [1919] 1 K. B. 244.

4287. ————.]—Defts. wrote a postcard stating that pltf., being a German firm, would probably be closed down. Pltf. were a limited co. incorporated under 1908 Act, all the directors being British & practically all the shares being held by British subjects residing in England, & were manufacturers of articles used in sports:—*Held*: under the circumstances of the time the statement was defamatory, & pltf., though a limited co., could maintain an action in respect of it, since it was made of them in respect of their business.—**SLAZENGERS, LTD. v. GIBBS (C.) & Co.** (1916), 33 T. L. R. 35.

4288. ————.]—Nature of remedy—Injunction.]—An injunction can be granted to restrain a libel likely to injure a friendly society or joint-stock co. A member of a friendly society issued to persons not members of the society circulars containing inaccurate statements as to the financial condition of the society:—*Held*: such circulars ought to be restrained by injunction.—**HILL v. HART DAVIES** (1882), 21 Ch. D. 798; 51 L. J. Ch. 845; 47 L. T. 82; 31 W. R. 22.

Annotation:—**Consd.** *Liverpool Household Stores Assocn. v. Smith* (1887), 37 Ch. D. 170.

4289. Maliciously presenting winding-up petition—Proof of special damage.]—An action will lie for falsely, maliciously, & without reasonable & probable cause presenting a petition to wind up a co., without proof that special damage has been sustained.—**QUARTZ HILL GOLD MINING CO. v. EYRE** (1883), 11 Q. B. D. 674; 52 L. J. Q. B. 488; 49 L. T. 249; 31 W. R. 668, C. A.; *subsequent proceedings* (1884), 50 L. T. 274, D. C.

Annotations:—**Refd.** *Allen v. Flood*, [1898] A. C. 1; *Wyatt v. Palmer*, [1899] 2 Q. B. 106. **Mentd.** *Wiffen v. Bailey & Romford U. C.*, [1915] 1 K. B. 600.

SUB-SECT. 8.—CRIMES AND OFFENCES.

Criminal liability.]—*See, generally*, **CORPORATIONS**, Vol. XIII., pp. 408 *et seq.*

Offences under Companies Acts—Default in making returns to registrar.]—*See* Sect. 30, sub-sect. 5, *ante*.

—————.]—Failure to file order—Alteration of memorandum.]—*See* No. 4371, *post*.

Offences under other statutes—Whether company liable—As “person.”]—*See* **CORPORATIONS**, Vol. XIII., pp. 351 *et seq.*

—————.]—As “occupier.”]—*See* **CORPORATIONS**, Vol. XIII., p. 353.

—————.]—For acts of agents or servants.]—*See* Sub-sect. 4, *ante*.

undertake with the mtgor. to keep alive an insurance on the mortgaged property, & to take steps towards carrying out such undertaking, but fail to carry it out, they are guilty of such negligence as to render them liable in damages to the mtgor., if ignorant of such failure, for the amount of such insurance in case the property

is burned after the policy lapses.—**CAMPBELL v. CANADIAN CO-OPERATIVE INVESTMENT CO.** (1907), 5 W. L. R. 153; 16 Man. L. R. 464.—**CAN.**

PART III. SECT. 31, SUB-SECT. 7.—B.

4286 i. Libel—Whether action lies—In respect of statements concerning

business—Proof of special damage.]—A co. incorporated for the purpose of publishing a newspaper can maintain an action of libel in respect of a charge of corruption in the conduct of their paper, without alleging special damage.—**JOURNAL PRINTING CO. v. MACLEAN** (1894), 25 O. R. 509.—**CAN.**

4290. — Representation of qualification of officer or servants—Whether company liable.]—A limited co. caused the following notice to be displayed above its premises: "Churchill's Veterinary Sanatorium (Lim.). Dogs & Cats Boarded. James Churchill, M.D., U.S.A., Specialist, Managing Director." James Churchill, the managing director of this co., was not a duly qualified veterinary surgeon within Veterinary Surgeons Act, 1881 (c. 62), s. 17:—*Held*: the notice amounted to a false representation that Churchill was a duly qualified veterinary surgeon, & was contrary, as such, to the above sect. &, accordingly, though no penal action under the sect. could be taken against a limited co., yet an injunction could be granted against them & against Churchill personally, to restrain both from continuing to make this false representation.—*A.-G. v. CHURCHILL'S VETERINARY SANATORIUM, LTD.*, [1910] 2 Ch. 401; 79 L. J. Ch. 741; 103 L. T. 368; 74 J. P. 397; 26 T. L. R. 630.

Annotation:—*Mentd.* Royal College of Veterinary Surgeons v. Kennard (1913), 78 J. P. 1.

4291. — What amounts to—Dentists Acts, 1878 (c. 33), s. 3.]—Application was made for the registration, under 1908 Act, of a co. with the name of "The United Dental Service, Ltd." One of the objects of the co. was "to carry on the practice, profession, or business of practitioners in dentistry in all its branches," which it was intended to carry on by practitioners not registered under Dentists Act, 1878 (c. 33):—*Held*: the use of the proposed name by the co. when carrying on business by unregistered practitioners would not constitute an offence under Dentists Act, 1878 (c. 33), & therefore the object of the co. was not unlawful.—*R. v. REGISTRAR OF COMPANIES, Ex p. BOWEN*, [1914] 3 K. B. 1161; 84 L. J. K. B. 229; 112 L. T. 38; 30 T. L. R. 707, D. C.

See, generally, MEDICINE & PHARMACY.

4292. — Veterinary Surgeons Act, 1881 (c. 62).]—*A.-G. v. CHURCHILL'S VETERINARY SANATORIUM, LTD.*, No. 4290, *ante*.

Contempt of court.]—*See* CONTEMPT OF COURT, ATTACHMENT & COMMITTAL, Vol. XVI., p. 49, Nos. 522, 523.

Liability of manager.]—*See* No. 3609, *ante*.

What constitutes—In winding up.]—*See* No. 6815, *post*.

See, further, CROWN PRACTICE, Vol. XVI., pp. 405, 406, Nos. 2521–2524.

Liability of officers & members—Directors—

Criminal proceedings against.]—*See* Sect. 28, sub-sect. 6, G., *ante*.

Issue of misleading reports & balance-sheets.]—*See* Sect. 28, sub-sect. 6, B. (d), *ante*.

Misrepresentation to secure Stock Exchange quotation.]—*See* Sect. 28, sub-sect. 6, B. (c), *ante*.

Default in making returns to registrar.]—*See* No. 3914, *ante*.

Exercising supreme control—Liability for act of servant.]—*See* No. 3609, *ante*.

Secretary.]—*See* Sect. 29, sub-sect. 2, D., *ante*.

Managers.]—*See* No. 3611, *ante*.

SUB-SECT. 9.—ALTERATION OF OBJECTS.

A. What Alterations may be allowed.

See 1908 Act, s. 9 (1).

4293. Carrying on business more economically or more efficiently—Investment & loan company—Guarantee & finance.]—A petition was presented by a co., under Cos. Acts, 1862 to 1890, asking for the sanction of the ct. to certain proposed alterations in, & additions to, the memorandum of assocn. of the co. resolved on by special resolutions. The co. was registered in May, 1888, with a nominal capital of £2,000,000, but it had not been brought out, nor had it carried on business. It had no creditors nor debenture-holders, & only seven shareholders, viz. the seven subscribers to the original memorandum of assocn., all of whom joined the co. as co-petitioners. The co. had no arts. of assocn. The objects of the co. as contained in its memorandum of assocn. were those of an investment & loan co. It was proposed to add to these the objects of a guarantee & finance co. with increased borrowing powers. The evidence showed that the business of the co. could be more conveniently carried on with less restricted borrowing powers; & that the proposal to give to the co. the additional powers of a guarantee & finance co. would enable the co. to carry on business more efficiently, & attain its purpose by improved means, & also conveniently & advantageously combine other business with its original business:—*Held*: (1) the ct. ought to sanction the proposed alterations; (2) although there had been no advertisements of the petition or application in chambers relating thereto, advertisements would, under the circumstances, be dispensed with, as every one who was properly

PART III. SECT. 31, SUB-SECT. 8.

4291 i. Offences under other statutes—Representation of qualification of officers or servants—Dentists Act, 1878 (c. 33).]—Although the word "person" in sect. 3 of above Act has been held not to include artificial persons, & not to apply to limited co., a limited co. is not at liberty to use the word "dentist" or its synonyms in such a way as to amount to a false representation, calculated to induce the public to believe that the individuals whom it comprises or employs are qualified "dentists," & may be restrained from doing so by injunction at the suit of the A.-G.—*A.-G. (O'DUFFY) v. MYDDLETONS, LTD.*, [1907] 1 I. R. 471.—*IR.*

4291 ii. — Certain persons formed a co., under the Cos. Acts, with the title of A., Surgeon-Dentist, Ltd., to carry on, through competent persons, the business of dentists, or dental surgeons, in the United Kingdom, &, for that purpose, to employ suitable persons, & to purchase, hire, or procure suitable instru-

ments, furniture, & fittings; & they carried on & advertised such business. None of the directors or other persons forming the co. was a qualified dentist, registered under the above Act. In an information by the A.-G., at the relation of the honorary secretary, Irish Branch of the British Dental Assocn., alleging that the co. was formed for the fraudulent purpose of deceiving the public, by falsely representing that the business was carried on by persons registered under the above Act, & for the purpose of injuring & defrauding persons duly registered under that Act, the co., the signatories to the memorandum of assocn., & certain directors named as special defts., not delivering any defence, it being, however, admitted that the co. was in liquidation:—*Held*: the A.-G. suing in the public interest to prevent an admitted fraudulent attempt to evade statutory provisions, was entitled to an injunction.—*A.-G. (O'DUFFY) v. APPLETON*, [1907] 1 I. R. 252.—*IR.*

o. — Pharmacy Act, 1868 (c. 121).]

— A limited co. carried on business as "wholesale chemists, druggists & tea merchants," doing both a wholesale & retail business. None of the shareholders was a duly qualified chemist & druggist under the above Act, 1868, but the dispensing of drugs was done by duly qualified chemists & druggists:—*Held*: the individual shareholders were not liable under sects. 1 & 15 of the Act to be prosecuted for the offence of unlawfully taking & using the name chemists & druggists, & advertising the co. as chemists & druggists.—*BREMIDGE v. GRAY* (1887), 14 R. (Ct. of Sess.) 60; 24 Sc. L. R. 747.—*SCOT.*

PART III. SECT. 31, SUB-SECT. 9.—A.

p. Attaining its main purpose by new or improved means.]—The memorandum of assocn. of a co. registered under Cos. Acts, & promoted for the purpose of managing licensed premises mainly with a view to minimising the evils of the drink traffic, provided that the whole surplus profits of the co., after making provision for deprecia-

Sect. 31.—Powers and liabilities of company: Sub-sect. 9, A.]

interested was before the ct.—*Re EMPIRE TRUST, LTD.* (1891), 64 L. T. 221; 7 T. L. R. 222.

4294. — *Company investing in government stock—Extension of powers of investment.*—The alterations of a co.'s memorandum of assocn. allowable under 1890 (Memorandum of Association) Act, are expressly confined to the definite matters mentioned in sect. 1, sub-sect. 5, of the Act.

A co. whose objects were stated by its memorandum of assocn. to be to invest in the stocks of British, foreign, or colonial govts., & public undertakings guaranteed by such govts., presented a petition under 1890 (Memorandum of Assocn.) Act, for confirmation of a special resolution extending the objects of the co. by giving it power to also invest in stocks of any trust or investment co. The main purpose of the co. was stated to be to make investments in such a way as to spread the same over a number of different securities, & thereby obtain a fairly uniform average of interest; & it was submitted that unless the proposed alteration was confirmed, the co. would be at a disadvantage in competing with other similar cos. The only creditors of the co. were holders of £438,879 debenture-stock of the co., & also depositors to the amount of £78,000. The judge having directed a circular to be sent to ascertain their wishes, £150,000 debenture-holders assented, & £22,690 dissented; £51,000 stated that they were neutral, & the remainder exceeding £215,000 sent no reply. Of the depositors, some £30,000 signified their assent, some £8,000 their dissent, & the remaining £40,000 sent no reply. A debenture-holder for a small amount appeared & opposed the petition:—*Held*: (1) the main purpose of the co. was to invest in govt. stocks, & the proposed extension of its range of investments was not, within sect. 1, sub-sect. 5, "an alteration required to carry on its business more economically or more efficiently, or to attain its main purpose by new or improved means," & the ct. must refuse to confirm the proposed alteration, as not being within the scope of the Act; (2) even assuming that the proposed alteration was within the Act, it was not one which the ct., having the duty imposed on it by the Act of regarding each particular case with care, could do otherwise than refuse to confirm, having regard to the interests of the creditors who dissented & of the minority of the shareholders.—*Re GOVERNMENTS STOCK INVESTMENT CO.*, [1891] 1 Ch. 649; 60 L. J. Ch. 477; 64 L. T. 239; 39 W. R. 375; 7 T. L. R. 353; *subsequent proceedings*, [1892] 1 Ch. 597.

Annotations:—As to (1) *Consd. Re Foreign & Colonial Government Trust Co.*, [1891] 2 Ch. 395; *Re National Boiler Insee.*, [1892] 1 Ch. 306.

4295. — *Power to give security to debenture-stock holders.*—The objects of the Governments Stock Investment co. were stated by its memorandum of assocn. to be to invest in the stocks of British, foreign or colonial govts. & public undertakings guaranteed by such govts. The co. had created a large issue of debenture-stock by means of certificates entitling the holders to be paid a perpetual interest out of the assets of the co. A petition was presented by the co. for

confirmation of a special resolution altering the memorandum of assocn. first, by enabling it to give security to the debenture-stock holders; & secondly, to enlarge the scope of its investments by enabling it to invest in the bonds or securities of any co. The petition was supported by eight-ninths of the debenture-stock holders, & there were, for all practical purposes, no other creditors of the co.:—*Held*: the first alteration fell within sect. 1, sub-sect. 5 (a) of the 1890 (Memorandum of Assocn.) Act, as it would enable the co. "to carry on its business more efficiently"; the second alteration fell within sect. 1, sub-sect. 5 (d) of the Act, as it would enable the co. "to carry on some business or businesses which under existing circumstances might conveniently or advantageously be combined with the business of the co." The ct., therefore, made an order confirming the resolution, on an undertaking by the co. to alter its name within three months by adding the words "and other securities," and to give, within four months, the debenture-stock holders a floating security by way of first charge on the co.'s assets.—*Re GOVERNMENTS STOCK INVESTMENT CO.* (No. 2), [1892] 1 Ch. 597; 61 L. J. Ch. 381; 66 L. T. 608; 40 W. R. 387; 8 T. L. R. 356; 36 Sol. Jo. 292.

Annotation:—*Refd. Re Bernicia Steamship* (1900), 81 L. T. 816.

4296. — *Borrowing powers.*—A reversionary interest society was constituted in 1823 by a deed of settlement, which provided that the object & business of the society should be to purchase reversionary interests of every description in real & personal property except advowsons & next presentations, & also to purchase life or other partial interests the reversions expectant on which might have been previously purchased by the society, & to purchase life policies of insurance. In 1845 a private Act was passed, which empowered the society to increase its capital, & this was done in 1846. In 1857 another private Act was passed, which provided that the society might purchase life & other partial interests of every description in real & personal property, whether vested or contingent, so as the interests to be so purchased should be either to determine or to take effect upon the decease of a person or persons, except interests in advowsons & next presentations to ecclesiastical benefices, but including rents & annuities of every description given or granted for a life or lives or for a term or terms of years determinable upon the dropping of a life or lives; & that the society might lend money as well upon real security as upon the security of any interest in real or personal property which the society was authorised to purchase by the deed of settlement or by this Act. In 1880 the society was registered as a co. with limited liability, under the 1862 Act. In 1891 the society, by a special resolution, resolved to add the following clause to the deed of settlement; "That the society may from time to time borrow & raise money for the purposes of the society's business, & secure the repayment thereof by bonds, debentures, debenture-stock, or mtge. debentures, perpetual or determinable payable to bearer or otherwise, & with or without a trust deed, & for this purpose may mortgage or charge the undertaking & all or any of the property of the society, including its capital for the time

tion of assets, for a reserve fund, & for payment of a dividend of not more than 4 per cent *per annum*, should be applied to purposes of public utility. The ct. doubted the competency of a proposed alteration of the memorandum which consisted in deleting

the clause dealing with the application of the profits; but confirmed an amended alteration increasing the maximum dividend to 6 per cent, as being, in view of the changed financial situation, an "unproved means" of attaining the "main purpose" of the

co. within 1908 Act, s. 9 (1) (b).—*KIRKCALDY CAFE CO.*, [1921] S. C. 681.—SCOT.

q. Enlarging or changing local area of operations.—The Kirkcaldy Steam Laundry Co. incorporated under

being uncalled; provided that the total indebtedness of the society under this clause shall not at any time exceed the amount of the paid-up capital of the society for the time being." The proposed alteration did not affect any of the provisions of the private Acts:—*Held*: (1) notwithstanding the private Acts, the constitution of the society was such that the provisions of the deed of settlement could be altered under 1890 (Memorandum of Assocn.) Act; (2) the proposed addition came within sub-sect. 5 (a) of sect. 1 of the Act.—*Re REVERSIONARY INTEREST SOCIETY, LTD.*, [1892] 1 Ch. 615; 61 L. J. Ch. 379; 66 L. T. 460; 40 W. R. 389; 36 Sol. Jo. 327.

4297. — Trade protection society—Extension of membership.]—*Re WOLVERHAMPTON & DISTRICT INCORPORATED SOCIETY OF LICENSED VICTUALLERS, BREWERS, WINE & SPIRIT MERCHANTS, & BEER RETAILERS* (1892), 36 Sol. Jo. 761.

4298. — Single-ship company—General shipping.]—The ct. has jurisdiction & will exercise its discretion under 1890 (Memorandum of Assocn.) Act, to confirm the alteration of the memorandum of assocn. of a co., so as to change it from a single-ship co. into a general shipping co., where there is evidence that under the proposed extension the business of the co. can be more efficiently carried on & no shareholder or creditor opposes.—*Re BERNICIA STEAMSHIP, LTD.* (1900), 69 L. J. Ch. 194; 81 L. T. 816; 16 T. L. R. 163; 7 Mans. 361.

4299. — Cyclist club—Inclusion of motorists.]—A co. was formed having for its objects the promotion of the interests of cyclists:—*Held*: a proposed alteration of the memorandum so as to include in the objects the promotion of the interests of motorists, was not within either clause (a) or clause (d) of 1890 (Memorandum of Assocn.) Act, s. 1 (5), as an alteration which would "enable the co. to carry on its business more economically or efficiently" or "to carry on some business which may conveniently or advantageously be combined with the business of the co."—*Re CYCLISTS' TOURING CLUB*, [1907] 1 Ch. 269; 76 L. J. Ch. 172; 96 L. T. 780; 23 T. L. R. 220; 51 Sol. Jo. 172; 14 Mans. 52.

4300. — Marine insurance company—General insurance.]—*Re MERCHANTS' MARINE INSURANCE CO., LTD.* (1920), 149 L. T. Jo. 196.

4301. Attaining its main purpose by new or improved means—Investment & loan company—Guarantee & finance.]—*Re EMPIRE TRUST, LTD.*, No. 4293, *ante*.

4302. — Company investing in government stock—Extension of powers of investment.]—*Re GOVERNMENTS STOCK INVESTMENT CO.*, No. 4294, *ante*.

4303. — Trade protection society—Extension of membership.]—*Re WOLVERHAMPTON & DISTRICT INCORPORATED SOCIETY OF LICENSED VICTUALLERS, BREWERS, WINE & SPIRIT MERCHANTS, & BEER RETAILERS* (1892), 36 Sol. Jo. 761.

4304. Enlarging or changing local area of operations—Investment & loan company—Guarantee & finance.]—*Re EMPIRE TRUST, LTD.*, No. 4293, *ante*.

4305. — Trade protection society—Extension of membership.]—*Re WOLVERHAMPTON & DISTRICT INCORPORATED SOCIETY OF LICENSED VICTUALLERS, BREWERS, WINE & SPIRIT MERCHANTS, & BEER RETAILERS* (1892), 36 Sol. Jo. 761.

4306. — Advance on realty in Australasia—Inclusion of Argentina.]—By its memorandum of assocn. the objects of a co. were defined as being the investment of moneys of the co. in advances on real estate in Australasia & the transaction of a general agency & commission business between Australasia & England & elsewhere, including the investment of moneys entrusted to the co. By a special resolution the co. resolved to alter the objects of the co. so as to allow it to advance money on real property in Australasia & Argentina or on the security of any leasehold interest therein. The ct. confirmed the resolution & having regard to the peculiar nature of the co.'s business, lending money on mortgage, did not require a change in the name of the co.—*Re TRUST & AGENCY CO. OF AUSTRALASIA, LTD.* (1908), 25 T. L. R. 61; 53 Sol. Jo. 48.

4307. — Marine insurance company—General insurance.]—*Re MERCHANTS' MARINE INSURANCE CO., LTD.* (1920), 149 L. T. Jo. 196.

4308. Business conveniently or advantageously combined with existing business.]—*Re NATIONAL BOILER INSURANCE CO.*, No. 4353, *post*.

4309. —.]—The additional business which a co. by an alteration of its objects effected under 1908 Act, s. 9 (1) (d), is enabled to carry on, may be a business wholly different from & bearing no relation to the then existing business of the co. & yet be capable of being conveniently & advantageously combined with it, provided such new business is not destructive of or inconsistent with the existing business.

Whether the proposed new business is one which may be conveniently & advantageously combined with the then existing business of the co. is a question for the determination of the co.'s managers & shareholders.

A co., whose business had ultimately come to consist in the holding & management of large investments in two other cos., on the advice of its directors that the businesses of bankers & financiers might be conveniently & advantageously combined with the then existing business of the

Cos. Act, 1862–1890, presented a petition under 1890 (Memorandum of Assocn.) Act, for confirmation of a special resolution altering its memorandum of assocn. so as to enable it to extend the local area of its operations. The ct. granted the petition without requiring any change in the co.'s name.—*Re KIRKCALDY STEAM LAUNDRY CO., LTD.* (1904), 6 F. (Ct. of Sess.) 778.—SCOT.

4308 i. Business conveniently or advantageously combined with existing business.]—The memorandum of assocn. of a joint-stock co. incorporated in 1867 stated its object to be "the carrying on for profit or gain in Great Britain or Ireland or any other part of the world the following trades or businesses, i.e. marine underwriting on cargoes & freights & the doing of all things which the co. or the board of

directors may deem incidental or conducive thereto":—*Held*: within 1890 (Memorandum of Assocn.) Act, s. 1 (5) (d), the following alterations in the memorandum of assocn. as being in harmony with the objects of the co. might be sanctioned: (a) an alteration enabling the co. to engage in marine insurances not on cargoes merely, but also upon ship's *responsa*, bottomry, etc.; (b) an alteration giving the co. power of effecting insurances so as to include risks *in transitu* by land.—*Re ULSTER MARINE INSURANCE CO.* (1891), 27 L. R. Ir. 487.—IR.

4308 ii. —.]—The Scottish Accident Insurance Co., incorporated in 1877, under Cos. Acts, 1862 & 1867, for the purpose of carrying on business of insurance against accident, presented a petition under 1890 (Memorandum

of Assocn.) Act, for confirmation of a special resolution altering its memorandum of assocn. so as to extend its business to life, sickness, employers liability & fidelity insurance. The ct. granted the petition on condition that the name of the co. was changed to the Scottish Accident Life & Fidelity Insurance Co., or to such other name as might be approved of by the Board of Trade, & by the ct. to indicate the extended nature of the co.'s business.—SCOTTISH EMPLOYERS' LIABILITY ASSURANCE CO., LTD. (1896), 23 R. (Ct. of Sess.) 1016.—SCOT.

4308 iii. —.]—COATS (J. & P.), LTD., PETITIONERS (1900), 2 F. (Ct. of Sess.) 829.—SCOT.

r. Sale of part of undertaking.]—On a petition by M. & Co., that a special resolution of the co. altering its memorandum of assocn. might be

Sect. 31.—Powers and liabilities of company: Sub-sect. 9, A. & B. (a) & (b).]

co., passed a special resolution by an overwhelming majority of its shareholders to alter the objects clause of its memorandum, so as to enable the co. to carry on such new businesses. Upon the petition of the co. under 1908 Act, s. 9, sub-s. 1 (d), the ct. confirmed the alteration, notwithstanding the new businesses were wholly different from & bore no relation to the co.'s then existing business.—*Re PARENT TYRE CO.*, [1923] 2 Ch. 222; 92 L. J. Ch. 358; 129 L. T. 244; 39 T. L. R. 426; 67 Sol. Jo. 556.

4310. — Company investing in government stock—Extension of powers of investment.]—*Re GOVERNMENTS STOCK INVESTMENT CO. (No. 2)*, No. 4295, *ante*.

— — — — —.]—*Compare* No. 4294, *ante*.

4311. — Cyclists club—Inclusion of motorists.]—*Re CYCLISTS' TOURING CLUB*, No. 4299, *ante*.

4312. — Marine insurance company—General insurance.]—*Re MERCHANTS' MARINE INSURANCE CO., LTD.* (1920), 149 L. T. Jo. 196.

4313. Restriction or abandonment of specified objects—To enable registration in foreign country.]—*Re LOANDA GAS CO., LTD.* (1896), 41 Sol. Jo. 111.

See, also, No. 4329, *post*.

4314. Power to lend on real estate—Extension to leasehold.]—*Re TRUST & AGENCY CO. OF AUSTRALASIA, LTD.*, No. 4306, *ante*.

confirmed by the ct. under the above Act, the ct. ordered that the said resolution should be confirmed, but so far only as was necessary to enable the co. to sell a part of its undertaking, namely, its New York Branch.—*Re WARD (MARCUS) & CO.*, [1897] 1 L. R. 435.—*IR*.

4315 i. Purchase of other undertaking.]—A co. presented a petition for confirmation of a special resolution, by which it was proposed to alter its memorandum of assocn. by adding powers to acquire similar businesses; to sell the undertaking of the co.; or to amalgamate with any other firm, person, or co. The ct. while confirming the power to acquire similar businesses, refused to confirm the other alterations, on the ground that they were not within the alterations which a co. was authorised to make by 1908 Act, s. 9 (1).—*WALKER (JOHN) & SONS, LTD.*, [1914] S. C. 280.—*SCOT*.

4317 i. Sale of entire undertaking.]—*ABERDEEN STRAM NAVIGATION CO., LTD.*, PETITIONERS (1919), 56 Sc. L. R. 343.—*SCOT*.

4320 i. Amalgamation.]—A co. incorporated in 1866, under 1862 Act, presented a petition under 1890 (Memorandum of Assocn.) Act, for confirmation of a special resolution of the co. altering its memorandum of assocn. by giving it power to acquire & pay for the business of any other co. carrying on any business which the co. might legally carry on; to sell the business or property of the co., & to amalgamate with any other co. in the United Kingdom established for objects similar to its own. The ct. refused the petition on the ground that the Act did not contemplate that such general powers should be conferred, although particular transactions of the kinds specified might be sanctioned.—*YOUNG'S PARAFFIN LIGHT & MINERAL OIL CO., LTD.* (1894), 21 R. (Ct. of Sess.) 384; 31 Sc. L. R. 303; 1 S. L. T. 450.—*SCOT*.

4320 ii. —.]—A limited co., which by its memorandum of assocn. had power to amalgamate with any other co. carrying on business within the objects of the co., presented a petition

for confirmation of a special resolution by which it was proposed to alter its memorandum by adding certain powers, including a power to carry out such an amalgamation by sale of the undertaking of the co. The ct. granted the petition.—*Re MACFARLANE, STRANG & CO., LTD.*, [1915] S. C. 196.—*SCOT*.

4320 iii. —.]—A limited co., registered under Cos. Acts & constituted by a contract of co-partnership which empowered it to carry on the business of banking in Scotland, presented a petition, under 1908 Act, for confirmation of a memorandum & arts. of assocn. in place of the existing contract of copartnership. The memorandum included powers of carrying on banking business without restriction to any locality, of amalgamating with similar cos., & of selling the undertaking or assets of the co. The ct. granted the petition, but modified the proposed arts. of the memorandum conferring the power of amalgamation, & deleted the art. giving the co. power to sell its undertaking or assets.—*Re UNION BANK OF SCOTLAND, LTD.*, [1918] S. C. 21.—*SCOT*.

4320 iv. —.]—In the case of a shipping co. substituting for co-partnership a memorandum & arts., the ct. confirmed a memorandum of assocn. in which the objects clause, as to form, went beyond a strict statement & definition of the objects & included a variety of powers designed to secure the objects, & contained provisions enabling the co., which was formerly for carriage by land & sea, to carry by air, & to perform functions & exercise powers subsidiary thereto, & to acquire & take over the business, property, goodwill, and liabilities of any other co. carrying on a business of a similar nature, or possessed of property suitable for the purposes of the co., & to arrange to share profits or co-operate with such a co., & refused to confirm an interpretation clause to the effect that each paragraph in the objects clause should not be limited or restricted by inference drawn from the terms of any other paragraph or from the name of the co.—*NORTH OF*

4315. Purchase of other undertaking.]—*Re PROVIDENT CLERKS' & GENERAL GUARANTEE ASSOCN., LTD.* (1906-12), cited in 105 L. T. at p. 947.

Annotations:—Folld. Re Anglo-American Telegraph Co. (1911), 105 L. T. 947; *Re New Westminster Brewery Co.* (1911), 105 L. T. 946; *Re Marshall* (1919), 63 Sol. Jo. 683.

4316. —.]—*Re NEW WESTMINSTER BREWERY CO., LTD.*, No. 4333, *post*.

4317. Sale of entire undertaking.]—*Re NEW WESTMINSTER BREWERY CO., LTD.*, No. 4333, *post*.

4318. — For shares in similar company.]—Under 1908 Act, s. 9, a co. can include in the objects of its altered memorandum of assocn. a power to sell or dispose of the undertaking of the co., or any part thereof, for such consideration as the co. may think fit & in particular for shares, debentures, or securities of any other co. having objects altogether or in part similar to those of the co. so altering its arts.—*Re MARSHALL, SONS & CO., LTD.* (1919), 63 Sol. Jo. 683.

4319. Lease of entire undertaking.]—The ct., under 1908 Act, s. 9 (1), may sanction alterations of the objects of a co., including a power to lease the whole undertaking of the co.—*Re ANGLO-AMERICAN TELEGRAPH CO., LTD.* (1911), 105 L. T. 947; 56 Sol. Jo. 141.

4320. Amalgamation.]—*Re NEW WESTMINSTER BREWERY CO., LTD.*, No. 4333, *post*.

4321. Cemetery company.]—*Re ISLE OF SHEPPEY*

SCOTLAND & ORKNEY & SHETLAND STRAM NAVIGATION CO., LTD. (1920), 57 Sc. L. R. 689.—*SCOT*.

s. Rope-making company — To build house on vacant site—Use of surplus profits.]—A rope-making co. desired to alter its memorandum of assocn. so as to allow it, *inter alia*, to invest a part of its surplus profits in erecting houses on the undeveloped portion of its site. The ct. sanctioned the alteration without requiring any change in the name of the co.—*Re HONG KONG ROPE MANUFACTURING CO., LTD.* (1922), 17 Hong Kong L. R. 1.—*HONG KONG*.

t. Company formed for purposes of buying cattle ranch—Permitted to lend money on security.]—A co. was incorporated for the purposes of acquiring a cattle ranch & of buying, grazing, breeding & selling cattle & other live stock in the United States. A petition was presented by the co. for confirmation of a special resolution altering its memorandum of assocn. so as to enable it to carry on along with the original business the business of lending money on the security of movable property including cattle & other live stock & of certain stocks & shares, or on the personal obligation of persons or corps. engaged in the live stock business in America. As ancillary to these objects it was proposed to give the co. power to borrow on debenture money to be employed in the increased prosecution of the lending business. Answers to the petitions were lodged by certain dissentient shareholders:—*Held*: while the new business proposed was likely to be profitable, it would depend for its success on the management of the local agent of the co. & would not be sufficiently under the control of the director of the co., & consequently it was not such an extension of the primary business of the co. as could be forced on dissentient shareholders.—*WESTERN RANCHES, LTD. v. NELSON'S TRUSTEES* (1899), 36 Sc. L. R. 576; 1 F. (Ct. of Sess.) 812; 6 S. L. T. 396.—*SCOT*.

a. Dairy company—To carry on insurance business but not life insurance.]—On the hearing of a petition by a limited co. under Cos. Act, 1910, s. 17,

GENERAL CEMETERY Co.'s PETITION (1920), 84 J. P. Jo. 507.

Alteration of memorandum generally, *see* sect. 7, sub-sect. 4, *ante*.

B. Confirmation by Court.

(a) What Court has Jurisdiction.

4322. Any Chancery judge.]—*Re ISLINGTON & GENERAL ELECTRIC SUPPLY Co., LTD.* (1892), 36 Sol. Jo. 487.

Annotation:—Expld. Re Mining Shares Investment Co., [1893] 2 Ch. 660.

4323. —.]—*Re ESSEX & SUFFOLK EQUITABLE INSURANCE SOCIETY, LTD.* [1909] W. N. 102.

4324. Winding-up judge.]—The judge for the time being appointed by the Lord Chancellor under 1890 (Winding-up) Act, s. 2, to exercise the jurisdiction of the High Ct. under that Act, has jurisdiction to deal with a petition under 1890 (Memorandum of Assocn.) Act, s. 1 (1) for the confirmation of an alteration in the memorandum of assocn. of a co.—*Re MINING SHARES INVESTMENT Co., [1893] 2 Ch. 660; 62 L. J. Ch. 434; 68 L. T. 578; 41 W. R. 376; 9 T. L. R. 355; 37 Sol. Jo. 356; 3 R. 480.*

Annotations:—Consd. Re Aluminium Co. (1893), 38 Sol. Jo. 130. Refd. Re Ocean Queen S.S. Co., [1893] 2 Ch. 666.

4325. Company within county courts winding-up jurisdiction—High Court or county court.]—*Re RUGELEY GAS Co., [1899] W. N. 127.*

4326. —.]—*Re CLAREMONT LIBERAL CLUB Co., LTD.* (1910), cited in Yearly Supreme Court Practice, 1924, at. p. 886.

—.]—*Compare* No. 949, *ante*.

4327. Company limited by guarantee.]—*Re MONMOUTHSHIRE & SOUTH WALES EMPLOYERS' MUTUAL INDEMNITY SOCIETY, LTD., [1909] W. N. 6.*

See, now, 1908 Act, s. 285.

(b) Extent of Jurisdiction.

4328. As to alteration—Limited by statutory provision.]—*Re GOVERNMENTS STOCK INVESTMENT Co., No. 4291, ante.*

the ct. has power to confirm a special resolution for the alteration of a co.'s memorandum of assocn., subject to approved modifications, without reference to a fresh meeting of the co. It confirmed, subject to modifications, & as being within sect. 17 (1) (d) of the Act, a special resolution which authorised a co. formed primarily for the buying, sale, export & distribution of dairy produce & for agency business to carry on the business of insurance of various kinds, other than life insurance, & to receive deposits.—*Re GIPPSLAND & NORTHERN CO-OPERATIVE SELLING Co., LTD.* (1914), V. L. R. 503.—AUS.

b. — To sell machinery, to lend money & to supply electricity.]—The ct. confirmed, as being within Cos. Act, 1915, s. 17 (d), a special resolution which, after modifications directed by the ct., authorised a co., formed primarily for the purchase, manufacture, & sale of farm & dairy produce, & for the export & disposition of the same & for ancillary objects, to carry on, *inter alia*, the business of (a) general storekeepers in all branches with the co.'s members, customers & suppliers, & in connection with any other business of the co; (b) the purchase & sale of all dairy requisites, including implements & machinery; (c) agency business connected with the co.'s business; (d) the manufacture & sale of ice; (e) general carriers & forwarding agents in connection with the handling of farm & dairy produce; (f) advancing money to any of the co.'s members, customers, or suppliers upon security; (g) guaranteeing customers' accounts; (h) supplying

electrical motive power & heat & light.—*Re FOSTER & DISTRICT CO-OPERATIVE BUTTER FACTORY, LTD.* (1917), V. L. R. 5.—AUS.

c. Shipowners allowed to carry on business of shipbrokers.]—A co. whose business was, by its memorandum of assocn., limited to that of shipowners, by special resolution altered the memorandum of assocn., *inter alia*, by adding clauses enabling the co. (1) to carry on the business of shipbrokers, insurance brokers, managers of shipping property, lightermen, warehousemen, wharfingers, ice merchants, refrigerating storekeepers, & general traders; (2) to purchase heritable property for the purposes of the co., & to erect buildings, warehouses, wharves, factories, & machinery on the property of the co.; & (3) to amalgamate with similar cos. On a petition by the co. under 1890 (Memorandum of Association) Act, s. 1, the ct. confirmed the alterations.—*KING LINE, LTD., PETITIONERS* (1902), 4 F. (Ct. of Sess.) 504.—SCOT.

d. Shipping company—Allowed to lend money to persons dealing with company.]—*Re LONDON & EDINBURGH SHIPPING Co., LTD., [1909] S. C. 1: 46 Sc. L. R. 85; 16 S. L. T. 386.*—SCOT.

e. Not to enlarge class of permitted shareholders—Jurisdiction of court.]—A special resolution passed by a limited co. for the alteration of its memorandum of assocn. by enlarging the class of permitted shareholders, as defined therein, is not a resolution for the alteration of the "objects" of the co. within Cos. Act, 1915, s. 15, & the ct. has therefore no jurisdiction to

4329. —.]—The ct. has jurisdiction under 1890 (Memorandum of Assocn.) Act, s. 1 (5), (e), to confirm an alteration in the memorandum of assocn. of a co. involving the abandonment of objects of a fundamental character & limiting the operations of the co. from a world-wide area to a comparatively small prescribed region. But in a case where the constitution of the co. placed it in the power of the controlling body of the co., who were in favour of such an alteration, to permit the extended powers of the co. to lie dormant, & where the vast majority of the shareholders, representing over three-fourths of the share capital, had given no indication of their wishes on the subject, the ct. refused to sanction the proposed alteration.

The provisions of above sub-sect. furnish the only test for determining the question whether the ct. has jurisdiction to sanction a proposed alteration of the memorandum of assocn.

The principles which have been laid down for the guidance of the ct. in dealing with applications for confirmation of reduction of capital under 1867 Act, s. 11, apply to the case of applications for confirmation of an alteration of the memorandum of assocn. under 1890 (Memorandum of Assocn.) Act, s. 1, & accordingly, all that the ct. has to decide is whether the alteration is fair & equitable as between the members of the co. The ct. is not concerned to consider the wisdom or desirability of the proposed alteration.—*Re JEWISH COLONIAL TRUST (JUEDISCHE COLONIAL BANK), LTD., [1908] 2 Ch. 287; 77 L. J. Ch. 629; 99 L. T. 243; 24 T. L. R. 595; 15 Mans. 279.*

4330. —.]—Method of conducting business.]—*Re CYCLISTS' TOURING CLUB, No. 4299, ante.*

4331. —.]—Amplification of description of existing objects.]—1890 (Memorandum of Assocn.) Act, does not authorise alterations in the memorandum which merely amplify the description of objects clearly comprised in the original memorandum of assocn.—*Re CONSETT IRON Co., LTD.,*

confirm it.—*Re GIPPSLAND & NORTHERN CO-OPERATIVE SELLING & INSURANCE Co., LTD., [1918] V. L. R. 451.*—AUS.

f. No alteration allowed to proceed with incidental objects—& not to carry on main objects.]—Where, in accordance with a resolution adopted at a special meeting an insurance co. applied for leave to alter its memorandum of assocn. by the addition of "objects" which were not widely different from the "objects" originally contemplated in the memorandum: the ct. in granting a rule *nisi* directed that the rule should be served upon the creditors of the co. & be published in the Press, but did not require that notice of the amendment should be given to the policy-holders of the co. individually. The ct. refused to sanction an amendment of the memorandum, the effect of which was to give the co. power to carry out the incidental objects of the co. without carrying out its main objects.—*Ex p. AFRICAN MOTHERHOOD ENDOWMENT SOCIETY (CAPE), LTD., [1921] C. P. D. 743.*—S. AF.

PART III. SECT. 31, SUB-SECT. 9.—*B. (b).*

4328 i. As to alteration—Limited by statutory provision.]—The ct. has jurisdiction under Cos. (Memorandum of Association) Act, 1891, s. 3, to entertain an application made by a co. registered under the Joint-Stock Cos. Act, 1860, to confirm an alteration in the objects of the co.—*Re NEW ZEALAND ACCIDENT INSURANCE Co. (1894), 12 N. Z. L. R. 326.*—N.Z.

Sect. 31.—Powers and liabilities of company: Sub-sect. 9, B. (b), (c) & (d).]

[1901] 1 Ch. 236; 70 L. J. Ch. 198; 84 L. T. 258; 8 Mans. 429.

4332. — Broad general expressions & powers.]—*Re FRASER (D. & D. H.), LTD.* (1903), 19 T. L. R. 364.

4333. — Extent of alterations.—The ct., under 1908 Act, s. 9 (1), may sanction very extensive alterations of the objects of a co. including a power to purchase other undertakings, a power to amalgamate with other undertakings, & a power of sale of the whole undertaking of the co.—*Re NEW WESTMINSTER BREWERY CO., LTD.* (1911), 105 L. T. 946; 56 Sol. Jo. 141.

Annotation:—Folld. Re Marshall (1919), 63 Sol. Jo. 683.

4334. — Abandonment of fundamental objects—Limit of area of operations.]—*Re JEWISH COLONIAL TRUST (JUEDISCHE COLONIAL BANK), LTD.,* No. 4329, *ante*.

4335. As to company—Company registered under 1856 Act.]—*Re GENERAL CREDIT CO.,* [1891] W. N. 153.

Annotation:—N.F. Re Copiapo Mining Co., [1899] W. N. 25.

4336. — —.]—*Re NITROPHOSPHATE & ODAMS CHEMICAL MANURE CO., LTD.,* [1893] W. N. 141.

Annotations:—Folld. Re Copiapo Mining Co. (1899), 6 Mans. 320; *Re Euphrates & Tigris Steam Navigation Co.* (1904), 73 L. J. Ch. 175.

4337. — —.]—*Re HONG KONG & CHINA GAS CO., LTD.* (1898), 43 Sol. Jo. 77.

Annotations:—Folld. Re Copiapo Mining Co. (1899), 43 Sol. Jo. 368; *Re Euphrates & Tigris Steam Navigation Co.* (1904), 73 L. J. Ch. 175.

4338. — —.]—The ct. has jurisdiction under 1890 (Memorandum of Assocn.) Act, to make an order for the alteration of the memorandum of assocn. of a co. registered under 1856 Act.—*Re COPIAPO MINING CO., LTD.* (1899), 43 Sol. Jo. 368; 6 Mans. 320.

Annotation:—Folld. Re Euphrates & Tigris Steam Navigation Co. (1904), 73 L. J. Ch. 175.

4339. — —.]—The ct. has jurisdiction to make an order under 1890 (Memorandum of Assocn.) Act, in the case of a co. registered under 1856 Act, although it is not also registered under the 1862 Act.—*Re EUPHRATES & TIGRIS STEAM NAVIGATION CO., LTD.,* [1904] 1 Ch. 360; 73 L. J. Ch. 175; 90 L. T. 56; 11 Mans. 93.

4340. — Company constituted by deed of settlement & private Act of Parliament.]—*Re REVERSIONARY INTEREST SOCIETY, LTD.,* No. 4296, *ante*.

4341. — Unlimited company without shares or capital.]—The High Ct. has jurisdiction to wind up a registered unlimited co. which has no shares & no capital & therefore has jurisdiction to sanction an alteration of its memorandum of assocn.

4333 i. — Extent of alteration.]—A co. incorporated under Cos. Act, 1899, accepted an offer for the disposal of its goodwill & stock-in-trade, & passed a resolution for the amendment of its memorandum of assocn. by the addition thereto of a power of sale. Application was made under sect. 93 for the confirmation by the ct. of the amendment:—*Held:* in the absence of a provision in the memorandum of assocn. authorising such sale, there is no power in the ct. to confirm an alteration in the memorandum of assocn. which would enable the co. to sell & dispose of its whole property & assets.—*Re ST. JOHN'S ELECTRIC LIGHT CO., LTD.* (1901), 8 Nfld. L. R. 440.—N.F.L.D.

g. — Parties interested should be notified.]—Although the ct. construes liberally the power conferred on

it by Act 25, 1892, s. 28, of sanctioning an alteration of the objects of a co. as set out in the memorandum of assocn., care should be taken to ensure that all interested parties have notice of the proposal to make the alterations.—*Ex p. AFRICAN MUTUAL TRUST & ASSURANCE CO., LTD.* (1920), C. P. D. 276.—S. AF.

h. — New objects in modern form—Instead of old objects.]—The ct. has jurisdiction to sanction an alteration of the objects of a co. which introduces a series of new objects in modern form instead of the old objects, where such new objects are usual.—*Ex p. ITALIAN WAREHOUSE, LTD.,* [1921] W. L. D. 10.—S. AF.

PART III. SECT. 31, SUB-SECT. 9.—
B. (c).

4346 i. Effect on interests of persons

The North of England Iron Steamship Insurance Assocn. was registered in Feb., 1876, as an unlimited co., its object being the mutual insurance of iron steamships insured with the co. by members of the co. Upon an application under 1890 (Memorandum of Assocn.) Act for an alteration in its memorandum enlarging the scope of its operations, the question arose whether there was any ct. competent to wind up such a co. as this, which had no capital paid up or credited as paid-up:—*Held:* the ct. had jurisdiction to wind up this assocn., & to sanction an alteration of the memorandum of assocn.—*Re NORTH OF ENGLAND IRON STEAMSHIP INSURANCE ASSOCN.,* [1900] 1 Ch. 481; 69 L. J. Ch. 211; 82 L. T. 598; 48 W. R. 604; 16 T. L. R. 172; 44 Sol. Jo. 230; 7 Mans. 364.

(c) Grounds for Granting or Refusing.

See 1908 Act, sect. 9 (5).

4342. Effect on interests of dissenting creditors.]—*Re GOVERNMENTS STOCK INVESTMENT CO.,* No. 4294, *ante*.

4343. — Creditors for small amounts.]—*Re WOLVERHAMPTON & DISTRICT INCORPORATED SOCIETY OF LICENSED VICTUALLERS, BREWERS, WINE & SPIRIT MERCHANTS, & BEER RETAILERS* (1892), 36 Sol. Jo. 761.

4344. Effect on interests of shareholders—Minority.]—*Re GOVERNMENTS STOCK INVESTMENT CO.,* No. 4294, *ante*.

4345. — Whether fair & equitable.]—*Re JEWISH COLONIAL TRUST (JUEDISCHE COLONIAL BANK), LTD.,* No. 4329, *ante*.

4346. Effect on interests of persons outside company.]—1908 Act, s. 9, sub-sect. 3, provides that before confirming an alteration of the memorandum of assocn. of a co. with regard to its objects, "the ct. must be satisfied that sufficient notice has been given . . . to any persons or class of persons whose interests will, in the opinion of the ct., be affected by the alteration . . .":—*Held:* (1) the sub-section only applied to persons, such as creditors & members of the co., whose interests in the co. itself would be affected by the alteration; (2) the ct. would not on a petition for confirmation of an alteration of the objects hear a person having an interest outside the co. that would be injuriously affected by the alteration.

In dealing with a petition for confirmation of an alteration of the objects of a company, the ct. will assume, in the absence of evidence to the contrary, that the co. will carry on its business properly, & will not therefore have regard to the fact that the alteration in its objects will enable the co. to carry on a business competing with that of a body with a very similar name & so facilitate passing off.—*Re HEARTS OF OAK LIFE & GENERAL ASSUR-*

outside company.]—A co., carrying on the ordinary business of bankers, petitioned the ct. to confirm a resolution, passed unanimously to alter its memorandum of assocn. by empowering it to undertake the execution of trusts, & to act as exor. or administrator, or as trustee or treasurer. The application was opposed by seven shareholders, who were solrs., on the ground that the alteration would not be beneficial to the shareholders, & would be injurious to the solrs.' profession. The ct. confirmed the alteration, with the modification that the powers were not to be exercised unless some part of the trust property was situate within the jurisdiction of the ct.—*Re MUNSTER & LEINSTER BANK, LTD.,* [1907] 1 I. R. 237.—IR.

k. Construction of 1890 (Memorandum of Association) Act.]—A co.

ANCE Co., LTD. & REDUCED, [1920] 1 Ch. 544; 89 L. J. Ch. 241; 123 L. T. 46; 64 Sol. Jo. 324.

4347. Desirability of proposed alteration.]—Re JEWISH COLONIAL TRUST (JUEDISCHE COLONIAL BANK), LTD., No. 4329, ante.

4348. Alteration facilitating passing off.]—Re HEARTS OF OAK LIFE & GENERAL ASSURANCE Co., LTD. & REDUCED, No. 4346, ante.

(d) Confirmation subject to Conditions.

See 1908 Act, s. 9, sub-sect. 4.

4349. Alteration of name—Increasing scope of business—Telephone company—Supplying electricity & manufacturing electrical appliances.]—Re ORIENTAL TELEPHONE Co., [1891] W. N. 153.

4350. ——— Company investing in government securities—Extension of powers of investment.]—The memorandum of assocn. of the Foreign & Colonial Government Trust Co., incorporated in 1879, stated one of its objects to be to invest money in securities of foreign, or colonial, or British Govts. including municipal, ruling & public authorities, & shares & obligations of undertakings guaranteed by such govts.

As the capital could no longer be advantageously invested in the securities mentioned in the memorandum, the ct. was asked to confirm a proposed alteration therein, extending the class of investments to securities, bonds, debentures, & debenture-stock, obligations, & mtges. of cos. & corpns. formed or incorporated under British, foreign, or colonial law:—*Held*: (1) within 1890 (Memorandum of Assocn.) Act, sect. 1 (5) (d), "the business of the co." was the investment of money in the limited class of securities mentioned in the memorandum; (2) investment in the class specified in the proposed alteration was also a business which might be "combined with the business of the co."; (3) the proposed alteration ought to be sanctioned, subject to the condition that the name of the co. should be so altered that persons dealing with it might not be misled into supposing that its investments were limited to govt. securities.—*Re FOREIGN & COLONIAL GOVERNMENT TRUST Co., [1891] 2 Ch. 395; 65 L. T. 78; 39 W. R. 699; 7 T. L. R. 458.*

Annotations:—As to (3) Folld. Re Alliance Marine Insee., [1892] 1 Ch. 300; Re National Boiler Insee., [1892] 1 Ch. 306; Egyptian Delta Land & Investment Co., [1907] W. N. 16.

4351. ———.]—Re GOVERNMENTS STOCK INVESTMENT Co. (No. 2), No. 4295, ante.

4352. ——— Marine insurance company—Undertaking other insurance.]—A marine insurance co. applied under 1890 (Memorandum of Assocn.) Act, for the sanction of the ct. to resolutions altering the co.'s deed of settlement, by extending the objects of the co. so as to combine therewith businesses in the nature of life, fire, & accident insurance connected with marine risks. There was evidence that such businesses were commonly transacted by marine insurance cos. at the present time, & that they could conveniently or advantageously be combined with the existing business of the co.:—*Held*: the proposed alteration ought to be sanctioned only on the condition that the name of the co. should be altered in such manner as should be approved of by the judge in chambers, so as to indicate to persons dealing with the co. the extended nature of the co.'s business.—*Re ALLIANCE MARINE ASSURANCE Co.,*

[1892] 1 Ch. 300; 61 L. J. Ch. 176; 65 L. T. 554; 40 W. R. 329; 36 Sol. Jo. 42.

Annotation:—Folld. Re National Boiler Insee., [1892] 1 Ch. 306.

4353. ——— Boiler insurance company—Undertaking other insurance.]—(1) In exercising the powers given by 1890 (Memorandum of Assocn.) Act, s. 1 (5) (d), the ct. should regard as convenient & advantageous those things which experience & the opinions of traders reasonably show to be of that character. A co., whose memorandum of assocn. stated the objects of the co. to be "the insurance of every kind of steam-boiler against the risk of explosion, & the insurance also of property & life against the risk of damage consequent upon the explosion of such boilers," petitioned for the confirmation of alterations in its memorandum which would enable it amongst other things to insure against occurrences of an injurious & accidental nature to any engine, boiler, generator or thing used to produce motive-power, & against loss arising from electricity, galvanism, or any other force, & against deaths & personal injuries arising from such accidents:—*Held*: the alterations should be sanctioned, subject to (2) an alteration in the name of the company sufficient to indicate the proposed enlargement of its objects; (3) an undertaking that the extended powers should not be exercised until either the present policyholders had assented or their policies had expired; (4) the omission or modification of provisions in the altered memorandum which transgressed the reasonable limits of combination.—*Re NATIONAL BOILER INSURANCE Co., [1892] 1 Ch. 306; 61 L. J. Ch. 501; 65 L. T. 849; 8 T. L. R. 135.*

Annotation:—As to (4) Distd. Re Fleetwood Estate Co., [1897] W. N. 20.

4354. ——— Enlarging area of operations—Name suggesting limited area.]—On confirming an alteration in the memorandum of assocn. of a co., the effect of which was to enlarge the area of a co.'s operations, the ct. imposed the condition that the name of the co., which indicated that its operations were limited to one country, must be altered so as no longer to contain such a suggestion.—*Re INDIAN MECHANICAL GOLD EXTRACTING Co., [1891] 3 Ch. 538; 61 L. J. Ch. 33; 40 W. R. 184.*

4355. ——— Land company.]—The ct. will not confirm a proposed alteration in a company's memorandum of assocn. effecting an extension of the co.'s objects, unless the name of the co. is, if necessary, altered so as to indicate the extension of objects.—*Re EGYPTIAN DELTA LAND & INVESTMENT Co., LTD. (1907), 51 Sol. Jo. 211.*

4356. ——— Company not a trading company.]—Re TRUST & AGENCY Co. OF AUSTRALASIA, LTD., No. 4306, ante.

4357. Restriction of general powers—Unreasonable power of combination.]—Re NATIONAL BOILER INSURANCE Co., No. 4353, ante.

4358. ——— Within principal objects of company.]—The power of the ct. under 1890 (Memorandum of Assocn.) Act, s. 1 (1) & (5), to confirm "in part" the resolution of a co. altering its memorandum of assocn., may be exercised by confirming the resolution with the addition of words limiting the effect of such alteration.—*Re SPIERS & POND, LTD. (1895), 40 Sol. Jo. 32; 2 Mans. 596; 13 R. 838.*

Annotation:—Folld. Re Fleetwood Estate Co., [1897] W. N. 20.

incorporated in 1866 under 1862 Act, presented a petition under the above Act for confirmation of a special resolution of a co. altering its memorandum of assocn. by giving it power to acquire & pay for the business of any other co. carrying on any business

which the co. might legally carry on; to sell the business or property of the co. & to amalgamate with any other co. in the United Kingdom established for objects similar to its own:—*Held*: the petition must be refused on the ground the Act did not contemplate

that such general powers should be conferred, although particular transactions of the kinds specified might be sanctioned.—*YOUNG'S PARAFFIN LIGHT & MINERAL OIL Co., LTD. (1894), 21 R. (Ct. of Sess.) 384.—SCOT.*

Sect. 31.—Powers and liabilities of company: Sub-sect. 9, B. (d) & C.; sub-sect. 10. Sect. 32: Sub-sect. 1, A. & B. (a) & (b).]

4359. ————.]—*Re EQUITY & LAW LIFE ASSURANCE SOCIETY* (1896), 40 Sol. Jo. 728.

4360. ————.]—*Re FLEETWOOD ESTATE Co.*, [1897] W. N. 20.

4361. ———— **Discretion of directors to treat subsidiary objects as principal objects—Restraint by shareholders.**—*J. B. & Co., Ltd.*, carried on an extensive business in shipbuilding & the manufacture of armaments, & the *T. Co., Ltd.*, carried on an extensive colliery business. Both cos. desired to extend greatly the objects of the co. as stated in their respective memorandums, & presented petitions under 1908 Act, s. 9, for the approval by ct. of certain proposed alterations in the memorandum:—*Held*: (1) if a co. were considering the present expansion of its principal business by the adoption of other businesses, the ct. would consider the desirability of altering its memorandum, but the ct. would not meet the possibility of the co. some day or other desiring to carry on another principal business, because the co. could always come again to the ct. when they have a reasonable intention of so doing; (2) as regards subsidiary businesses, every facility would be given, but that it must not be within the discretion of the directors to treat subsidiary objects as principal objects.

Proposed alterations in a memorandum sanctioned when reduced in number & simplified, & with a clause inserted to the effect that none of the additional objects should be undertaken except as subsidiary objects unless by sanction of a special resolution of the co.—*Re BROWN (J.) & Co., LTD.*, *Re TREDEGAR IRON & COAL Co., LTD.* (1914), 84 L. J. Ch. 245; 112 L. T. 232; 59 Sol. Jo. 146.

Annotation:—Refd. Re Atlantic Fuel P tent Co., [1917] W. N. 214.

4362. **Consent of existing policy-holders.**—*Re NATIONAL BOILER INSURANCE Co.*, No. 4353, *ante*.

C. Practice.

4363. **Special resolution—Proof that meeting duly convened.**—*Re UPPINGHAM GAS & COKE Co., LTD.* (1901), 45 Sol. Jo. 483.

———.]—*See, generally*, Sect. 30, sub-sect. 3, *ante*.

4364. **Consent of Board of Trade—Company not for purposes of gain—Not described as limited.**—Where an assocn. incorporated with the licence of the Board of Trade under 1867 Act, s. 23, as an assocn. formed for purposes not of gain, without the word "limited," desires to alter its memo-

randum of assocn., the proper course is first to submit the proposed alterations to the Board of Trade, & if the Board approves & authorises them then to apply to the ct. under 1890 (Memorandum of Assocn.) Act, for its sanction.—*Re ST. HILDA'S INCORPORATED COLLEGE, CHELTENHAM*, [1901] 1 Ch. 556; 70 L. J. Ch. 266; 49 W. R. 279; 8 Mans. 430.

4365. **Notice of alteration—By advertisement—When dispensed with—All persons interested before the court.**—*Re EMPIRE TRUST, LTD.*, No. 4293, *ante*.

4366. ———— **Creditors few & for small amounts.**—*Re WOLVERHAMPTON & DISTRICT INCORPORATED SOCIETY OF LICENSED VICTUALLERS, BREWERS, WINE & SPIRIT MERCHANTS & BEER RETAILERS* (1892), 36 Sol. Jo. 761.

4367. ———— **Of meetings.**—*Re ROYAL LONDON MUTUAL ASSURANCE SOCIETY, LTD.* (1910), 55 Sol. Jo. 46.

4368. ———— **Of resolution.**—*Re ATLANTIC PATENT FUEL Co., LTD.*, [1917] W. N. 214, 253.

4369. ———— **Who entitled to.**—*Re HEARTS OF OAK LIFE & GENERAL ASSURANCE Co., LTD. & REDUCED*, No. 4346, *ante*.

4370. **Who may be heard against petition.**—*Re HEARTS OF OAK LIFE & GENERAL ASSURANCE Co., LTD. & REDUCED*, No. 4346, *ante*.

4371. **The order—Registration—Delivery out of time—Power of registrar to receive.**—*Re CRICCIETH PIER & HARBOUR Co.*, [1891] W. N. 15.

4372. ———— **Extension of time.**—*Re REVERSIONARY INTEREST SOCIETY, LTD.* (1892), as reported in 66 L. T. 460.

4373. ————.]—*Re BRIN'S OXYGEN Co.*, [1899] W. N. 44.

4374. ———— **Advertisement—Whether necessary.**—*Re LOANDA GAS Co., LTD.* (1896), 41 Sol. Jo. 111.

4375. ————.]—There is no established practice as to the advertising of the order made on a petition confirming a special resolution under 1890 (Memorandum of Assocn.) Act, but the ct. has jurisdiction in its discretion to direct or dispense with advertisements of such an order.—*Re LANCASTER BANKING Co., LTD.* (1897), 75 L. T. 647; 41 Sol. Jo. 208.

4376. ———— **How advertised.**—*Re COPPER MINES TINPLATE Co.*, [1897] W. N. 20.

SUB-SECT. 10.—ARRANGEMENTS AND PROMISES.

Power to compromise—Cancellation or forfeiture of shares by agreement with shareholders.—*See* Sect. 27, sub-sect. 4, *ante*.

——— **Club—Settling action with secretary.**—*See* CLUBS, Vol. VIII., p. 514, No. 60.

PART III. SECT. 31, SUB-SECT. 9.—C.

1. Notice of alteration—By advertisement—When dispensed with.—The memorandum of assocn. of a Joint-Stock Co., incorporated in 1867, stated its object to be the carrying on for profit or gain in Great Britain or Ireland, or any other part of the world, the following trades or businesses, that is to say, the business of marine underwriting on cargoes & freights, & the doing of all things which the co. or the board of directors may deem incidental or conducive thereto:—*Held*: as it was proved that there were no creditors of the co. & no debentures had been issued, & as the ct. was satisfied that there was no one whose interest was antagonistic to the proposed alterations, advertisements might be dispensed with.—*Re ULSTER MARINE INSURANCE Co.* (1891), 27 L. R. Ir. 487.—IR.

m. ———— **By change of name—Whether necessary.**—Where a co.

styled "The Southern Cross Biscuit Co., Ltd." altered its memorandum of assocn. so as to allow it, in addition to the manufacture of biscuits & confectionary, to carry on the business of flour-milling:—*Held*: it was not bound to alter its name so as to give notice to the public that it was carrying on the business of flour-milling.—*Re SOUTHERN CROSS BISCUIT Co., LTD.* (1907), 26 N. Z. L. R. 557.—N.Z.

4374 i. **The order—Advertisement—Whether necessary.**—*Re WARD (MARCUS) & Co.*, [1897] 1 I. R. 435.—IR.

4376 i. ———— **How advertised.**—The memorandum of assocn. of a co. incorporated in 1909 under 1908 Act, stated the objects to be, among others, to promote the trade interests of the members of the federation in or about the County of Cork. Resolutions were duly passed altering certain clauses in the memorandum, & adopting new clauses intended for the better pro-

tection of its members, & extending the scope of the operations of the federation. The federation had issued no debentures, & had no trade creditors. A petition having been filed to obtain the sanction of the ct. to the proposed alterations. The ct. fixed a day for the hearing of the petition, & as there were no parties to be served with notice of the petition, directed an advertisement of the hearing of the petition in one of the local newspapers.—*Re CORK EMPLOYERS' FEDERATION, LTD.*, [1921] 1 I. R. 69.—IR.

n. **Who may confirm alteration in constitution of company—Not Registrar of Supreme Court.**—*McGREGOR v. PIHAMA CO-OPERATIVE DAIRY Co., LTD.* (1907), 26 N. Z. L. R. 933.—N.Z.

PART III. SECT. 31, SUB-SECT. 10.

o. **Scheme of arrangement between company & creditors—When operative—**

4377. Arrangement distinguished from compromise.]—An assurance co. presented a petition under 1908 Act, s. 120, for the sanction of the ct. to a proposed arrangement for the fusion of the co.'s interests with those of a marine insurance co., & for the subdivision of its shares in order to carry out the arrangement. The scheme involved that each of the petitioning co.'s shareholders should contribute a portion of his holding in the co. to be transferred to the marine insurance co. & its shareholders, & it had been approved by the requisite majority of the shareholders in general meeting:—*Held*: the scheme, though not a "compromise," was an "arrangement" within the above sect., & there was no ground for limiting the meaning of the word "arrangement" to something analogous to a compromise.—*Re GUARDIAN ASSURANCE CO.*, [1917] 1 Ch. 431; 86 L. J. Ch. 214; 116 L. T. 193; 33 T. L. R. 169; 61 Sol. Jo. 232; [1917] H. B. R. 113, C. A.
Annotation:—*Refd.* *Re Anglo-Continental Supply Co.*, [1922] 2 Ch. 723.

4378. Costs of notices of meeting.]—The provisions of R. S. C., as to the costs of preparing & sending out notices, do not, expressly or by analogy, apply to (a) notices of judgment in a debenture-holder's action, or (b) notices of meetings or creditors & members of a co. to agree to an arrangement under 1908 Act, s. 120. The Directions of the Ch. Div. judges of May, 1896, do not prescribe merely a new mode of "service" of a judgment in an ordinary debenture-holders' action, but substitute the sending of notices of the judgment for service thereof.

In the case of the notices of judgment & of meetings aforesaid the taxing Master may, under Ord. 65, r. 27 (38A), assess the costs thereof at gross sums & in that sub-rule the words "other cause" are not to be read as *ejusdem generis* with those matters which are expressly mentioned in the sub-rule, but the taxing Master may act on the sub-rule in cases where no misconduct or negligence on the part of the solrs. whose costs are being taxed is imputed.—*Re COMMONWEALTH OIL CORPN., LTD., PEARSON v. COMMONWEALTH OIL CORPN., LTD.*, [1917] 1 Ch. 404; 86 L. J. Ch. 348; 116 L. T. 402; 61 Sol. Jo. 315.

Annotation:—*Consd.* *Re Wyatt's Appln.*, [1918] 2 Ch. 293.

Arrangement involving re-organisation of capital

—Procedure.]—*See* Nos. 1076, 1077, 1085, 1087, *ante*.

Arrangement in winding up.]—*See* Sect. 39, *post*.

Arrangement involving reduction of capital.]—*See* No. 960, *ante*.

SECT. 32.—ACQUISITION AND DISPOSITION OF PROPERTY.

SUB-SECT. 1.—ACQUISITION.

A. In General.

4379. What may be purchased—Governed by memorandum—Primary object.]—Where a co. puts in the forefront of its memorandum of assocn. a special object, as to which definite information can be obtained by intending subscribers for shares, & the subsequent clauses of the memorandum contain a list of general objects, the

reasonable mode of construing the memorandum in ordinary cases is to say that the object first stated is the paramount object of the co., & that the other objects are ancillary & subservient to that object.

Where, therefore, the paramount object of a co. was to work gold mines in the colony of West Australia, the promoters of the co. having in view one particular mine near Coolgardie in that colony, although the memorandum of assocn. specified as one of the objects of the co. to acquire & work mines "in West Australia or elsewhere":—*Held*: acquiring & working a mine in the colony of Victoria was not a carrying out of the objects of the co.—*Re COOLGARDIE CONSOLIDATED GOLD MINES, LTD.* (1897), 76 L. T. 269; 13 T. L. R. 301; 41 Sol. Jo. 365, C. A.

Annotations:—*Distd.* *Re M'Donald Gold Mines, Ex p. Duncan* (1898), 14 T. L. R. 204; Transvaal Exploring Co. v. Albion (Transvaal) Gold Mines, [1899] 2 Ch. 370. *Refd.* *Re Anglo-Cuban Oil, Bitumen & Asphalt Co.* (1917), 61 Sol. Jo. 282.

4380. ———.]—A co. was formed, first, to acquire & take over as a going concern the undertaking of another gold-mining co.; & secondly, to acquire gold mines, mining & other rights, & land, auriferous, metalliferous, or otherwise, or any interests in the same, in Mysore & elsewhere, & to work, exercise, develop, & turn to account the mines, etc. The memorandum of assocn. also gave the co. wide general powers. The property acquired under the first object was not workable at a profit, & the directors now sought to purchase other mining properties in Bombay. A general meeting of the co. was called, & a resolution was passed approving of the draft agreement, & authorising the directors to enter into it & carry it into effect. On a motion by a shareholder for an injunction to restrain the co. from entering into the agreement on the ground that it was *ultra vires*:—*Held*: the main object of the co. was gold mining in "Mysore & elsewhere," & the proposed agreement to purchase other mining properties was within the objects stated in the memorandum of assocn.—*PEDLAR v. ROAD BLOCK GOLD MINES OF INDIA, LTD.*, [1905] 2 Ch. 427; 74 L. J. Ch. 753; 93 L. T. 665; 51 W. R. 44; 12 Mans. 422.

Annotation:—*Consd.* *Butler v. Northern Territories Mines of Australia* (1906), 96 L. T. 41.

4381. ———.]—*BUTLER v. NORTHERN TERRITORIES MINES OF AUSTRALIA, LTD.*, No. 4068, *ante*.

Restraint by court—Where purchase may prevent completion of previous purchase agreement.]—*See* No. 4109, *ante*.

Construction of memorandum generally, *see* Sect. 7, sub-sect. 3, *ante*.

B. Purchase of Business.

(a) From Private Owner or Partnership.

See Sect. 2, sub-sect. 1, *ante*.

(b) From Another Company.

4382. Whether intra vires.]—(1) There is no remedy, either at law or in equity, against a co. upon any contract to which a director of the co. was a party & in which he was interested, unless

Date of arrangement & not date of sanction by court.]—A scheme or arrangement made between a co. in liquidation & its creditors under Companies Act, 1913, s. 153, becomes on the true construction of that sect., operative & binding from the date it is made & duly assented to by a three-fourths majority of the creditors, &

not from the date of its being sanctioned by the ct. A creditor, therefore, who has obtained a decree between those dates cannot execute it against the co. after the former date, although he has not assented to the arrangement.—*RAGHUBAR DAYAL v. BANK OF UPPER INDIA* (1919), 1 L. R. 41 All. 566.—IND.

PART III. SECT. 32, SUB-SECT. 1.—A. p. Power to acquire land & give a mortgage.]—Where a co. has power to acquire land for the purposes of its incorporation, it has the power to give a mtge. for, & to bind itself by covenant to pay, the purchase-money.—*SHEPARD v. BONANZA NICKEL MINING CO.* (1894), 25 O. R. 305.—CAN.

*Sect. 32.—Acquisition and disposition of property:
Sub-sect. 1, B. (b) & (c) & C.]*

the requirements of 1844 Act, s. 29, have been complied with. (2) *Semble*: it is not within the ordinary scope of a co. to purchase the goodwill of the business of another co.; & such a transaction, therefore, is one in which, without special powers for the purpose, directors would not be justified.—*ERNEST v. NICHOLLS* (1857), 6 H. L. Cas. 401; 30 L. T. O. S. 45; 3 Jur. N. S. 919; 10 E. R. 1351; *sub nom.* SEA, FIRE LIFE ASSURANCE SOCIETY v. PORT OF LONDON SHIP OWNERS' LOAN & ASSURANCE SOCIETY, 6 W. R. 24, H. L.; *reversg.* S. C. *sub nom.* *Re* SEA, FIRE & LIFE ASSURANCE CO., PORT OF LONDON ASSURANCE CO.'S CASE (1854), 5 De G. M. & G. 465, L. JJ.

Annotations:—*As to* (1) *Folld.* *Stears v. South Essex Gas-Light & Coke Co.* (1860), 9 C. B. N. S. 180. *Reid.* *Re* National Patent Steam Fuel Co., *Baker's Case* (1860), 1 Drew. & Sm. 55. *As to* (2) *Folld.* *Re* Era Assce., *Williams' Case*, *Anchor Case* (1862), 1 Hem. & M. 672; *Re* Saxon Life Assce. Soc., *Anchor Assce. Case*, *Era Assce. Soc.'s Case*, *Re* Era Assce. Soc., *Williams' Case*, *Anchor Assce. Case* (1862), 32 L. J. Ch. 206. *Reid.* *Re* Era Assce., *Williams' Case*, *Anchor Case* (1860), 2 John. & H. 400; *Kearns v. Leaf*, *Aldebert v. Leaf* (1864), 1 Hem. & M. 681; *Fountaine v. Carmarthen Ry.* (1868), L. R. 5 Eq. 316. *Generally*, *Reid.* *Re* Norwich Equitable Fire Assce. Soc. (1887), 58 L. T. 35. *Mentd.* *Hickman v. Cox* (1857), 3 C. B. N. S. 523; *London Dock Co. v. Simmott* (1857), 8 E. & B. 347; *Agar v. Athenæum Life Assce. Soc.* (1858), 3 C. B. N. S. 725; *Athenæum Life Assce. Soc. v. Pooley* (1858), 3 De G. & J. 294; *Re* Athenæum Soc., *Ex p.* *Eagle Co.* (1858), 4 K. & J. 549; *Prince of Wales Assce. v. Harding* (1858), E. B. & E. 183; *Re* Athenæum Assce. Soc., *Ex p.* *Prince of Wales Life & Educational Assce.* (1859), 28 L. J. Ch. 335; *Re* London & Eastern Banking Corp., *Ex p.* *Longworth's Exors.* (1859), John. 465; *Metropolitan Saloon Omnibus Co. v. Hawkins* (1859), 4 H. & N. 87; *Re* Royal British Bank, etc., *Nicol's Case* (1859), 3 De G. & J. 387; *Browning v. Great Central Mining Co.* (1860), 5 H. & N. 856; *Conybeare v. New Brunswick, etc. Co.* (1860), 1 De G. F. & J. 578; *Re* Magdalena Steam Navigation Co. (1860), John. 690; *Re* Phoenix Life Assce., *Burges & Stock's Case* (1862), 2 John. & H. 441; *Re* State Fire Insce. (1863), 1 De G. J. & Sm. 634; *Re* State Fire Insce. (1865), 34 L. J. Ch. 436; *Mahony v. East Holyford Mining Co.* (1875), L. R. 7 H. L. 869.

4383. —.]—*Re* ERA ASSURANCE CO., WILLIAMS' CASE, ANCHOR CASE, No. 4118, *ante*.

4384. —.]—Two insurance cos., A. & B., entered into a contract for the purchase & transfer of B.'s business. Both cos. were subsequently wound up.

The official manager of A. co. claimed against the official manager of B. co. the excess of the amount paid by A. co. under the contract, over the amount received:—*Held*: (1) on the construction of the deeds of settlement of the cos., the contract was not absolutely void, as being *ultra vires*; (2) A. co. was bound by acquiescence & conduct.—*Re* SAXON LIFE ASSURANCE CO., ERA CO.'S CASE (1862), 1 De G. J. & Sm. 29; 1 New Rep. 116; 7 L. T. 404; 11 W. R. 59; 46 E. R. 12; *sub nom.* *Re* SAXON LIFE ASSURANCE SOCIETY, ANCHOR ASSURANCE CO.'S CASE, ERA ASSURANCE SOCIETY'S CASE, *Re* ERA ASSURANCE SOCIETY, WILLIAMS' CASE, ANCHOR ASSURANCE CO.'S CASE, 32 L. J. Ch. 206, L. JJ.

Annotations:—*As to* (1) *Reid.* *Re* Bank of Hindustan, China & Japan, *Higg's Case* (1865), 2 Hem. & M. 657. *As to* (2) *Consd.* *Re* Era Assce., *Williams' Case*, *Anchor Case* (1862), 1 Hem. & M. 672.

4385. By purchase of shares.]—N. co., a life assurance co., whose deed of settlement provided that every instrument whereby the co. became liable to pay money should contain a clause limiting the liability of shareholders to the amount payable on their shares & empowered the co., with the sanction of an extraordinary general meeting, to purchase the business of any other co. of a similar nature, upon such terms as the meeting should think fit, resolved, with the sanction of an

extraordinary general meeting, to purchase the business of the C. co., an assurance co. whose deed of settlement contained no power to sell the business, & whose capital was divided into £50 shares, on which £5 had been paid. To give effect to this resolution the shares of the C. co. were transferred to various officers of the N. co., who subsequently executed a deed, which was never sanctioned by a general meeting of the shareholders, transferring the shares to the N. co., which co. was thereupon entered on the register of shareholders of the C. co. In the winding-up of the two cos.:—*Held*: the transfer of the shares to the N. co. was *ultra vires* & invalid & the N. co. could not be placed on the list of contributories of the C. co.—*Re* EUROPEAN SOCIETY ARBITRATION ACTS, *Ex p.* BRITISH NATION LIFE ASSURANCE ASSOCN. (LIQUIDATORS) (1878), 8 Ch. D. 679; 39 L. T. 136; 27 W. R. 88; *sub nom.* *Re* EUROPEAN ASSURANCE SOCIETY ARBITRATION, BRITISH COMMERCIAL INSURANCE CO. v. BRITISH NATION LIFE ASSURANCE ASSOCN., 48 L. J. Ch. 118, C. A.

Annotation:—*Mentd.* *Re* Cardiff Savings Bank, *Davies' Case* (1890), 45 Ch. D. 537.

Under power of amalgamation.]—*See* No. 4059, *ante*.

4386. Underwriting commission paid in form of profit on resale.]—A transaction by which a purchasing co. pays part of its capital in substance as underwriting commission to an intermediary co. is illegal under the Cos. Act, 1900 (c. 48), s. 8 (2), notwithstanding that the payment takes the form of a profit on a re-sale by the intermediary co. to the purchasing co.

A co., having an issued capital of 205,014 fully paid shares of £1 each, under the powers contained in its memorandum of assocn. agreed to sell its undertaking to an intermediary co. which undertook to form a new co. to take over the undertaking according to the terms of a second scheduled agreement intended to be made between the intermediary co. & the new co. Under this second agreement, as consideration for the purchase of the undertaking of the old co., the new co. was to offer 205,014 shares of £1 each, with 12s. paid up, to the shareholders of the old co. in proportion to their holding in the old co., & the intermediary co. was to take up such shares as should not be subscribed for by the shareholders in the old co., & was to receive in addition as further part of the consideration the sum of £12,300. The new co. had power under its arts. to pay underwriting commission "at a rate" not exceeding 50 per cent.:—*Held*: (1) the proposed payment of £12,300 was in substance an underwriting commission paid by the new co. to the intermediary co.; (2) it was not within the saving clause contained in above sub-sect., as there had been no offer of shares to the public by the new co., & the payment was of a lump sum & not "at a rate," as provided by the arts., & it was therefore illegal.—*BOOTH v. NEW AFRIKANDER GOLD MINING CO., LTD.*, [1903] 1 Ch. 295; 72 L. J. Ch. 125; 87 L. T. 509; 51 W. R. 193; 19 T. L. R. 67; 47 Sol. Jo. 91; 10 Mans. 56, C. A.

Annotations:—*As to* (1) *Reid.* *Re* Worthington, *Ex p.* *Pathé Frères* (1914), 83 L. J. K. B. 885. *As to* (2) *Reid.* *Bisgood v. Henderson's Transvaal Estates* (1908), 77 L. J. Ch. 486. *Generally*, *Mentd.* *Doughty v. Lomagunda Reefs* (1903), 88 L. T. 337.

Stamp duty—How calculated.]—*See* No. 4388, *post*.

(c) Stamp Duties.

See, generally, REVENUE.

4387. Conveyance or transfer on sale—Partnership converted into limited company.]—Where

eight partners turned their business into a co. consisting solely of themselves, transferred by deed the whole of the partnership property to the co., which was a party to the deed, & divided the whole of the shares in proportion to their respective interests in the partnership estate:—*Held*: the deed was a “conveyance or transfer on sale” within Stamp Act, 1891 (c. 39), s. 55, for the consideration of shares & stock, & was liable to *ad valorem* stamp duty.—*FOSTER (JOHN) & SONS v. INLAND REVENUE COMRS.*, [1894] 1 Q. B. 516; 63 L. J. Q. B. 173; 69 L. T. 817; 58 J. P. 449; 42 W. R. 259; 10 T. L. R. 152; 38 Sol. Jo. 128; 9 R. 161, C. A.

Annotations:—*Apld.* *Coats v. I. R. Comrs.*, [1897] 2 Q. B. 423. *Refd.* *G. N. Ry. v. I. R. Comrs.*, [1899] 2 Q. B. 652.

4388. Money payable periodically—Dividend payable on contingency to vendor company.—Part of the consideration for the sale of a co.’s assets to another co. was that the buying co. should pay out of its profits to the selling co. an annual dividend of 3 per cent. upon capital issued, after paying to its own shareholders a 5 per cent. dividend upon its shares:—*Held*: the dividend of 3 per cent., though payable on a contingency or more than one contingency, was “money payable periodically” within the meaning of the Stamp Act, 1891 (c. 39), s. 56 (2).—*UNDERGROUND ELECTRIC RYS. CO. v. INLAND REVENUE COMRS.*, [1906] A. C. 21; 75 L. J. K. B. 117; 93 L. T. 819; 54 W. R. 381; 22 T. L. R. 160, H. L.

Annotation:—*Consd.* *Underground Electric Rys. of London & Glyn, Mills, Currie v. I. R. Comrs.*, [1916] 1 K. B. 306.

4389. Property locally situate out of the United Kingdom—Book debts recoverable in South America—Sale of private business to company.—An agreement was made & executed in England for the sale of a business carried on at Buenos Aires in Argentine, which included certain book debts owing by persons resident in Argentina to the vendor of the business:—*Held*: the book debts were not “property situate out of the United Kingdom” within Stamp Act, 1891 (c. 39), s. 59 (1); (2) *ad valorem* duty was payable on the apportioned consideration for the sale of the book debts.—*VELAZQUEZ, LTD. v. INLAND REVENUE COMRS.*, [1914] 3 K. B. 458; 83 L. J. K. B. 1108; 111 L. T. 417; 30 T. L. R. 539; 58 Sol. Jo. 554, C. A.

C. Purchase of Shares and Other Property.

4390. Shares—Authorised by memorandum.—*Re BARNED’S BANKING CO., Ex p. CONTRACT CORPN.*, No. 4054, *ante*.

4391. — Prohibited by articles—Authorised by special resolution.—*TAYLOR v. PILSEN JOEL & GENERAL ELECTRIC LIGHT CO., Co.* 3716, *ante*.

4392. — Whether authorised by articles—Bill discounting company—Purchase of shares in banking company.—The memorandum of assocn. of a joint-stock discount co. stated that the objects for which the co. was established were *inter alia* the carrying on the business of a bill-broker & scrivener, the drawing, accepting, & discounting bills of exchange, the making advances & procuring loans on & the investing in securities, & the doing of all such things as the directors should consider incidental or conducive to the attainment of the above objects. The directors invested moneys of the co. in the shares of a joint-stock banking co. with a view of setting up the banking

co. & thereby promoting the discount business of their own co., concealing, however, the nature of the transaction from the shareholder:—*Held*: the directors had acted *ultra vires*.—*JOINT STOCK DISCOUNT CO. v. BROWN* (1866), L. R. 3 Eq. 139; 15 L. T. 174; 12 Jur. N. S. 899; *subsequent proceedings* (1869), L. R. 8 Eq. 381.

Annotations:—*Consd.* *Parker v. Lewis* (1873), 28 L. T. 91; *Hampson v. Price’s Patent Candle Co.* (1876), 45 L. J. Ch. 437; *London Financial Assocn. v. Kelk* (1884), 26 Ch. D. 107. *Refd.* *Studdert v. Grosvenor* (1886), 33 Ch. D. 528. *Mentd.* *Re Faure Electric Accumulator Co.* (1888), 40 Ch. D. 141.

4393. — — — — ——The objects of a joint-stock co., limited, were declared by the arts. of assocn. to be for carrying on the business of a bill broker & scrivener, the drawing, accepting, endorsing, discounting, & rediscounting bills of exchange & promissory notes; the making advances & procuring loans on, & the investing in, securities; the borrowing & lending of money, the guaranteeing payment of bills of exchange, promissory notes & advances, & the doing all such things as the directors should consider incidental or conducive to the attainment of the above objects. The co. by a resolution of the board of directors agreed to assist a joint-stock banking co. by taking 3,000 shares in such banking co., & as a consideration for a transfer & registration of those shares to nominees of the directors of the discount co., they drew cheques amounting to £30,000, on the bankers of the co., which were duly paid. This transaction the directors alleged was entered into with a view of promoting & increasing the business of their co., but the true character of the transaction was not entered in their cash book, but was described as “loans” to the banking co.:—*Held*: (1) such a transaction was *ultra vires* of the directors of the discount co.; (2) it was a breach of trust, & the £30,000 ordered to be paid into ct. by defts., the directors, forthwith.—*JOINT STOCK DISCOUNT CO. v. BROWN* (1869), L. R. 8 Eq. 381; 20 L. T. 844; 17 W. R. 1037.

Annotations:—*As to* (1) *Consd.* *London Financial Assocn. v. Kelk* (1884), 26 Ch. D. 107. *Refd.* *Parker v. Lewis* (1873), 28 L. T. 91; *Phosphate Sewage Co. v. Hartmont* (1877), 5 Ch. D. 394; *Re Financial Corpn., Goodson’s Claim* (1880), 28 W. R. 760; *Grimwade v. Mutual Soc.* (1884), 52 L. T. 409; *Studdert v. Grosvenor* (1886), 33 Ch. D. 528; *Cullerne v. London & Suburban General Permanent Bldg. Soc.* (1890), 25 Q. B. D. 485; *Re Liverpool Household Stores Assocn.* (1890), 59 L. J. Ch. 616. *As to* (2) *Consd.* *Parker v. Lewis* (1873), 28 L. T. 91. *Refd.* *Power v. O’Connor* (1871), 19 W. R. 923; *Re Ry. & General Light Improvement Co., Marzetti’s Case* (1880), 28 W. R. 541; *Re Lands Allotment Co.* (1894), 63 L. J. Ch. 291. *Generally, Mentd.* *Re Faure Electric Accumulator Co.* (1888), 40 Ch. D. 141.

4394. — — — — — Company formed to promote others.—The I. C. co. was empowered by its memorandum & arts., in the widest terms, to undertake & assist in the formation of other cos., including ry. cos. in England or elsewhere, to transact the business of a capitalist. Its managing director, on its behalf, applied for shares in the ry. co. Upon this 5,198 shares were allotted to it, & it was entered on the register with notice of the allotment:—*Held*: the taking of the shares by the I. C. co. was not *ultra vires*, & this co. must be settled on the list of contributories.—*Re PERUVIAN RYS. CO., CRAWLEY’S CASE, ROBINSON’S CASE* (1869), 4 Ch. App. 322; *sub nom. Re PERUVIAN RYS. CO., CRAWLEY’S CASE, ROBINSON’S CASE, INTERNATIONAL CONTRACT CO.’S CASE*, 20 L. T. 96; 17 W. R. 454, L. JJ.

Annotations:—*Refd.* *Re Disderi* (1870), 23 L. T. 694.

PART III. SECT. 32, SUB-SECT. 1.—C.
q. *Shares—Whether ultra vires.*—The holding of shares by one trading corp. in another trading corp. is not *ultra vires*.—*CANADA LIFE ASSURANCE*

CO. v. PEEL GENERAL MANUFACTURING CO. (1879), 26 Gr. 477.—*CAN.*

r. — *Whether each purchase should be submitted for approval to shareholders.*—A bye-law passed by

the directors of a co. & confirmed by a vote of the shareholders expressly authorising the directors “from time to time & whenever they see fit to purchase shares in any other corp. &

Sect. 32.—Acquisition and disposition of property:
Sub-sect. 1, C.; sub-sect. 2, A. & B. (a).]

Mentd. *Re* Land Shipping Colliery Co., *Ex p.* Harwood, Gull, Geary & Stafford (1869), 20 L. T. 736; *Re* British & American Steam Navigation Co., Ward's Case (1870), L. R. 10 Eq. 659; *Re* International Contract Co., Levita's Case (1870), 39 L. J. Ch. 673.

4395. — Financial company—Purchase of unpaid shares.]—The objects of a co. were stated in its memorandum to be the "undertaking, assisting, & participating in financial, commercial, & industrial operations & undertakings, both singly & in connection with other persons, firms, companies, & co-operations," & doing all things incidental or conducive thereto:—**Held:** the co. was authorised to take unpaid-up shares in another co.—*Re* FINANCIAL CORPN., GOODSON'S CLAIM (1880), 28 W. R. 760.

— Purchase amounting to purchase of business.]—See No. 4385, *ante*.

— Company's own shares.]—See Sect. 10, sub-sect. 3, F. (a), ii., & Sect. 31, sub-sect. 2, B., *ante*.

4396. Patent—Company formed to work patented machine.]—Where a co. is formed for working a patented machine, it is not *ultra vires* to purchase the patent.—*Re* BRITISH & FOREIGN CORK CO., LEIFCHILD'S CASE (1865), L. R. 1 Eq. 231; 13 L. T. 267; 11 Jur. N. S. 941; 14 W. R. 22.

Annotations:—Mentd. *Re* Baglan Hall Colliery Co. (1870), 5 Ch. App. 349, n.; *Re* Britannia Permanent Benefit Bldg. Soc. (1891), 65 L. T. 196; *Re* Wragg, [1897] 1 Ch. 796.

4397. Agricultural land—Company working coal mine beneath.]—A co. having for its objects to work coal & iron mines, obtained a lease for 30 years, enabling it to work the mines under certain property in Russia. A large amount of money was sunk by the co. in working, & on the death of the lessor an opportunity occurred of purchasing the freehold of the mines & surface land. The co. & its board of directors determined that the co.'s interests would be best served by making the purchase. The surface was agricultural land which it was proposed to let out on agricultural tenancies which would bring in about £4,000 per annum, but there was evidence that even if the land was allowed to lie fallow, still the purchase would be beneficial to the co. There was no express power in the memorandum to purchase land, but there was the usual clause enabling the co. to do all things "incidental & conducive to the attainment" of its objects. On motion by a dissenting shareholder to restrain the completion of the purchase by the co.:—**Held:** the purchase might be "incidental & conducive" to the attain-

ment of the co.'s objects, & the motion must be dismissed.—*JOHNS v. BALFOUR* (1889), 5 T. L. R. 389; 1 Meg. 181.

Annotation:—Apld. *Re* Kingsbury Collieries & Moore's Contract, [1907] 2 Ch. 259.

SUB-SECT. 2.—DISPOSITION.

A. In General.

4398. General rule.]—A co. incorporated under 1862 Act are, unless the contrary appear, either by express provision in their arts. of assocn. or by necessary implication from the nature of their business, in the same position as to dealing with their property as any individual owner of property.—*Re* PATENT FILE CO., *Ex p.* BIRMINGHAM BANKING CO. (1870), 6 Ch. App. 83; 40 L. J. Ch. 190; 19 W. R. 193, L. J.J.; *affg.* 23 L. T. 484.

Annotations:—Refd. *Re* General Provident Assce., *Ex p.* National Bank (1872), L. R. 14 Eq. 507; *R. v.* Reed (1880), 5 Q. B. D. 483; *Re* Clough, Bradford Commercial Banking Co. v. Cure (1885), 31 Ch. D. 324; *General Auction Estate & Monetary Co. v. Smith*, [1891] 3 Ch. 432.

4399. User conducive to objects of company.]—*SIMPSON v. WESTMINSTER PALACE HOTEL CO.*, No. 4423, *post*.

B. By Sale.

(a) Power to Sell.

4400. Whole undertaking—Where ultra vires company as constituted—How effected.]—An unregistered co. which has no power under its deed of settlement to sell & transfer its business to another co. may, nevertheless, carry into effect an agreement for that purpose by registering under 1862 Act, & then passing a resolution for voluntarily winding up, & directing the liquidator to carry out the agreement.—*SOUTHALL v. BRITISH MUTUAL LIFE ASSURANCE SOCIETY* (1871), 6 Ch. App. 614; 40 L. J. Ch. 698; 19 W. R. 865, L. J.J.

Annotation:—Consd. *Kaye v. Croydon Tram. Co.*, [1898] 1 Ch. 358.

4401. — Under power in memorandum—Sale with a view to voluntary winding up—Whether ultra vires.]—The 1862 Act, s. 161, in no way prohibits a co. from carrying into effect a resolution passed in pursuance of a provision in its arts. or memorandum of assocn. for the sale of its undertaking to another co. in consideration of shares in such purchasing co., although for the purposes of carrying the resolution into effect the vending co. proposes to go into voluntary liquidation.—*COTTON v. IMPERIAL & FOREIGN AGENCY & IN-*

to use the funds of the co. for such purpose" is permissible. A separate bye-law approving of each individual purchase is not necessary.—*McINTYRE v. TEMISKAMING MINING CO.* (1921), 50 O. L. R. 467.—CAN.

s. Purchase of land — By borrowed money.]—*EASTERN TRUST CO. v. MARITIME TELEGRAPH, ETC. CO.* (1914), 14 E. L. R. 319; 15 D. L. R. 653.—CAN.

PART III. SECT. 32, SUB-SECT. 2.—A.

t. Assignment of company's property—To trustees for benefit of creditors.]—The directors of a joint-stock co. have power to make an assignment of the co.'s estate & property to trustees for the benefit of creditors, & their action in so doing does not require the assent of the shareholders.—*Re OLYMPIA CO.* (1915), 33 W. L. R. 331; 9 W. W. R. 875.—CAN.

a. — Without consent of shareholders Ultra vires.]—The directors of a joint stock co. incorporated under Canada Joint-Stock Cos. Letters Patent

Act, 1869 (c. 13) (D), & subject to the provisions of Insolvent Act, 1875, cannot, without being authorised by the shareholders, make a voluntary assignment in insolvency.—*DONLY v. HOLMWOOD* (1879), 4 A. R. 555.—CAN.

PART III. SECT. 32, SUB-SECT. 2.—B. (a).

b. Whole undertaking — Covenant not to deal in same class of stock for twenty years—Whether intra vires.]—An agreement by a co., incorporated under the Dominion Joint-Stock Cos. Letters Patent Act for the purpose of manufacturing, importing & dealing generally in mouldings, picture frames, mirrors, plate glass, sheet glass, etc., for the sale of its stock of plate glass to a co. to be formed with a covenant not to compete in the plate glass business with that co. for twenty years, is valid, & is not an *ultra vires* abandonment of its powers.—*MCCAUSLAND v. HILL* (1896), 23 A. R. 738.—CAN.

c. — Under statute — Whether shareholders in transferor company are

shareholders in transferee company.]—A statute which authorises the sale & transfer of the whole of the business rights & property of one co. to another co. & authorises such purchase by the latter co. does not, in the absence of clear & precise language to that effect, constitute the shareholders of the selling co. shareholders in the purchasing co.—*Re DOMINION TRUST CO.*, [1917] 1 W. W. R. 171; 24 B. C. R. 450.—CAN.

d. — In breach of terms of resolution.]—The ct. will not allow a trustee, agent or other person holding an office or place of trust & confidence, to put himself in a position where his interest conflicts with his duty, or without disclosure to make a profit out of his agency. Unless & so far only as authorised by a co.'s arts. or bye-laws or by the statute governing the co., the co.'s directors cannot make a binding contract with any other co. in which a member of the quorum is interested. If the latter co. has notice of the irregularity, the

VESTMENT CORPN., [1892] 3 Ch. 454; 61 L. J. Ch. 684; 67 L. T. 342; 8 T. L. R. 777.

Annotations :—Distd. *Payne v. Cork Co.*, [1900] 1 Ch. 308.
Expld. & Foll'd. *Doughty v. Lomagunda Reefs*, [1902] 2 Ch. 837. **Overd.** *Bisgood v. Henderson's Transvaal Estates*, [1908] 1 Ch. 743.

4402. ———.]—The memorandum of assocn. of a co. contained powers to sell its undertaking for shares in another co., & to distribute amongst its members in specie any of its property. Its arts. of assocn. empowered the liquidators in its winding up, with the sanction of an extraordinary resolution, to distribute in specie amongst the contributories any part of its assets. The co. while a going concern agreed to sell its undertaking & all its property to another co., the consideration being—(a) that the purchaser co. should pay the vendor co.'s debts & perform its obligations, & keep the vendor co. & its liquidators & contributories indemnified; (b) that the vendor co. should retain a sum to pay the costs of & incidental to its winding up; (c) the allotment to the vendor co. or its nominees of fully-paid shares in the purchaser co. The agreement was conditional on its being sanctioned by an extraordinary resolution of the vendor co. before Jan. 31, 1902. On Dec. 30, 1901, the vendor co. passed by a three-fourths majority resolutions—(a) that the agreement should be adopted & carried into effect; (b) for voluntary winding up & the appointment of a liquidator, who was authorised to distribute any of the assets amongst the members in specie. At a subsequent meeting resolution (b) was confirmed as a special resolution:—*Held*: the sale was properly made under the power of sale in the memorandum & was not vitiated by the fact that it involved the co.'s immediately going into voluntary liquidation; & it was not in disguise a sale by the liquidator upon terms not justified by 1862 Act, s. 161.—*DOUGHTY v. LOMAGUNDA REEFS, LTD.*, [1902] 2 Ch. 837; 71 L. J. Ch. 888; 88 L. T. 337; 51 W. R. 29; 9 Mans. 418; *affd.*, [1903] 1 Ch. 673, C. A.

Annotations:—*Reid*. Fuller v. White Feather Reward, [1906] 1 Ch. 823; Bisgood v. Henderson's Transvaal Estates, [1908] 1 Ch. 743.

first co. may rescind the transaction, even after completion, provided that rescission is still possible; &, if the agents of the purchasing co. are also agents of the selling co., the purchasing co. is fixed with notice of anything of which its purchasing agents had notice. In an action by pltf. co. to set aside a grant of all its lands to deft. co., it appeared that the conveyance was drawn by deft. P., then acting manager & solr. for pltf. co., & was executed on behalf of pltf. co. by defts. D. & H. acting as president & secretary-treasurer respectively. The consideration was not stated in the conveyance, but it was said to have been executed to complete an oral agreement of sale entered into by pltf. co., through the agency of D. & H., acting under authority conferred upon them by a resolution passed at a special meeting of the shareholders of pltf. co. There was a dispute as to who was the purchaser; but it appeared that the same persons, D., H. & P., represented the purchaser in the making of any contract that was made. There was also a dispute as to what was actually authorised by the resolution referred to:—*Held*: a syndicate, which included among its members pltf. co.'s agents & officers, was the purchaser; & D. & H. were not authorised by the resolution to sell the whole of pltf. co.'s lands at the price & upon the terms as to commission & other matters upon which they purported to sell; & the agents of pltf. co. were the agents, officers, & shareholders of deft. co., &

the same men negotiated for both the buyers and the sellers; deft. co., through its officers, agents, & solrs., had full notice & knowledge of all the facts; & such knowledge rendered the transaction & conveyance subject to the equities between pltf. co. & the individual defts. & deft. co., to which the conveyance was made, & which had been incorporated for that very purpose, could not retain the property conveyed. The parties could & should be restored to their original positions, pltf. co. being ready & willing to pay to defts. the moneys which they had expended, & to take a reconveyance of the lands subject to such agreements of sale as defts. had entered into. — ROXBOROUGH GARDENS OF HAMILTON, LTD. v. DAVIS (1920), 46 O. L. R. 615.—CAN.

4404 i. Part of undertaking.]—A co. was formed having for its main object the carrying on of the business of manufacturing & selling butter or cheese. In order to effect its object it was expressly empowered by its memorandum of assocn. to acquire land by purchase or lease, & to erect creameries thereon. In the course of carrying on its business the co. found that certain of its creameries were no longer required. There was no express power in its memorandum to dispose of such of its freehold or leasehold lands as were not required for the purpose of its business:—*Held*: the co. had power to sell the creameries in question, such power being incidental

4403. — Whether proper object.]—The sale of all a co.'s assets & all its undertaking & the distribution of the proceeds cannot be a corporate object so that under a clause for that purpose introduced into the memorandum of assocn. such a sale & distribution can be made without regard to 1862 Act, s. 161.—**BISGOOD v. HENDERSON'S TRANSVAAL ESTATES, LTD.,** [1908] 1 Ch. 743 ; 77 L. J. Ch. 486 ; 98 L. T. 809 ; 24 T. L. R. 510 ; 52 Sol. Jo. 412 ; 15 Mans. 163, C. A.

Annotations :—**Consd.** Etheridge v. Central Uruguay Northern Extension Ry., [1913] 1 Ch. 425. **Distd. Re** Anglo-Continental Supply Co., [1922] 2 Ch. 723. **Consd.** Dibble v. Wilts & Somerset Farmers, [1923] 1 Ch. 342. **Refd.** Thomson v. Henderson's Transvaal Estates (1908), 98 L. T. 815; *Re* Aramayo Francke Mines, [1917] 1 Ch. 451; *Re* Guardian Assce., [1917] 1 Ch. 431. **Mentd. Re** Jewish Colonial Trust (Juedische Colonial Bank), [1908] 2 Ch. 287; *Hickman v. Kent or Romney Marsh Sheep-Breeders' Asscn.*, [1915] 1 Ch. 881.

4404. Part of undertaking.]—GRANT v. UNITED KINGDOM SWITCHBACK RAILWAYS Co., No. 3759, *ante*.

— **Insurance company.**—See Part V., Sect. 7, sub-sect. 2, *post*.

— Where company in liquidation.]—See Sect. 36, sub-sect. 10, F., *post*.

4405. — **Whole of assets except shares of purchasing company—Construction of memorandum.]**—**WALL v. LONDON & NORTHERN ASSETS CORPN., LTD.,** No. 3775, *ante*.

4406. ——— Branch business—Branch carried on at loss.]—A co. carried on its undertaking in three distinct branches, & issued debentures operating as a floating charge upon the property of the co. The debentures were secured by a covering trust-deed under which the co. covenanted to carry on their business in a proper & efficient manner. The co. resolved to sell to another co. the stock-in-trade & plant of one of the branches of the business which had been carried on at a loss. In an action by the debenture-holders :—*Held* : the sale could not be restrained, as it was not contrary to the terms of the debentures or trust-deed, & was consistent with the carrying on of the business of the co. in a proper manner.—*Re VIVIAN (H. H.) & Co., LTD., METROPOLITAN BANK OF ENGLAND &*

to the main purpose for which the co. existed.—**CHELTEMHAM CO-OPERATIVE DAIRY Co., LTD. v. MICHIE** (1913), 32 N. Z. L. R. 157.—**N.Z.**

e. — *To hinder & delay creditors.*—Where property is transferred from one co. to another, the person who planned the transfer for the transferor co., being the guiding spirit of the transferee co., & the effect of such transfer being to hinder & delay the creditors of the transferor co. the *onus* of showing that the transfer was not made with the intent to hinder & delay creditors of the transferor co. falls upon the transferee co.—*WALTER v. LEDUC LUMBER Co.* (1915), 8 W. W. R. 360.—CAN.

f. Power to sell land—Land held under agreement for sale—Directors named as co-purchasers—Whether purchaser can repudiate because of vendor's lack [of title.]—ALLIANCE SECURITIES, LTD. v. POSNEKOFF, [1922] 3 W. W. R. 1201.—CAN.

g. — *Surplus land — Not required for cemetery purposes.*]—Previous to 1893 a number of persons including pl'tfs. formed themselves into a co. under Cemetery Cos. Act, R. S. O. 1887 (c. 175), they acquired fifty acres of land & signed a certificate, in the form prescribed by sect. 3 of the Act, & registered it in the proper registry office on Apr. 14, 1893. With a view to obtaining power to sell part of the fifty acres not used for burial purposes, the directors of the co. in 1912, applied to the Provincial Secretary under

Sect. 32.—Acquisition and disposition of property: Sub-sect. 2, B. (a), (b), (c) & (d).]

WALES, LTD. *v.* VIVIAN (H. H.) & Co., LTD., [1900] 2 Ch. 654; 69 L. J. Ch. 659; 82 L. T. 674; 48 W. R. 636; 44 Sol. Jo. 530; 7 Mans. 470.

Annotation:—Refd. Re Borax Co., Foster v. Borax Co., [1901] 1 Ch. 326.

4407. — Construction of memorandum.]

—Pltf. co. carried on the business of brick manufacturers at Wellington, Somerset, having a branch property & business at Taunton adjoining certain other brick works belonging to the C. co., which carried on a similar business to that of pltf. co. By its memorandum of assocn. pltf. co. had power to sell or otherwise deal with all or any part of its property "in such manner & on such terms & for such purposes" as it should think proper, & also to "make & carry into effect arrangements with respect to the union of interests, or amalgamation, either in whole or in part, with any other co.," having similar objects. It was proposed that pltf. co. & the C. co. should sell their Taunton businesses to a new co., to be formed for that purpose in consideration of shares or debentures in the new co., pltf. co. & the C. co. also providing the necessary working capital by applying & paying for shares or debentures in the new co.:—*Held*: on the true construction of its memorandum of assocn. pltf. co. had power to sell its Taunton business in consideration of shares or debentures in the new co., & to provide working capital in the way proposed.—*Re* THOMAS (WILLIAM) & Co., LTD., THOMAS (WILLIAM) & Co., LTD. *v.* SULLY, [1915] 1 Ch. 325; 84 L. J. Ch. 232; 112 L. T. 408.

4408. — Surplus land—Whether reduction of capital.]—The whole of the capital of a partnership of nine persons, who in 1870 formed themselves into a limited co., under 1862 & 1867 Acts, consisted of land, on which they spent money in improvements for the purpose of their trade:—*Held*: the sale of a surplus part of the land & division of the proceeds, was a reduction of capital, which might be restrained by injunction.—*HOLMES v. NEWCASTLE-UPON-TYNE FREEHOLD ABATTOIR Co.* (1875), 1 Ch. D. 682; 45 L. J. Ch. 383; 24 W. R. 505.

Annotation:—Mentd. Guinness v. Land Corpn. of Ireland (1882), 22 Ch. D. 349.

4409. — Land acquired—Colliery company—Construction of memorandum.]—*Re* KINGSBURY COLLIERIES, LTD. & MOORE'S CONTRACT, No. 4032, *ante*.

Company with charitable objects—Whether con-

sent of Charity Commissioners necessary.]—*See, generally, CHARITIES, Vol. VIII., pp. 356 et seq.*

Authority of agents.]—*See* Sect. 31, sub-sect. 4, *ante*.

(b) On what Terms.

4410. Consideration—Shares in purchasing company—Issued to shareholders of selling company—Construction of memorandum.]—A power given to a special general meeting of a co. "to sell, dispose or otherwise deal with" the business, etc., of the co., does not authorise a transfer of the business to another co. upon the terms of an exchange by the members of the transferring co. of their shares in that co. for shares in the transferee co.

The S. co., which was a Scottish co., was empowered by its arts. of assocn. to sell & dispose of its business to any other co., but the arts. contained no express power to amalgamate with another co. By an agreement between the S. co. & the E. co., the S. co. agreed to transfer its business to the E. co. on the terms that the shareholders in the S. co. should receive shares in the E. co. in exchange for their shares in the S. co.:—*Held*: the amalgamation was *ultra vires*, not being a sale within the powers of the S. co.—*Re* EMPIRE ASSURANCE CORPN., DOUGAN'S CASE (1873), 8 Ch. App. 540; 42 L. J. Ch. 460; 28 L. T. 649; 21 W. R. 495, L. JJ.

Annotation:—Refd. Re United Ports & General Insee., Beck's Case (1874), 30 L. T. 346.

4411. — Partly-paid shares—Power to sell for shares.]—*HONIG v. BLACKETT'S MINES, LTD.* (1901), 45 Sol. Jo. 770.

4412. —]—Under a clause in a memorandum of assocn. stating one of the objects of the co. to be "to sell the undertaking of the co. . . for a consideration consisting in whole or in part of . . . shares . . . of any other co. . .":—*Held*: the co. could sell for partly-paid shares.—*MASON v. MOTOR TRACTION Co., LTD.*, [1905] 1 Ch. 419; 74 L. J. Ch. 273; 92 L. T. 234; 21 T. L. R. 238; 12 Mans. 31.

Annotations:—Folld. Fuller v. White Feather Reward, [1906] 1 Ch. 823. Refd. Bisgood v. Henderson's Transvaal Estates, [1908] 1 Ch. 743.

See, further, Sect. 37, sub-sect. 13, D., post.

4413. — Construction of memorandum.]—*Re* THOMAS (WILLIAM) & Co., LTD., THOMAS (WILLIAM) & Co., LTD. *v.* SULLY, No. 4407, *ante*.

4414. — Power to accept obligations—Sale in consideration of covenant to procure waiver of rights—Construction of memorandum.]—By its memorandum of assocn. the S. co. was empowered

(Cos. Act, 1912 (c. 31), s. 11, for re-incorporation, & letters patent re-incorporating the co. were issued on Oct. 18, 1912, which purported to give the reincorporated co. power to sell, alienate, & convey any of the lands held by the old co. & any other lands not required for the purposes of the co., if deemed necessary. The directors of the old co. then transferred all its assets to the new co. & the new co. sold & conveyed a part of the fifty acres to deft. W. Pltfs. contended that the new co. had no power so to convey:—*Held*: it was the old co.'s duty to hold the land upon the trusts declared by the statute, this duty attached to the new co. & might be enforced against it as though it had been subject to it at origin. The powers of the Provincial Secretary were strictly limited by the statute & could not be considered to extend to granting authority to trustees to sell lands which they had in trust, & put the proceeds in their own or the shareholders' pockets.—*SMITH v. HUMBERVALE CEMETERY Co.* (1915), 7

O. W. N. 462; 8 O. W. N. 202; 33 O. L. R. 452.—CAN.

h. — Sale of mineral claim—By directors—Inadequate price.]—*DANIEL v. GOLD HILL MINING Co.* (FOREIGN) (1897), 6 B. C. R. 495.—CAN.

k. Agreement for sale of land—Enforceable against purchaser by company—Without proof of bye-law authorising directors to sell.]—The shareholders of a land co. passed a bye-law providing for the directors subdividing land & re-selling it at such price & terms as they from time to time should deem advisable, & for their passing such resolutions & bye-laws as might prove necessary to carry out such objects. The directors by resolution accepted a proposed plan of subdivision, fixed the prices & authorised certain agents to sell the land in accordance therewith on such terms as they might deem fit:—*Held*: an agreement of sale executed in proper form & on which the purchaser had made a payment was enforceable by the co. without proof of a bye-law of the

directors specially authorising the agreement.—*ST. VITAL INVESTMENTS, LTD. v. HALLDORSON & CLEMENTS* (1920), 3 W. W. R. 950; 30 Man. L. R. 573.—CAN.

l. — Implied from power to purchase & hold land.]—*BROWN v. MOORE* (1921), 62 S. C. R. 487.—CAN.

PART III. SECT. 32, SUB-SECT. 2.—B. (b).

m. Sale to highest bidder.]—In winding-up proceedings of a joint-stock co., tenders were advertised for the purchase of the co.'s property, to be received by a certain time, when the sale was to be "peremptorily closed." At the time fixed one tender only had been received, & the referee enlarged the time for the arrival of a train which was late. Two more tenders were received by that train; one on behalf of the largest beneficiary under the mtge. to enforce which the sale was being held, & the other by a stranger, which was a little higher than that of the beneficiary. The latter then by

to sell or dispose of all or any part of its business or property for cash, shares, or obligations of another co. The S. co. agreed to sell to the D. co. all its property & assets, except the amounts unpaid upon certain shares, in consideration partly of a sum of money & partly of the procuring by the D. co. of a waiver by holders of shares in the S. co. of their rights to participate in the sum of money aforesaid:—*Held*: the proposed sale was not within the powers conferred on the S. co. by its memorandum of assocn.—*HOLST v. SYDNEY & LOUISBURG COAL & RAILWAY CO., LTD.* (1893), 69 L. T. 132.

4415. — Foreign government bonds—Sale to foreign government.]—LOEFFLER *v.* DONNA THEREZA CHRISTINA RY. CO., LTD. (1901), 18 T. L. R. 149.

4416. — Release from liabilities—Assets sold at undervalue.]—A co. was registered in 1889 to carry on the business of hotel proprietors with a capital of £130,000, divided into 26,000 shares of £5 each. In 1891 the co. took on lease the M. Hotel & increased their capital by creating 5,000 new shares of £5 each. Debentures to the amount of £75,000 were issued, all of which were outstanding, & there were very few other creditors. Upwards of £23,000 was expended on the M. Hotel, & it was worked at a loss. The co. agreed with B., who was one of the lessors of the M. Hotel, to hand over the possession of the M. Hotel to B., who should pay the rent & carry on the hotel. The directors undertook to obtain, & obtained, from the shareholders the necessary resolutions for reducing the capital of the co. by writing off £23,710 of fully-paid ordinary shares held by B., & his associates, & undertook to obtain the sanction of the High Court of Justice in England to such reduction, whereupon such shares should be extinguished. B. was to pay to the co. for stores & goodwill, 15,000 dols. The co. had power, under its arts. of assocn., to reduce its capital by cancelling capital:—*Held*: (1) this transaction was not a purchase by the co. of its own shares, but was a sale by the co. of some of its assets for less than their cash value, in consideration of a release from heavy burdens & of a surrender of shares; (2) the sanction of the ct. to the transaction was only necessary for the permanent extinguishment of the shares, & the ct. had jurisdiction to, & would sanction, the transaction.—*Re DENVER HOTEL CO.*, [1893] 1 Ch. 495; 62 L. J. Ch. 450; 68 L. T. 8; 41 W. R. 339; 9 T. L. R. 169; 37 Sol. Jo. 191; 2 R. 330, C. A.

Annotations:—As to (1) *Consd. British & American Trustee & Finance Corp. v. Couper*, [1894] A. C. 399. *Reid. Bellerby v. Rowland & Marwood's S.S. Co.*, [1902] 2 Ch. 14. *Generally, Mentd. Re Oceana Development Co.* (1912), 56 Sol. Jo. 537.

4417. Uncalled capital called up—& handed over to purchasing company.]—Where a co. have by

their memorandum of assocn. power to sell their undertaking, they can, as one of the terms of the sale, call up their uncalled capital & hand over the proceeds to the purchaser.—*NEW ZEALAND GOLD EXTRACTION CO. (NEWBERRY-VAUTIN PROCESS) v. PEACOCK*, [1894] 1 Q. B. 622; 63 L. J. Q. B. 227; 70 L. T. 110; 9 R. 669, C. A.

Annotations:—*Distd. Bisgood v. Henderson's Transvaal Estates*, [1908] 1 Ch. 743. *Reid. Re Bank of South Australia* (No. 2), [1895] 1 Ch. 578; *Wall v. London & Northern Assets Corp.*, [1898] 2 Ch. 469. *Mentd. James v. Buena Ventura Nitrate Grounds Syndicate*, [1896] 1 Ch. 456; *Allon v. Gold Reefs of West Africa*, [1899] 2 Ch. 40.

Sale of assets at undervalue.]—See No. 4416, *ante*.

(c) Application of Proceeds of Sale.

On sale of undertaking—Allotment of shares among shareholders—Whether return of capital.]—See Sect. 37, sub-sect. 13, E. (b), *post*.

On liquidation of selling company.]—See Sect. 37, sub-sect. 13, E. (e), *post*.

4418. On sale of part of assets—Division of purchase price among shareholders.]—HOLMES *v.* NEWCASTLE-UPON-TYNE FREEHOLD ABATTOIR CO., No. 4408, *ante*.

Profits on sale—Whether available for dividends.]—See No. 3926, *ante*.

(d) Restraint of Sale.

4419. Winding up preferable in particular circumstances.]—A co. had been in existence for four years without carrying on any business; all its shares were registered as fully paid-up, & there were no creditors. An agreement having been entered into for the sale of its property, a shareholder presented a petition for winding up the co. with a view to the property being sold under the direction of the ct., other shareholders, however, opposing the petition on the ground that the sale could be better effected without the intervention of the ct., & that there being no creditors or contributories a winding-up order would be useless:—*Held*: (1) the co. being registered under 1862 Act, the liability to a winding-up order existed, independently of the question whether any advantage might result from such an order; (2) as the property appeared to be of some value, & the shareholders were unable to agree as to the mode of sale, the sale could be more advantageously effected under the direction of the ct.—*Re TUMACACORI MINING CO.* (1874), L. R. 17 Eq. 534; 43 L. J. Ch. 417; 22 W. R. 510.

Annotation:—*Generally, Expld. Re New Gas Generator Co.* (1877), 4 Ch. D. 874.

4420. At whose instance—Licence.]—DAVISON *v.* ROYAL AQUARIUM (1888), 5 T. L. R. 6.

4421. — Debenture-holders—Substratum of company destroyed.]—By an agreement dated Nov. 29, 1898, & made between the B. co. & the

his agent handed in a much higher tender, whereupon the referee instructed notice of the last tender to be given to the other tenderers, & on a subsequent day accepted the last, which was the highest tender:—*Held*: that he was justified in so doing.—*Re ALGER & SARNIA OIL CO.* (1891), 21 O. R. 440; 19 A. R. 446.—CAN.

PART III. SECT. 32, SUB-SECT. 2.— B. (c).

n. Division of purchase price among shareholders.]—The directors of a no liability co. having notice of a claim against the co., sold the mining machinery, which formed the only asset of the co. available for payment of debts, & distributed the proceeds in the form of dividends amongst the

shareholders:—*Held*: the directors were liable under the general law, to refund the amount thereof, or so much thereof as might be sufficient to satisfy the claims of the creditors to the liquidator suing on behalf of the creditors.—*MACKIE v. CLOUGH* (1891), 17 V. L. R. 493.—AUS.

c. —.]—*Re STILLWATER LUMBER & SHINGLE CO., LTD. v. CANADA LUMBER & TIMBER CO., LTD.* (1923), 32 B. C. R. 249.—CAN.

PART III. SECT. 32, SUB-SECT. 2.— B. (d).

p. Sale of land belonging to company—Whether dissentient minority can restrain sale.]—RITCHIE *v.* VERMILLION MINING CO. (1902), 22 C. L. T. Occ. N.

382; 4 O. L. R. 588; 1 O. W. R. 624.—CAN.

q. Sale of company's assets to unformed company.]—Powers were conferred upon a co. by the legislature to sell its plant, property & assets for shares "in a co. carrying on or formed for the purpose of carrying on any business capable of being conducted so as directly or indirectly to benefit this co.":—*Held*: a sale to individuals who were not the agents nor trustees of an unformed co., upon their undertaking to pay in shares of a co. not yet formed would be *ultra vires*.—*HILL v. STARR MANUFACTURING CO.* (1913), 13 E. L. R. 420; 15 D. L. R. 146; 47 N. S. R. 387.—CAN.

r. Who must authorise action in name of company.]—If persons uncon-

Sect. 32.—Acquisition and disposition of property: Sub-sect. 2, B. (d), C. & D. Sect. 33: Sub-sect. 1.]

trustee for an intended new co., the B. co. agreed to sell its assets to the new co. for £320,000 paid as to £100,000 either in cash or shares at the option of the purchaser, as to £150,000 either in cash or cumulative preference shares at the option of the purchaser, & as to £70,000 in ordinary shares. Pltf., the holder of certain debentures in the B. co. alleged that the rights of debenture-holders would be destroyed if the arrangement were carried out; that the words of the memorandum of assocn. could not interfere with the rights of secured creditors; & that the right to enforce his security arose when the whole or substantially the whole of the assets were parted with & the B. co. ceased to be a going concern. He accordingly moved for an interlocutory injunction to restrain the carrying out of the arrangement:—*Held*: the B. co. was destroying the substratum of its existence, & therefore the floating charge which the debenture-holders held upon the whole assets attached.—*Re BORAX Co., FOSTER v. BORAX Co.*, [1899] 2 Ch. 130; 68 L. J. Ch. 410; 80 L. T. 461; 6 Mans. 439; *subsequent proceedings*, 80 L. T. 637, C. A.

4422. — Floating charge.—The memorandum of assocn. of a limited co. included, among its objects, the carrying on of a business of a specified nature, & also the carrying into effect of arrangements for amalgamation or union of, or sharing in interests whether in whole or in part with, any other co. carrying on any business similar or analogous to any business authorised by the memorandum; & also the sale of all or any part of the co.'s business or property & the holding of any debenture, shares, stocks, or securities of any other co.

The co. sold the whole of its property & assets, including the goodwill, with the exception of certain securities, which it retained as its own property, to a new co. formed for the purpose of acquiring & working the old co.'s business & similar undertakings, the sale being in consideration of debenture-stock & shares in the new co., & the old co. agreeing not to carry on any similar business otherwise than in conjunction with & for the benefit of the new co. The old co. had, before the sale, issued debentures charging, "by way of floating security, all its property, undertaking, & assets for the time being, whether present or future," & becoming immediately payable upon

an order or effective resolution to wind up. In a debenture-holders' action against the old co. claiming that by the sale it had ceased to carry on its objects as defined by the memorandum, & that therefore the debenture charge immediately attached:—*Held*: pltf.'s claim failed, because (1) the sale was not *ultra vires* of the memorandum of assocn.; (2) the old co.'s undertaking had not ceased to be a going concern, so that the debentures were still nothing more than a "floating security"; & (3) the debentures, being a floating security, did not give the holders any right to interfere with what the co. had done in the ordinary course of its business as defined in the memorandum of assocn.

(4) *Qu.*: whether on the sale the old co. could preclude itself from exercising its powers in respect of what was in fact the principal object included in the memorandum, & whether so to do would not endanger the security of the debenture-holders by limiting & altering it.—*Re BORAX Co., FOSTER v. BORAX Co.*, [1901] 1 Ch. 326; 70 L. J. Ch. 162; 83 L. T. 638; 49 W. R. 212; 17 T. L. R. 159; 45 Sol. Jo. 138, C. A.

See, also, No. 4406, *ante*.

C. By Lease.

4423. Unwanted portion of premises—Incidental or otherwise conducive to objects.—A joint-stock co. may use its corporate property in a way not actually contemplated in the objects set forth in the memorandum of assocn., if such user be conducive to those objects, & be made in good faith as tending thereto.

The funds of a joint-stock co. established for the purposes of one undertaking cannot be applied to another, & the attempt so to apply them, though sanctioned by all the directors, & by a large majority of the shareholders, is illegal. But where a co. was established "for the erection, furnishing, & maintenance of an hotel, the carrying on the usual business of an hotel & tavern therein, & the doing all such things as are incidental or otherwise conducive to the attainment of the above objects"; & the directors, while the hotel was in the course of being built, agreed to let off, for a stipulated period of short duration, a large portion of it to the head of a Government department for the business of his office, & evidence was given that such a letting was calculated to be productive of advantage to the co. in its intended business, & that a majority of shareholders had sanctioned the act:—*Held*: the arrangement was

nected with a co. or its duly qualified officers, authorise an action in the name of the co., the ct. will stay proceedings without costs.—*DE WOLF SPURR v. ALBERT MINING Co.* (1874), 2 Pug. 260.—CAN.

s. Right to withdraw from litigation.—A corpn. has the same right as an individual to withdraw its name from litigation to which it has been made a pltf., but of which it does not approve.—*INTERNATIONAL WRECKING Co. v. MURPHY* (1888), 12 P. R. 423.—CAN.

t. Consent judgment—In respect of transaction *ultra vires*.—If a co. enters into a transaction which is *ultra vires*, & litigation ensues in the course of which a judgment is entered by consent, such judgment is not as binding on parties as one obtained after a contest, & will be set aside because the transaction was beyond the power of the co.—*CHARLEBOIS v. DELAP*, [1899] A. C. 114.—CAN.

a. Judgment against company—Setting aside—Obtained by collusion

with directors.—At a meeting of directors of deft. co. a resolution was passed that an action brought by pltf., who was president of the co. & held a majority of the shares, against the co., should not be defended; that pltf. should be allowed to take judgment for the amount of his claim with interest; & that an account rendered to pltf. by the secretary of the co. should be withdrawn & treated as rendered without authority. There was ground for inferring collusion, & a question as to whether pltf. was entitled to recover anything in his action against the co.:—*Held*: the judgment entered against the co. was properly set aside, & the secretary of the co. was properly permitted to defend & plead a counterclaim on behalf of the co.—*DIMOCK v. CENTRAL RAWDON MINING Co.* (1903), 36 N. S. R. 337.—CAN.

b. Against company—After winding up—Against official manager.—When a public co. has been ordered to be wound up, under the Winding-up Acts, & an official manager has been

appointed, all suits in respect of claims against the co. must, thenceforth, be prosecuted against such official manager.—*RIDDICK v. DEPOSIT & GENERAL LIFE ASSURANCE Co.* (1858), 9 I. C. L. R. 84; 11 Ir. Jur. 87.—IR.

c. — With branches in Scotland—Contract performed in England—Company sued in Scotland.—Where the chief office of a co. for carrying goods between Liverpool & Greenock was at Liverpool, but they had branches at Glasgow & Greenock:—*Held*: the co. could be sued in Scotland for the value of goods delivered at Liverpool.—*BISHOP v. MERSEY & CLYDE NAVIGATION STEAM Co.* (1830), 8 Sh. (Ct. of Sess.) 558; 5 Fac. Coll. 441.—SCOT.

d. When company "pursuer"—1862 Act, s. 69.—A co. successfully pursued an action in the Sheriff Ct. & Defender appealed:—*Held*: in opposing the appeal the co. was not a pursuer within above sect. & it did not apply.—*STAR FIRE & BURGLARY INSURANCE Co. v. DAVIDSON & SONS* (1902), 4 F. (Ct. of Sess.) 997.—SCOT.

valid within the words of the clause, "all such things as are incidental or otherwise conducive to the attainment" of the objects for which the co. was established.—**SIMPSON v. WESTMINSTER PALACE HOTEL CO.** (1860), 8 H. L. Cas. 712; 2 L. T. 707; 6 Jur. N. S. 985; 11 E. R. 608, H. L.

Annotations:—**Consd. Re Saxon Life Assce. Soc., Anchor Assce. Case, Era Assce. Soc.'s Case, Re Era Assce. Soc., Williams' Case, Anchor Assce. Case** (1863), 32 L. J. Ch. 206. **Appld. Featherstonhaugh v. Lee Moor Porcelain Clay Co.** (1865), L. R. 1 Eq. 318. **Consd. Joint Stock Discount Co. v. Brown** (1866), L. R. 3 Eq. 139; **Re London & Colonial Co., Ex p. Horsey** (1868), 37 L. J. Ch. 393; **Guinness v. Land Corpn. of Ireland** (1882), 22 Ch. D. 349. **Reid. MacDougall v. Jersey Imperial Hotel Co.** (1864), 2 Hem. & M. 528; **Taunton v. Royal Insce.** (1864), 2 Hem. & M. 135; **Studdert v. Grosvenor** (1886), 33 Ch. D. 528; **Henderson v. Bank of Australasia** (1888), 40 Ch. D. 170; **A.-G. v. Mersey Ry.**, [1907] 1 Ch. 81; **Moseley v. Koffyfontein Mines**, [1911] 1 Ch. 73. **Mentd. Russell v. Wakefield Waterworks Co.** (1875), L. R. 20 Eq. 474; **Yorkshire Miners' Asscn. v. Howden**, [1905] A. C. 256; **Russell v. Amalgamated Soc. of Carpenters & Joiners**, [1912] A. C. 421.

4424. —[A limited co. established for the purpose of carrying on business as hop merchants, exporters of ale, etc., with power to take & make leases for the purposes of their undertaking, took a lease of a much larger house than was required for the purposes of their business, & used part only of the premises, letting off the larger portion of it:—**Held:** the co. having taken this lease with the *bonâ fide* object of having their offices in the most eligible situation for the purposes of their business, the letting off so much of the premises as they did not require was not *ultra vires*.—**Re LONDON & COLONIAL CO., HORSEY'S CLAIM** (1868), L. R. 5 Eq. 562, n.; 37 L. J. Ch. 393; 16 W. R. 535.

Annotations:—**Mentd. Re Gartness Iron Co., Ex p. Elphinstone** (1870), L. R. 10 Eq. 412; **Re Telegraph Construction Co.** (1870), L. R. 10 Eq. 384; **Gooch v. London Banking Asscn.** (1886), 32 Ch. D. 41; **Re Midland Coal, Coke & Iron Co., Craig's Claim**, [1895] 1 Ch. 267; **Re New Oriental Bank Corpn. (No. 2)**, [1895] 1 Ch. 753.

4425. Business unsuccessful—Making most of assets.—**FEATHERSTONHAUGH v. LEE MOOR PORCELAIN CLAY CO.**, No. 4081, *ante*.

D. By way of Mortgage.

See Sect. 34, post.

SECT. 33.—ACTIONS AND PROCEEDINGS BY AND AGAINST COMPANIES.

SUB-SECT. 1.—IN GENERAL.

Legal proceedings—What are—Construction of articles.—*See No. 4459, post.*

4426. Position of shareholder—Where company party to action.—*Semble:* an ordinary member of a co. ought not to be examined on interrogatories unless the judge is satisfied that there is no officer of the co. capable of making the discovery, & that the member proposed to be examined has the required information.

When a co. is a party to an action, a member is in the position, not of a witness, but of a party. The usual practice is for the co.'s solr. to act for the member who is directed to answer, & charge the costs against the co.—**BERKELEY v. STANDARD DISCOUNT CO.** (1879), 13 Ch. D. 97; 49 L. J. Ch. 1; 41 L. T. 374; 28 W. R. 125, C. A.

Annotations:—**Reid. Re Alexandra Palace Co.** (1880), 16 Ch. D. 58; **Tannetta, Walker v. Newport (Alexandra) Dock Co.** (1890), 6 T. L. R. 325; **Chaddock v. British South Africa Co.** (1896), 65 L. J. Q. B. 635.

4427. To enforce company's regulations.—It seems clear that a co. is entitled as against its members to enforce & restrain of its regulations.

It is also clear that shareholders as against their

co. can enforce & restrain breaches of its regulations (**ASTBURY, J.**).—**HICKMAN v. KENT OR ROMNEY MARSH SHEEP-BREEDERS' ASSOCN.**, [1915] 1 Ch. 881; 84 L. J. Ch. 688; 113 L. T. 159; 59 Sol. Jo. 478.

Annotation:—**Mentd. Anglo-Newfoundland Development Co. v. R.**, [1920] 2 K. B. 214.

Proceedings by shareholders—In respect of ultra vires acts of company—Loss of right to bring.—*See Nos. 4112, 4117, 4118, 4120, ante.*

4428. —In respect of ultra vires acts of directors.]—The notice of an extraordinary general meeting of a limited co. stated the purpose of the meeting to be to consider & if thought fit, approve the draft new regulations to be submitted to the meeting, & to pass a resolution approving & adopting the same. It also stated that copies of the proposed new regulations might be seen at the offices of the co., or would be forwarded to shareholders on application. The new regulations contained an art. enabling the board to grant a retiring pension to any managing director, & confirming an agreement of Jan. 17, 1902, by which the directors, acting on behalf of the co., agreed to pay to one of the retiring managing directors, for consideration, an annual sum of £1,000 for ten years, & £500 a year thereafter for the remainder of his life. There were also other new arts. (*inter alia*): (a) enabling the board to increase the remuneration of the directors from £3,000 to £4,500 per annum, & allowing them travelling, hotel, & other expenses; (b) providing for the appointment of three directors for life; (c) relieving directors from liability for loss; & (d) enabling the directors to borrow a further sum of £150,000. The resolution adopting the new regulations was passed at the meeting & confirmed at a second extraordinary general meeting. In an action by the shareholders against the co. & the directors to test the validity of the resolutions:—**Held:** (1) the shareholders were not entitled to maintain the action at all, & must appeal to the co. in general meeting in respect of the irregularity committed by the directors.

(2) One or more shareholders of a co. cannot sue in respect of irregular or unauthorised acts of the directors which would be valid if done with the approval of the majority of the shareholders or are capable of being confirmed by the majority.—**NORMANDY v. IND, COOPE & CO., LTD.**, [1908] 1 Ch. 84; 77 L. J. Ch. 82; 97 L. T. 872; 24 T. L. R. 57; 15 Mans. 65.

Annotation:—*As to (2) Reid. Foster v. Foster*, [1916] 1 Ch. 532.

4429. Institution of proceedings—In county court.—A co., incorporated under 1908 Act, may lawfully employ an agent, who is not a solr., to institute proceedings in the county ct. & file the necessary *præcipe* on its behalf & with the leave of the judge, to represent it in ct.

The ancient rule that a corpn. can only act by attorney, which involved an appointment under the seal of the corpn., does not extend to prevent joint-stock cos. from issuing process in the county ct. as ordinary individuals can do, seeing that they are able to comply with all the provisions of the C. C. R., & without appointing any attorney under their common seal to do these acts for them (**SWINFEN EADY, L.J.**).—**KINNELL (CHARLES P.) & CO. v. HARDING, WACE & CO.**, [1918] 1 K. B. 405; 87 L. J. K. B. 342; 118 L. T. 429; 34 T. L. R. 217; 62 Sol. Jo. 267, C. A.

Provision in articles for arbitration—Dispute between directors as to validity of election—Whether "difference between company & members."—*See No. 3840, ante.*

Sect. 33.—Actions and proceedings by and against companies: Sub-sects. 2 & 3, A.]

SUB-SECT. 2.—CAPACITY TO TAKE OR DEFEND.

Whether company alien enemy.]—See **ALIENS**, Vol. II., pp. 145 *et seq.*

Proceedings in bankruptcy.]—See **BANKRUPTCY & INSOLVENCY**, Vol. IV., p. 110, No. 991.

SUB-SECT. 3.—IN WHOSE NAME ACTION TAKEN.

A. Whether in Name of Company or Shareholder.

4430. General rule.]—FOSS *v.* HARBOTTLE, No. 4100, *ante.*

4431. —.]—On a motion to strike out the name of a co. which had been added by amendment as co-pltf., on the ground that the co. had not authorised the use of its name:—*Held*: (1) the motion was wrong, as such a motion could only be made by the co. itself; (2) the consent of the co. must be obtained as necessary to sustaining the action, under the rule in *Foss v. Harbottle*, No. 4100, *ante.*

(3) There must be an absolute necessity for justice to allow a departure from the rule that the co. must sue in its own name for redress for injuries done to the co. In certain peculiar cases the minority of the shareholders must be allowed to sue on behalf of themselves; for instance, where an injunction is required to prevent a co. acting *ultra vires* before a general meeting can be called, or where there is something illegal or fraudulent on the part of the co., or the majority thereof (JESSEL, M.R.).—DUCKETT *v.* GOVER (1877), 25 W. R. 554; *previous proceedings*, 6 Ch. D. 82; 46 L. J. Ch. 407.

*Annotations:—*Generally, *Expld.* Mason *v.* Harris (1879), 11 Ch. D. 97. *Reid.* Harben *v.* Phillips (1883), 23 Ch. D. 14, where CHITTY, J., at p. 29, formerly one of the counsel in the case, treating it as unreported, stated that the case was decided on other grounds.

PART III, SECT. 33, SUB-SECT. 3.—A.

e. General rule—Redress of wrong done to company.]—A shareholder cannot maintain an action to redress a wrong done to a co., except where the acts complained of are of a fraudulent character or beyond the powers of the co., though he may have a cause of action to enforce his own individual right, which has been invaded by the directors or others.—BROWN *v.* MENZIES BAY TIMBER CO., [1917] 2 W. W. R. 658; 24 B. C. R. 27; 34 D. L. R. 452.—CAN.

f. — Company defrauded by contract of purchase—Minority of shareholders defrauded by majority.]—The general proposition is perfectly clear that when a co. has been defrauded by the execution of a contract of purchase & sale, it is the co. alone that has any title to complain because they alone have a right to decide whether they are to give up the property they have bought & to recover the price or whether the contract should be affirmed because the properties are too valuable to be given up. There is an exception to that rule, of which the pursuer decides to avail himself in this case. The exception is where the majority of the shareholders are using their voting power to defraud the minority, then the minority may sue an action in name of the co. which the majority decline to raise.—SMYTH *v.* MUIR (1891), 19 R. (Ct. of Sess.) 81.—SCOT.

g. — Acts ultra vires or mala fide.]—As a general rule the co. must sue to redress a wrong done to it, but if a majority of its shares are controlled by those against whom relief is sought & who will not permit an action to be

brought in the co.'s name the complaining shareholders may sue in their own names but must show that the acts complained of are either *mala fide* or beyond the powers of the co.—ROBINSON *v.* IMROTH, [1917] W. L. D. 159.—S. AF.

h. Shareholder unable to procure action by company—Must show refusal by company—Acts ultra vires company.]—GILLESPIE *v.* LLOYD, 11 C. L. T. Occ. N. 121.—CAN.

k. — Misconduct of directors—Use by plaintiffs of company's name.]—Where the directors of an incorporated co. misappropriate the funds of the corp., a bill against them & the co., in respect of such misappropriation, cannot be sustained by some of the stockholders on behalf of all except the directors; the co. must be made ptfs. whether the acts of the directors are void or only voidable, & the stockholders have a right to make use of the name of the co. as ptfs. in such proceedings.—HAMILTON *v.* DESJARDIN CANAL CO. (1849), 1 Gr. 1.—CAN.

l. — — —.]—Pltf. brought an action on behalf of himself & the other shareholders in a co. against the co. & two directors, claiming that the property standing in the name of directors should be declared to be the property of the co., & that the directors had improperly paid out money from the co.'s treasury on account of the debts of another co. when the debt. co. was not responsible for the liabilities of the other co.:—*Held*: ptlf. must first apply to the co. to proceed to recover the moneys alleged to be lost before he could bring this action in his own name.—JOHNSTON *v.* CARLIN

4432. —.]—The action is brought by a shareholder on behalf of himself & other the shareholders in the co. It is founded on an alleged wrong done to the co. For such a wrong the co. alone can sue at law, & the general rule is the same in equity (see *MacDougall v. Gardiner*, No. 3880, *ante*). But equity has admitted certain exceptions to the general rule, one of which is that where a fraud is committed by persons commanding a majority of votes, the minority can sue by a shareholder (CHITTY, L.J.).—SPOKES *v.* GROSVENOR HOTEL CO., [1897] 2 Q. B. 124; 66 L. J. Q. B. 572; 76 L. T. 679; 45 W. R. 546; 13 T. L. R. 431, C. A.

*Annotations:—**Reid.* National Assocn. of Operative Plasterers *v.* Smithies, [1906] A. C. 434; *Cory v. Cory*, [1923] 1 Ch. 90.

4433. — Recovery of corporate property.]—GRAY *v.* LEWIS, PARKER *v.* LEWIS, No. 4053, *ante.*

4434. Proceedings against directors—Acts complained of not ultra vires.]—LORD *v.* COPPER MINERS (GOVERNOR & CO. OF), No. 4079, *ante.*

4435. Proceedings against officer.]—DUCKETT *v.* GOVER, No. 4486, *post.*

4436. Shareholder able to procure action by company.]—The rule that a suit by individual shareholders in an incorporated co., complaining of an injury to the corp., cannot be maintained, if it appears that ptfs. have the means of procuring a suit to be instituted in the name of the corp. itself, applies equally whether the subject-matter of complaint be an act or transaction which is merely voidable at the discretion of a majority of shareholders, or an act or transaction absolutely illegal, & incapable of being confirmed by such majority.

A general demurrer to a bill by two members of an incorporated co., in their individual characters, against the corp. & twelve other members who were alleged to have usurped the office of

(1914), 20 B. C. R. 520.—CAN.

m. — — —.]—The managing director of a co. entered into contracts for work in his own name on behalf of the co. with a customer. The work was done by the co., & the director received the amounts due under the contracts, & paid over a portion to the co., but did not account for the amounts received by him. This was in consequence of an alleged arrangement with his co-directors that he was not to account for profits. The co. declined to call upon the director for an account, whereupon two shareholders brought an action against the co. & the director, claiming that the director was a trustee for the co. of all money received under the contracts, & asking for an account. The co. pleaded that the complaint was conversant with a matter of internal management over which the ct. had no jurisdiction. The defence of the director was that if there was any cause of complaint against him, which he did not admit, it was only enforceable at the suit of the co.:—*Held*: the transaction was illegal & *ultra vires*, & ptfs. were entitled to the relief sought.—COCKBURN *v.* NEWBRIDGE SANITARY STEAM LAUNDRY CO., LTD., & LLEWELLYN, [1915] 1 I. R. 249.—IR.

n. — — — Injury to corporate property.]—The co. itself is the proper ptlf. in actions for injury to the corporate property, & such as action by shareholders alone, showing no reason why the co. has not instituted the proceedings, cannot be sustained.—INTERNATIONAL WRECKING CO. *v.* MURPHY (1888), 12 P. R. 423.—CAN.

o. — — — Promoters' secret

directors, & to be exercising the functions thereof, as a majority of the governing body, injuriously to the interests of the co., praying that those twelve defts. might be restricted from acting as directors, & be ordered to deliver the common seal, & the property, & books of the co. in their possession, to six other persons, who were alleged to be the only duly constituted directors, was, on the above ground, allowed.—**MOZLEY v. ALSTON** (1847), 1 Ph. 790; 4 Ry. & Can. Cas. 636; 16 L. J. Ch. 217; 9 L. T. O. S. 97; 11 Jur. 315; 41 E. R. 833, L. C.

Annotations.—**Apld.** *Edwards v. Shrewsbury & Birmingham Ry.* (1848), 2 De G. & Sm. 537. **Foll.** *Gray v. Lewis, Parker v. Lewis* (1873), 8 Ch. App. 1035. **Apld.** *MacDougall v. Gardiner* (1875), 1 Ch. D. 13. **Refd.** *Lord v. S. Copper Miners' Co.* (1848), 1 H. & Tw. 85; *Carlisle v. S. E. Ry.* (1850), 2 H. & Tw. 366; *Cooper v. Powis* (1850), 3 De G. & Sm. 688; *Fawcett v. Laurie* (1860), 1 Drew. & Sm. 192; *Hoole v. G. W. Ry.* (1867), 3 Ch. App. 262; *MacDougall v. Gardiner* (1875), 10 Ch. App. 606; *Russell v. Wakefield Waterworks Co.* (1875), L. R. 20 Eq. 474; *Wall v. London & Northern Assets Corp.* (1898), 79 L. T. 249; *Burland v. Earle*, [1902] A. C. 83; *Dominion Cotton Mills Co. v. Amyot*, [1912] A. C. 546; *Baillie v. Oriental Telephone & Electric Co.*, [1915] 1 Ch. 503; *Foster v. Foster*, [1916] 1 Ch. 532. **Mentd.** *Yettis v. Norfolk Ry.* (1848), 5 Ry. & Can. Cas. 487; *Cooper v. Shropshire Union Ry. & Canal Co.* (1849), 6 Ry. & Can. Cas. 136; *Hattersley v. Shelburne* (1862), 31 L. J. Ch. 873; *Seaton v. Grant* (1867), 36 L. J. Ch. 638; *Wandsworth & Putney Gas-Light & Coke Co. v. Wright* (1870), 22 L. T. 404; *Ward v. Sittingbourne & Sheerness Ry.* (1874), 9 Ch. App. 490, n.; *Lambert v. Neuchatel Asphalte Co.* (1882), 51 L. J. Ch. 882.

4437. Shareholder unable to procure action by company—Relief sought against persons having controlling votes—Majority of shareholders.]—**ATWOOL v. MERRYWEATHER**, No. 4082, *ante*.

4438. ———.]—**EAST PANT DU UNITED LEAD MINING CO. v. MERRYWEATHER**, No. 3799, *ante*.

4439. ———.]—**MENIER v. HOOPER'S TELEGRAPH WORKS**, No. 4087, *ante*.

4440. ———.]—**SILBER LIGHT CO. v. SILBER**, No. 4449, *post*.

*profits.]—*The three plffs. were shareholders in deft. co., of which deft. M. was the promoter & organiser. K. entered into an agreement with deft. co., whereby the latter were to acquire K.'s business for 25,000 shares. It was alleged that there was an agreement between M. & the co.'s directors, that in consideration of his services in promoting the co. he was to receive a bonus of 25,000 shares. It was arranged that this bonus was to be given to M. through the transaction entered into with K.; that is to say: the agreement with K. should show the consideration for the acquirement of his business as 50,000 shares, & it should be understood that 25,000 should go to M. instead of there being a transfer direct to him from the co. The prospectus of the co. stated that there were no promoters' profits, & it was, as alleged, to get over this representation that the bonus to M. was carried out through the K. transaction:—**Held:** plffs., not having shown that the co. had declined to bring the action, or that any proper effort had been made by them to get the co. to do so, had no status to bring the action themselves.—**ROSE v. BRITISH COLUMBIA REFINING CO.** (1911), 16 B. C. R. 215.—**CAN.**

p. ——— To recover funds misapplied.]—Assuming that there was no authority for the payment of the liabilities, under the strict interpretation of certain agreements:—**Held:** plff. could not bring an action in his own name, at least before asking the co. itself to proceed to recover the money alleged to be lost to it.—**JOHNSTON v. THOMPSON** (1914), 26 W. L. R. 814; 19 B. C. R. 105.—**CAN.**

q. ——— Directors con-

*trolling voting power.]—*A bill was filed by a shareholder complaining of the misconduct of the managing director & the co., on behalf of plff. & all other shareholders not made defts.; to which defts. demurred on the ground, amongst others, that the bill should have been by the co., which demurrer was allowed, with liberty to amend; & thereupon plff. amended by charging that the managing director & the other directors held proxies sufficient to control, & did control, the corp., & had caused the co. to adopt & confirm the illegal acts of the managing director; & that, controlling as they did the meetings of the bondholders & shareholders, it would be idle & useless to have a general or special general meeting of the bondholders & shareholders called for the purpose of obtaining a direction from them to the directors to bring him to an account. Defts. demurred for want of equity, which was allowed, but without costs as defts. had raised grounds of demurrer which had been overruled on the argument of the demurrer to the original bill.—**McMURRAY v. NORTHERN RY. CO.** (1876), 23 Gr. 134.—**CAN.**

r. Relief sought against company—For ultra vires acts of directors—In instituting action for conspiracy.]—A prosecution was commenced at the instance of the directors of a co. against plff. for conspiring by false reports to depreciate the value of shares in the co. Plff. was committed for trial but the Crown abandoned the prosecution. In an action for malicious prosecution brought by plff. against the co.:—**Held:** as object of plff. in the alleged conspiracy was one that affected the shareholders merely & not

4441. ——— Directors.]—Two shareholders in a co., on behalf of themselves & the other shareholders, commenced an action against the managing director & two other directors of the co., & the co., to set aside for fraud the sale of the business to the co. The statement of claim alleged that the contract of sale had been entered into by the promoters & adopted by the co. on the faith of false representations knowingly made by the managing director, who was the vendor to the co.; that deft. & directors formed the majority of the board, & refused to take any steps to remedy the matters complained of; & that the managing director by the preponderance of his votes had complete control over the co., & prevented the shareholders from taking any steps within the co. to remedy the matters complained of. Deft. directors demurred on the ground that the action ought to have been brought in the name of the co., & the co. by its statement of defence pleaded to the same effect:—**Held:** the allegations were sufficient to bring the case within the principle of *Atwool v. Merryweather*, No. 4082, *ante*, & the demurrers must be overruled.—**MASON v. HARRIS** (1879), 11 Ch. D. 97; 48 L. J. Ch. 589; 40 L. T. 644; 27 W. R. 699, C. A.

Annotations.—**Foll.** *Spokes v. Grosvenor Hotel Co.*, [1897] 2 Q. B. 124. **Mentd.** *Tryon v. National Provident Institution* (1886), 16 Q. B. D. 678; *Besley v. Besley* (1888), 37 Ch. D. 648.

4442. ———.]—It was ascertained & admitted at the trial that, when this action was commenced, defts. [the co. & certain of the directors] held such a preponderance of shares that they could not be controlled by the other shareholders. Under these circumstances an action by some shareholders on behalf of themselves & the others against defts. is in accordance with the authorities, & is unobjectionable in form (**LINDLEY, M.R.**).—**ALEXANDER v. AUTOMATIC TELEPHONE CO.**, [1900] 2 Ch. 56; 69 L. J. Ch.

the co., as distinguished from the shareholders, the institution of the prosecution by the directors was not within the scope of the co.'s operations & the co. was not liable.—**THURLING v. NORTH CORNISH QUARTZ MINING CO. & BECKETT** (1872), 3 V. L. R. 236.—**AUS.**

s. ——— Action in company's interest—Promotion shares—Effect of unauthorised use of company's name.]—Plffs. had become holders of shares in the co., in ignorance of the facts connected with the issue of the promotion stock, & sued in this action on behalf of themselves & all other shareholders of the co. They had not obtained the consent of the co. to the use of its name as plff. in the action, but defts. had made no application before trial to strike out the name of the co. as having been used without authority, nor did they at the trial offer any evidence to show which party, plffs. or defts., really represented the majority of the shareholders:—**Held:** the individual plffs., being shareholders, had, *prima facie*, the legal right to use the co.'s name to redress what were alleged to be wrongs to the co. & to the shareholders other than defts., which wrongs a majority could not sanction, & to have transactions which were illegal, fraudulent, & *ultra vires* of the co., set aside, & the objection taken in the defence as to the use of the co.'s name as plff. should be overruled, as there could be no doubt that the proceedings taken were in the co.'s interest.—**COLONIAL ASSURANCE CO. v. SMITH** (1913), 24 W. L. R. 105; 4 W. W. R. 295; 23 Man. L. R. 243.—**CAN.**

t. Joining company as plaintiff—No authority to use name—Adjournment to give opportunity of calling

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428; 82 L. T. 400; 48 W. R. 546; 16 T. L. R. 339; 44 Sol. Jo. 407, C. A.

4443. — *Evidence of inability.*—*MORRIS v. MORRIS*, [1877] W. N. 6.

4444. *Internal management.*—*MACDOUGALL v. GARDINER*, No. 3880, *ante*.

4445. — *Conduct of majority ultra vires.*—A suit by one shareholder, on behalf of himself & all other shareholders, to set aside a contract which is *ultra vires*, is properly constituted, though a majority of shareholders may have assented to the arrangement, & they are not made parties to the suit.—*CLINCH v. FINANCIAL CORPN.* (1868), 4 Ch. App. 117; 38 L. J. Ch. 1; 19 L. T. 334; 17 W. R. 84, L. C. & L. JJ.

Annotations:—Mentd. Imperial Bank of China, India, & Japan v. Bank of Hindustan, China, & Japan (1868), L. R. 6 Eq. 91; *Re Oriental Commercial Bank, Ex p. Alabaster* (1868), 38 L. J. Ch. 32; *Re London v. Northern Insee. Corpn., Stace & Worth's Case* (1869), 4 Ch. App. 682; *Re Trent & Humber Ship-Building Co., Ex p. Bailey & Leatham* (1869), 38 L. J. Ch. 485; *Bank of Hindustan v. Allison* (1870), L. R. 6 C. P. 54; *Southall v. British Mutual Life Assce. Soc.* (1870), L. R. 11 Eq. 65; *Re Irrigation Co. of France* (1871), 24 L. T. 336; *Cleve v. Financial Corpn., Williams v. Financial Corpn.* (1873), L. R. 16 Eq. 363; *Nicholl v. Eberhardt Co.* (1883), 59 L. T. 860; *Postlethwaite v. Port Phillip & Colonial Gold Mining Co.* (1889), 43 Ch. D. 452; *New Zealand Gold Extraction Co. (Newbery-Vautin Process) v. Peacock*, [1894] 1 Q. B. 622; *Re Bank of South Australia* (2), [1895] 1 Ch. 578; *Thomson v. Henderson's Transvaal Estates*, [1908] 1 Ch. 765.

4446. — *Or fraudulent.*—*BURLAND v. EARLE*, No. 4020, *ante*.

4447. — *—*—*—*—*DOMINION COTTON MILLS CO., LTD. v. AMYOT*, No. 4088, *ante*.

See, generally, CORPORATIONS, Vol. XIII., p. 415.

When court will interfere.—*See Sect. 31, sub-sect. 3, E., ante.*

B. Whether in Name of Company or Officer.

Proceeding in bankruptcy.—*See BANKRUPTCY & INSOLVENCY, Vol. IV., pp. 95, 110, 111, 134, Nos. 855, 856, 992-997, 1228-1230.*

Banking companies.—*See BANKERS & BANKING, Vol. II., pp. 140 et seq.*

C. Action by Officer or Member in Name of Company.

4448. *Who may bring—Dissenting minority of shareholders—Action complained of irregular but*

general meeting.—Where a shareholder without having previously obtained the consent of the co., brings an action in which he joins the co. as co-pltf., the ct. may, on motion by the co., order its name to be struck out. If, however, it considers that the justice of the case requires it, it has a discretion to adjourn the motion to give an opportunity to pltf. to call a meeting of the co. in order to obtain, if possible, its sanction to its name being used; but it may refuse to exercise that discretion unless on the condition that all the proceedings in the action, including such proceedings as the pltf. suing alone could have brought, should in the meanwhile be stayed, or on such other conditions as it thinks will do justice between the parties.—*WHITE v. SHAW* (1895), 21 V. L. R. 559.—*AUS.*

a. — *—*—*—*—A person cannot join a co. as pltf. in a suit unless he has, or can obtain from the co., authority to use its name.—*NEW SOUTH WALES WOOD PROCESS, LTD. v. GORTON* (1915), 15 S. R. N. S. W. 451.—*AUS.*

b. *Company unwilling or not entitled to sue.*—Where certain shareholders in a co. joined with the co. as

pltfs., as a precautionary measure merely in case it should transpire that their co-pltfs., the co., were not entitled or were unwilling to sue, the ct. refused to allow a demurrer for want of equity, as the objection was purely of a formal nature.—*CITY LIGHT & HEATING CO. OF LONDON v. MACFIE* (1881), 28 Gr. 363.—*CAN.*

c. *Action to recover money paid for stock—Fraudulent misrepresentation—Should be in name of company—All shareholders affected.*—Pltf. brought an action against deft. W., alleging that he was induced to become a shareholder of a co. by the fraudulent representations of deft., & claiming certain relief. By amendments to his statement of claim, pltf. alleged that he sued on behalf of himself & all the other shareholders of the co. who contributed to the cost of the action:—*Held*: (1) the action being in reality one on behalf of all the stockholders of the co., it should have been brought in the name of the co., & in order to enable pltf. to sustain such an action in his own name, on behalf of himself & other shareholders, special circumstances must be shown: (2) it was not sufficient, for this purpose, to show that the co. was under the absolute

not *ultra vires*.]—*Re IRRIGATION CO. OF FRANCE, Ex p. FOX*, No. 3727, *ante*.

See, also, No. 4102, ante.

4449. — *—*—*Alleged fraud by directors—Majority of shareholders opposed to action.*—Where an action was brought by a shareholder in the name of the co. against the directors, alleging misapplication of the funds of the co. & a large majority of the shareholders had passed a resolution that the name of the co. should not be used in the action:—*Held*: the co. must be struck out as pltf.; but liberty given to amend the writ by adding the co. as deft.—*SILBER LIGHT CO. v. SILBER* (1879), 12 Ch. D. 717; 48 L. J. Ch. 385; 40 L. T. 96; 27 W. R. 427.

4450. — *—*—*—*—*Re TRANSVAAL GOLD EXPLORATION & LAND CO., LTD.*, No. 4093, *ante*.

See, also, Nos. 4053, 4082, 4093, ante.

4451. — *Candidates for election as directors—Wrongfully declared not elected—Result of election not set aside.*—*WANDSWORTH & PUTNEY GAS LIGHT & COKE CO. v. WRIGHT*, No. 3824, *ante*.

4452. — *Former member of defunct company—Consent of other members not obtained.*—*OYSTERMOUTH RY. OR TRAMROAD CO. v. MORRIS*, [1876] W. N. 129.

4453. — *Shareholder representing majority of shareholders—No meeting of company held.*—*PENDER v. LUSHINGTON*, No. 3800, *ante*.

4454. — *Directors not duly appointed—Representing majority of shareholders.*—Certain shareholders of a co. were appointed directors by a general meeting, in the place of existing directors, & brought an action in the name of the co. against the existing directors to restrain those who had been removed from acting. The ct., holding that the new directors were not duly appointed, refused the relief prayed with costs; but, as pltfs. substantially represented the wishes of the majority of the shareholders, although technically they had no right to use the name of the co., the costs were ordered to be paid out of the co.'s assets.—*IMPERIAL HYDROPATHIC HOTEL CO., BLACKPOOL v. HAMPSON* (1882), 23 Ch. D. 1; 49 L. T. 150; 31 W. R. 330, C. A.

Annotations:—Consd. Harben v. Phillips (1883), 23 Ch. D. 14. *Refd.* Taylor v. Pilsen, Joel & General Electric Light Co. (1884), 27 Ch. D. 268; *Foster v. Greenwich Ferry Co.* (1888), 5 T. L. R. 16; *Howden v. Yorkshire Miners' Assocn.*, [1903] 1 K. B. 308. *Mentd.* Boston Deep Sea

control of deft., unless it was clearly & distinctly indicated that such control existed at the time the action was commenced.—*WEATHERBE v. WHITNEY* (1897), 30 N. S. R. 49.—*CAN.*

d. *To restrain illegal or fraudulent act.*—An individual shareholder in a co. can maintain an action in his own name to restrain the co. from doing an act without first endeavouring to obtain the assistance of the co. by means of a majority of shareholders where the act complained of is illegal or fraudulent, or one that the majority of the shareholders could not confirm or ratify.—*PHILLIPS v. MELBOURNE & CASTLEMAINE SOAP & CANDLE CO., LTD.* (1890), 16 V. L. R. 111.—*AUS.*

PART III. SECT. 33, SUB-SECT. 3.—C.

e. *Who may bring—Majority of shareholders.*—The majority of the shareholders have the right to use the name of the co. as pltf. in an action to have it declared that the defts. were usurpers who had assumed the office of directors without having been elected thereto.—*COLONIAL ASSURANCE CO. v. SMITH* (1912), 21 W. L. R. 815.—*CAN.*

f. — *Managing director—Authority.*—The arts. of assocn. of

Fishing & Ice Co. v. Ansell (1888), 39 Ch. D. 339; Boschoek Proprietary Co. v. Fuke, [1906] 1 Ch. 148; Hickman v. Kent or Romney Marsh Sheep-Breeders' Assocn., [1915] 1 Ch. 881.

4455. — Person duly authorised—How authority given.]—S. obtained the assent in writing of five out of the seven signatories to the memorandum of assocn. to the use of the name of the co. as co-pltf. in an action brought by himself against his co-directors:—*Held*: such authority was not sufficient; the authority could only be given by the board of directors or by a resolution of the shareholders properly convened in general meeting.—*COMPAGNIE DE MAYVILLE v. WHITLEY*, [1896] 1 Ch. 788; 65 L. J. Ch. 729; 74 L. T. 441; 44 W. R. 568; 12 T. L. R. 268; 40 Sol. Jo. 352, C. A.

4456. — Person holding controlling number of shares—No meeting of company held.]—A co. which was governed by 1862 Act, Table A, including art. 55 thereof, was formed with the object of acquiring & working a patent, which was subsequently sold to & was vested in pltf. co. M. & three others were the directors of the co., & M.'s holding gave him the majority of votes at a general meeting of the co. The directors other than M. having become interested in a patent vested in deft. co. which was alleged to be an infringement of pltf. co.'s patent, & was admittedly a competing patent with that, & as those three directors refused to sanction proceedings on behalf of pltf. co. against deft. co., M. commenced an action in the name of pltf. co. against deft. co. to restrain them from infringing pltf. co.'s patent. No meeting had been held to ascertain the wishes of the co., but it was admitted that no object would be gained by calling such meeting, seeing that M. could command the majority of votes. The three opposing directors having applied on behalf of pltf. co. that the name of the co. might be struck out as pltf. on the ground that the name had been inserted without the co.'s authority:—*Held*: the application must be dismissed as the majority of the shareholders had the right to control the action of the directors in the matter.—*MARSHALL'S VALVE GEAR CO., LTD. v. MANNING, WARDLE & CO., LTD.*, [1909] 1 Ch. 267; 78 L. J. Ch. 46; 100 L. T. 65; 25 T. L. R. 69; 15 Mans. 379.

4457. — One of two directors.]—Deft. & O. were the sole directors of & holders of an equal number of shares in pltf. co. O. alleged that deft. as a director was doing something which was injurious to the co., & thereupon an action was brought against him in the name of the co., at the instance of O., asking for his removal from the office of director, & in the alternative for an injunction restraining him from dealing with or so conducting the co.'s business as to injure or jeopardise its goodwill. There had been no resolution of the co. or directors authorising the bringing of the action, & from the constitution of the board it was known that no authority could be obtained:—*Held*: on motion by deft., the name of the co. should be struck out as pltf., & the action should be stayed, & further, pltf.' solrs. should be ordered to pay the costs of the

action.—*WEST END HOTELS SYNDICATE, LTD. v. BAYER* (1912), 29 T. L. R. 92.

4458. — Secretary—Authority.]—A co. was incorporated in England with a capital of £25,000 in £1 shares for the purpose of selling in England tyres made in Germany by a German co., who held the bulk of the shares in the English co. The holders of the remaining shares, save one, & all the directors were Germans resident in Germany. The one share was registered in the name of the secretary, who was born in Germany, but resident in England & had become a naturalised British subject. After the outbreak of the war between England & Germany an action was commenced in the name of the English co. by specially indorsed writ, issued by the co.'s solrs. on the instructions of the secretary, for payment of a trade debt. In answer to a summons for judgment under R. S. C. Ord. 14, defts. alleged, *inter alia*, that the action was commenced without the authority of the co. The master gave leave to pltf. co. to sign final judgment, & his order was affirmed by the judge in chambers & by the Ct. of Appeal:—*Held*: the action was commenced without authority & ought to be struck out as irregular.—*DAIMLER CO., LTD. v. CONTINENTAL TYRE & RUBBER CO. (GREAT BRITAIN), LTD.*, [1916] 2 A. C. 307; 85 L. J. K. B. 1333; 114 L. T. 1049; 32 T. L. R. 624; 60 Sol. Jo. 602; 22 Com. Cas. 32, H. L.; *affg.* S. C. *sub nom.* CONTINENTAL TYRE & RUBBER CO. (GREAT BRITAIN), LTD. v. DAIMLER CO., LTD., CONTINENTAL TYRE & RUBBER CO. (GREAT BRITAIN), LTD. v. TILLING (THOMAS), LTD., [1915] 1 K. B. 893, C. A.

*Annotations:—*Consd. Russian Commercial & Industrial Bank v. Comptoir d'Escompte de Mulhouse, [1923] 2 K. B. 630. *Mentd.* R. v. L. C. C., *Ex p.* London & Provincial Electric Theatres, [1915] 2 K. B. 466; The Poona (1915), 84 L. J. P. 150; The St. Tudno, [1916] P. 291; *Re* Aramayo Francke Mines, [1917] 1 Ch. 451; Clapham S.S. Co. v. Handels-en-Transport-Maatschappij Vulcaan of Rotterdam, [1917] 2 K. B. 639; *Continho Caro v. Vermont*, [1917] 2 K. B. 587; *Re* Hilckes, *Ex p.* Muhesa Rubber Plantations, [1917] 1 K. B. 48; *Tingloy v. Müller*, [1917] 2 Ch. 144; *Elders & Fyffes v. Hamburg Amerikanische Packetfahrt Act.*, *Elders & Fyffes v. Hamburg-Columbien Bananen Act.* (1918), 34 T. L. R. 275; *Ertel Bleber v. Rio Tinto Co.*, *Dynamit Act. v. Rio Tinto Co.*, *Vereinigte Königs & Laurahütte Act. v. Rio Tinto Co.*, [1918] A. C. 260; *Naylor, Benzon v. Krainische Industrie Gesellschaft*, [1918] 1 K. B. 331; *Stevenson (Hugh) & Sons v. Akt. für Carton-nagen-Industrie*, [1918] A. C. 239; *The Hamborn*, [1919] A. C. 993; *The Noordam (No. 2)*, [1919] P. 255; *Rodriguez v. Speyer*, [1919] A. C. 59; *Re Münster*, [1920] 1 Ch. 268; *The Naxos* (1920), 123 L. T. 556; *The Vesta*, [1920] P. 385; *Re Badische Co.*, *Re Bayer Co.*, etc., [1921] 2 Ch. 331; *Re Ferdinand*, *Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107; *I. R. Comrs. v. Sansom* (1921), 8 Tax. Cas. 20; *Russian Commercial & Industrial Bank v. British Bank for Foreign Trade*, [1921] 2 A. C. 438; *Bradbury v. English Sewing Cotton Co.*, [1922] 2 K. B. 569; *Re British Incandescent Mantle Works* (1923), 129 L. T. 126; *Re Rush, Warre v. Rush*, [1923] 1 Ch. 56.

4459. What proceedings—Winding-up petition—Construction of articles.]—A committee of directors, in pursuance of a resolution at a board meeting, presented a petition to wind up the co., which was dismissed with costs. They then passed a resolution to pay the costs of the petition out of the assets of the co. The arts. of assocn. empowered the directors to direct legal proceedings to be prosecuted on behalf of the co., & directed

a co. provided that the officers should be a president & a general manager, a vice-president, & a secretary-treasurer; that the affairs of the co. should be conducted by a board of directors, a majority of directors to constitute a quorum. At a shareholders' meeting, a managing director was appointed:—*Held*: (1) the appointment did not confer upon the managing director any implied authority to bring an action in the

name of the co., the office of managing-director not being recognised by the arts. of assocn.; (2) the managing director could not bring an action in the name of the co., since there was neither special power conferred upon him by the arts. of assocn., nor delegation by the board of directors, nor acquiescence by the board or shareholders in the exercise by him of authority to initiate actions in the co.'s name.—*STANDARD CONSTRUCTION*

Co. v. CRABB (1914), 30 W. L. R. 151; 7 W. W. R. 719; 7 Sask. L. R. 355.—*CAN.* g. *Shareholder with one share—Transferred for purpose—Liquidator alone represents company after winding up.]*—The transfer of one share of stock of a co. to pltf. after the winding up thereof is not effective to give pltf. a *locus standi* to sue as a shareholder to set aside a sale of the assets made by the assignee of the co. Even if a shareholder, the pltf. has no right

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that they should be indemnified out of the funds of the co. against all costs, damages, & expenses by reason of such proceedings:—*Held*: the winding-up petition was not a legal proceeding within the meaning of the arts., & the resolution was *ultra vires*.—*SMITH v. MANCHESTER (DUKE)* (1883), 24 Ch. D. 611; 53 L. J. Ch. 96; 49 L. T. 96; 32 W. R. 83.

—*Proceedings in bankruptcy.*—See *BANKRUPTCY & INSOLVENCY*, Vol. IV., pp. 110, 111, 126, Nos. 992–997, 1149, 1150.

4460. Necessity for consent—Where shareholders may bring action in own name.]—*MASON v. HARRIS*, No. 4441, *ante*.

D. Representative Actions.

(a) In General.

See, generally, *PRACTICE & PROCEDURE*.

4461. Whether allowed—All shareholders having common interest.]—(1) A bill may be filed by a few shareholders in a joint-stock co. on behalf of themselves & all other shareholders, where its object is, to compel the performance of a duty in which all the proprietors have a common interest.

(2) Where a bill brings into question matters in which the interests of the proprietors differ, all the members of the co. must be parties to the suit.—*MOCATTA v. INGILBY* (1836), 5 L. J. Ch. 145.

4462. ——— **No other shareholder wishing to sue.**—A pltf. who has a right to complain of an act done to a numerous society of which he is a member, is entitled to sue on behalf of himself & all others similarly interested, though no other may wish to sue.

On the other hand, although there are a hundred who wish & are entitled to sue, still, if they sue by a pltf. who is personally precluded from suing, the suit cannot proceed.—*BURT v. BRITISH NATION LIFE ASSURANCE ASSOCN.* (1859), 4 De G. & J. 158; 28 L. J. Ch. 731; 33 L. T. O. S. 191; 5 Jur. N. S. 612; 7 W. R. 517; 45 E. R. 62, L. J.J.

Annotation:—*Mentd. Re Waterloo Co., Beresford's Case* (1864), 33 Beav. 204.

4463. ———.]—*FAWCETT v. LAURIE*, No. 3081, *ante*.

4464. ——— **Action alleging wrongful forfeiture.**—Amendment of a bill brought by some of the

members of a joint stock co., on behalf of themselves & all the other shareholders, except defts. [alleging that pltf.'s shares had been improperly declared to be forfeited], by striking out "on behalf of themselves & all the other shareholders," etc., & making it the bill of pltf's. named on the record only.—*JONES v. ROSE* (1844), 4 Hare, 52; 67 E. R. 558.

4465. ———.]—Where the directors of a co. have acted on a void forfeiture of shares, the holder is entitled to a declaration that the forfeiture is void, & may sue on behalf of himself & all other shareholders to obtain that relief.—*SWENY v. SMITH* (1869), L. R. 7 Eq. 324; 38 L. J. Ch. 446.

4466. ——— **Action to disturb account approved by general body of shareholders.**—*STUPART v. ARROWSMITH*, No. 3928, *ante*.

4467. ——— **Action not brought bona fide on behalf of shareholders**—Action on behalf of rival company.]—The ct. will not entertain a suit by a shareholder of a public co., on behalf of himself & other shareholders to restrain the directors from doing acts which are alleged to be *ultra vires* when pltf. is really suing by the direction of a rival co., & in order to protect their interests.—*FORREST v. MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. CO.* (1861), 4 De G. F. & J. 126; 4 L. T. 666; 25 J. P. 709; 7 Jur. N. S. 887; 9 W. R. 818; 45 E. R. 1131, L. C.

Annotations:—*Distd. Seaton v. Grant* (1867), 2 Ch. App. 459; *Gray v. Lewis* (1869), L. R. 8 Eq. 526. *Foldd. Robson v. Dodds* (1869), L. R. 8 Eq. 301. *Refd. Filder v. L. B. & S. C. Ry., Barchard v. Brighton, Uckfield, & Tunbridge Wells Ry.* (1863), 1 Hem. & M. 489; *Fraser v. Whalley, Gartside v. Whalley* (1864), 11 L. T. 175; *Mutter v. Eastern & Midlands Ry.* (1888), 38 Ch. D. 92. *Mentd. Cooke v. Cooke* (1865), 4 De G. J. & Sm. 704; *Bloxam v. Met. Ry.* (1868), 17 L. T. 637; *A.-G. v. G. E. Ry.* (1879), 27 W. R. 759; *A.-G. v. Mersey Ry.*, [1907] 1 Ch. 81; *Davies v. Gas Light & Coke Co.* (1909), 100 L. T. 553; *Dundee Harbour Trustees v. Nicol*, [1915] A. C. 550; *County Hotel & Wine Co. v. L. & N. W. Ry.*, [1918] 2 K. B. 251.

4468. ———.]—A suit instituted by a pltf. having only a nominal interest, on behalf of a body of shareholders, not for the benefit of pltf., but for improper purposes, at the instigation of another person, who indemnifies pltf. against the costs of the suit, will be treated as an imposition on the ct., & the bill will be ordered to be taken off the file.—*ROBSON v. DODDS* (1869), L. R. 8 Eq. 301; 38 L. J. Ch. 547; 20 L. T. 968; 17 W. R. 782.

4469. ——— **Relief sought on ground of misrepre-**

to sue on behalf of himself & all other shareholders of the co., the liquidator alone representing the co.—*SHANTZ v. CLARKSON* (1913), 24 O. W. R. 596; 4 O. W. N. 1303; 11 D. L. R. 107.—*CAN.*

PART III. SECT. 33, SUB-SECT. 3.—D. (a).

4461 i. Whether allowed—All shareholders having common interest.]—A pltf. shareholder cannot bring a suit in his own name alone respecting matters common to all the shareholders.—*BUSBY v. BANK OF MONTREAL* (1880), (1825–1897), N. B. Dig. 653.—*CAN.*

4461 ii. ———.]—*DAWSON v. TABOR* (1851), 18 L. T. O. S. 27.—*IR.*

h. ——— **Representation of classes.**—*SMITH v. CORK & BANDON RY. CO.* (1870), 5 L. R. Eq. 65.—*IR.*

k. ——— **Action by shareholder on behalf of himself & all other shareholders except the directors**—Misappropriation of funds.]—Where the directors of a co. misappropriated the funds of the corp'n., a bill against them & the co., in respect of such misappropriation, cannot be sustained by some of the stockholders on behalf of all except

the directors; the co. must be made pltf's. whether the acts of the directors are void or only voidable, & the stockholders have a right to make use of the name of the co. as pltf's. in such proceedings.—*HAMILTON v. DESJARDIN CANAL CO.* (1849), 1 Gr. 1.—*CAN.*

l. By minority of shareholders—*Fraud by majority.*—*Semble*: where relief is sought on the ground that a fraud is being carried out by a majority against a minority of the shareholders of a co., the minority can bring a suit for relief even against third parties, although such relief is primarily a right of the co. To prevent circuitry of action, the suit may be brought by one shareholder on behalf of himself & other shareholders.—*NEW SOUTH WALES WOOD PROCESS, LTD. v. GORTON* (1915), 15 S. R. N. S. W. 454.—*AUS.*

m. ———.]—In an action by the minority of the shareholders of A. Co., which owned a patent for a certain process, against certain other shareholders & B. Co., of which also those others were shareholders claiming that the B. Co. might be restrained from infringing the patent, it was

alleged that those other shareholders had obtained a majority of the votes in the A. Co. for the purpose of preventing & were thereby preventing, the A. Co. from taking proceedings to vindicate the right of the A. Co. to the patent & the use of the process as against the B. Co.:—*Held*: on the evidence, that the majority of the shareholders of the A. Co. had determined by means of voting power constituted for the purpose either to make a present to themselves & others, but mainly to themselves, at the expense of the minority, or to prevent the minority in a more proper case from obtaining the decision of the ct. as to whether such a present had been made, & the minority were entitled to maintain the action & to obtain a declaration that the B. Co. was infringing the patent.—*DUTTON v. GORTON* (1917), 23 C. L. R. 362.—*AUS.*

n. ———.]—Where the complaint was that a majority of the shareholders had obtained possession of the co.'s name & the control of its affairs, & were using it improperly for their own benefit & causing injury to the co.'s property:—*Held*: an action could be sustained in the name of one

sentation.]—Pltf., suing on the ground of general misrepresentation & suppression by the directors of a co., cannot file a bill on behalf of himself & other shareholders; the injury, if any, being a separate injury.—*CROSEY v. BANK OF WALES* (1863), 4 Giff. 314; 8 L. T. 301; 9 Jur. N. S. 595; 66 E. R. 726.

4470. ——— Rescission of contract to take shares.]—Pltf. filed a bill on behalf of himself & all the other shareholders, except the directors, who were made defts., seeking to be relieved from his shares on the ground of misrepresentation in the prospectus:—*Held*: such a suit could not be maintained by pltf. on behalf of the other shareholders, but his suit was not therefore to be dismissed, as he had merely made a misjoinder of pltf.s.—*HALLS v. FERNIE* (1868), 3 Ch. App. 467; 18 L. T. 340; *sub nom.* *HALLS v. FERNIE*, *CASTELLAN v. FERNIE*, *DANSON v. FERNIE*, *GRUNING v. FERNIE*, 16 W. R. 873, L. C.

Annotations:—Mentd. *Sharpley v. Louth & East Coast Ry.* (1876), 2 Ch. D. 663; *Re Scottish Petroleum Co.*, *Anderson's Case* (1881), 17 Ch. D. 373; *York Tram. Co. v. Willows* (1882), 51 L. J. Q. B. 257; *Re Scottish Petroleum Co.* (1883), 23 Ch. D. 413; *Bellairs v. Tucker* (1884), 13 Q. B. D. 562; *Re Medical Attendance Assocn.*, *Onslow's Case* (1886), 55 L. T. 612; *Re Great Northern Salt & Chemical Works*, *Ex p. Kennedy* (1890), 44 Ch. D. 472.

4471. Whether necessary—Action to restrain act of company.]—A shareholder in an incorporated co., on his own behalf alone, filed a bill against the co. & the directors, but not making in any other manner, by representation or otherwise, any other member of the corpn. a party, the object of the suit being to prevent the co. from making only a part of the line, & from applying to Parliament for authority so to do:—*Held*: the suit was defective for want of parties, the case being analogous to that of a suit by a *cestui que trust* against a trustee complaining of a breach of trust, & not making other *cestuis que trust* parties; & a demurrer *ore tenus* on this ground was allowed, without costs.—*COOPER v. POWIS (EARL)* (1850), 3 De G. & Sm. 688; 61 E. R. 662.

Annotation:—Reid. *Fooks v. L. & S. W. Ry.* (1853), 17 Jur. 365.

Joinder of causes of action—Action in personal capacity—Representative action.]—*See* No. 3365, *ante*.

4472. Right of members of represented class to take separate action—Application by dissenting shareholders—Stay of proceedings.]—Bill by three members of the Y. Co., on behalf of themselves & all others, against the L. & W. Co., for an account

& an injunction to stay proceedings at law The common injunction for want of answer was obtained to restrain proceedings at law against "pltf.s.," touching any matters in question in the bill, etc. Defts. acquiesced in the injunction for a year, & then commenced proceedings by *sci. fa.* against some members of the Y. Co., who were not named as pltf.s. On motion that defts. might stand committed for contempt, or that they might be restrained from proceeding at law against any member of the Y. Co.:—*Held*: (1) the proceedings at law against the members of the Y. Co., who were not named as pltf.s. on the record, was no breach of the injunction; (2) pltf.s. showing that the members of the Y. Co. so proceeded against stood in precisely the same situation as themselves with respect to defts., were entitled, upon special application, to have the common injunction extended to such members.

Qu.: whether, in a suit by a few of the shareholders of a co. on behalf of themselves & the other shareholders, it is competent to some of such shareholders, who may disapprove of the suit, to move the ct. that the suit, so far as it is instituted on their behalf, may be stayed.—*LUND v. BLANSHARD* (1845), 4 Hare, 290; 14 L. J. Ch. 332; 5 L. T. O. S. 125; 9 Jur. 422; 67 E. R. 658.

4473. ——— Appeal—Order in favour of class.]—*WATSON v. CAVE* (No. 1), No. 4499, *post*.

4474. ——— Attendance at subsequent proceedings.]—Two actions were brought raising the question of the amount of remuneration payable to the trustees of a railway co. reorganisation scheme, in each of which actions pltf. sued on behalf of himself & all holders of certificates for bonds & shares under such reorganisation scheme. By an order made on July 15, 1881, in one of the actions, an inquiry was directed as to what sum, in addition to £6,000 in the statement of claim mentioned, was fit & proper to be allowed to defts. as a *quantum meruit* for their services in connection with the reconstruction of the railway co. Pltf. in the other action applied that he might be at liberty to attend such inquiry, & to contend that no further sum beyond the £6,000 ought to be allowed, & that he might, if necessary, be added as a deft. in the action. The evidence on the inquiry was closed, & everything was complete for decision:—*Held*: (1) it was not usual in a representative action to allow a person fairly represented to attend subsequent proceedings, unless such person was joined as a party to the action, &

or more shareholders, on behalf of themselves & all others, except defts. against the co. & the majority of the shareholders.—*INTERNATIONAL WRECKING CO. v. MURPHY* (1888), 12 P. R. 423.—**CAN.**

o. ——— Action against directors for account.]—In this action pltf., a shareholder, claimed a refund to deft. co., by the individual defts., directors of deft. co., of money received by them as salaries, a declaration that these defts. were disqualified, the appointment of a receiver to carry on the business of the co., & an account of the money improperly received by the directors while dealing with themselves as members of a partnership. The trial judge directed these defts. to account for the money they received as salaries; but dismissed pltf.'s other claim. The pltf. appealed from the dismissal of this claim:—*Held*: the conduct of defts. was not merely a matter of internal management, which the majority of the shareholders could rightly decide upon, but was a fraud upon the minority, i.e., pltf., & the action was properly constituted to entitle pltf.,

on the evidence as it stood, to an account of the profits in connection with the co.'s dealings with the partnership, but, as evidence had not been heard at the trial on defts.' behalf, they were entitled to a new trial on this branch of the case.—*STONE v. THEATRE AMUSEMENT CO.* (1913), 25 W. L. R. 905; 50 S. C. R. 32.—**CAN.**

p. Action to restrain ultra vires acts—Approved by majority of shareholders.]—Pltf. suing on behalf of himself & all other shareholders of the co., brought an action for a declaration that certain payments were *ultra vires*, & claimed against the persons receiving the payments a return of the money so paid. The majority of the shareholders approved of these payments & objected to the litigation:—*Held*: the pltf. was entitled to maintain the action.—*ATHERTON v. PLAIN CREEK CENTRAL MILL CO., LTD.*, [1914] S. R. Q. 73.—**AUS.**

q. Action for declaration of right to dividend—Plaintiff suing on behalf of himself & all other members of one class—Representative members of other classes made defendants.]—Pltf.s. were

the exors. of a deceased shareholder in deft. co. The capital of the co. was divided into preference & ordinary shares of £25 each, of the latter class of which pltf.s. were owners of 181 shares. The arts. of assocn. of the co. provided that the holders of preference shares should be paid eight per cent *per annum*, that the holders of ordinary shares should, subject to the payment of dividends on the preference shares, be paid eight per cent *per annum* on the capital value of such shares, & that the balance of the profits after paying these dividends should be distributed among all the shareholders. Pltf.s. alleged that during the financial year ending Oct. 31, 1905, deft. co. made large surplus profits, & they claimed that, after paying dividends on the preference shares, such profits should have been distributed as dividends on the ordinary shares instead of being applied to purchasing machinery & writing down goodwill. This deft. company refused to do. In the early part of the pltf.'s argument the ct. raised the question as to whether the action should not have been brought

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thereby made liable for costs; (2) the ct. would not be justified in adding the appct. as a deft. in the action, because, not only had he supported the motion upon which the order directing the inquiry was made, but it was too late for him to come forward & thrust himself into the litigation, especially when it was considered that the inquiry which he desired to attend was directed by an interlocutory order made so long ago as to be incapable of being disturbed by appeal.—*CONY-BEARE v. LEWIS* (1883), 48 L. T. 527.

4475. Injunction restraining proceedings against representative parties—Effect of.]—*LUND v. BLANSHARD*, No. 4472, *ante*.

4476. Compromise of action—Leave of court.]—A co. which had issued mtge. debentures secured by a deed of trust having made default, an action was brought by one of the debenture-holders, on behalf of himself & all other the debenture-holders, against the co. & the trustees:—*Held*: pltf.'s action being a representative one, he could not compromise without the sanction of the ct., having regard to R. S. C. Ord. 16, r. 9A.—*Re CALGARY & MEDICINE HAT LAND CO., LTD., PIGEON v. CALGARY & MEDICINE HAT LAND CO., LTD.*, [1908] 2 Ch. 652; 78 L. J. Ch. 97; 99 L. T. 706; 16 Mans. 36, C. A.

Annotations:—Mentd. *Keates v. Lewis Merthyr Consolidated Collieries*, [1910] 2 K. B. 445; *Cloutte v. Storey*, [1911] 1 Ch. 18.

(b) The Representative Party.

4477. As plaintiff—Former shareholder.]—A bill against the directors of a co., provisionally registered but not incorporated, was brought by A. & B., alleging themselves to be holders of scrip of certain shares on which they had paid the deposits, on behalf of themselves & all other the shareholders of the co., except defts., stating that the objects of the undertaking had been improperly diverted by defts., & seeking to charge them with the amount of losses occasioned by their alleged misconduct, & also to have the deposits returned, or the assets administered & the surplus divided. Plea by one of defts., that before the bill was filed, B. had sold & assigned to C. the shares mentioned in the bill to have been allotted to B., & that at the time the bill was filed all right, title & interest in the said shares were vested in C., & that B. had at such time no interest therein:—*Held*: (1) the plea must be allowed; (2) the bill could not be sustained on the suggestion that B., although he had parted with his interest in the shares, was still liable to third persons, & therefore entitled to

call upon the directors to administer the assets of the co. in discharge of its liabilities; (3) the bill could not be maintained on the suggestion that C. was a party to the suit, as being one of the "other shareholders" for whose benefit it was brought, for such "other shareholders" must be not merely other persons, but persons owning other shares than those held, or claimed to be held, by pltf.s. named on the record; (4) B. was not in such a case suing as a trustee for C., he was not entitled to sue in that character, & parties allowed in such cases to represent absent shareholders must be parties having the beneficial interest in the shares in respect of which they seek relief.—*DOYLE v. MUNTZ* (1846), 5 Hare, 509; 4 Ry. & Can. Cas. 422; 16 L. J. Ch. 51; 7 L. T. O. S. 386; 10 Jur. 914; 67 E. R. 1013.

4478. — Party personally precluded from suing.]—*BURT v. BRITISH NATION LIFE ASSURANCE ASSOCN.*, No. 4462, *ante*.

4479. — Estoppel—Plaintiff retaining benefit under act impeached.]—*TOWERS v. AFRICAN TRG CO.*, No. 3301, *ante*.

4480. — Shareholder party to act impeached.]—Deft. co. was incorporated in 1839 under arts. of assocn. which provided—art. 53—that "the co. in general meeting" might increase its capital by the creation of new shares. By a special resolution passed & confirmed in 1895, art. 53 was altered so that the power of increasing the capital should no longer be exercised by the co. in general meeting, but by "resolution of the directors." By art. 59 any new shares from time to time to be created might from time to time be issued with such right of preference & generally on such terms as the co. might from time to time by resolution of a general meeting declare. In 1903 the directors passed a resolution increasing the capital of the co. Pltf., a shareholder & former director of the co., was a party to the resolutions altering the arts. & authorising the issue of new capital. Having ceased to be a director, he brought an action, on behalf of himself & all other shareholders, to have it declared that the resolutions altering art. 53 & increasing the capital were *ultra vires*, & that the directors had no power to issue new shares.

Resps. objected that pltf., having been a party to the resolutions in question, was not entitled to maintain the action:—*Held*: inasmuch as pltf. was seeking to restrain proposed future illegal proceedings by the co., he was entitled to maintain the action.—*MOSELY v. KOFFYFONTEIN MINES, LTD.*, [1911] 1 Ch. 73; 80 L. J. Ch. 111; 103 L. T. 516; 27 T. L. R. 61; 55 Sol. Jo. 44; 18 Mans. 86, C. A.; *on appeal, sub nom. KOFFY-*

as a representative action on behalf of pltf.s. & all the other ordinary shareholders, & whether some at least of the preference shareholders should not have been joined as defts.:—*Held*: pltf.s. were entitled to amend their claim by making it a representative action, & adding parties as they might be advised.—*COWLISHAW v. CHRISTCHURCH PRESS CO., LTD.* (1906), 26 N. Z. L. R. 539.—N.Z.

PART III. SECT. 33, SUB-SECT. 3.—
D. (b).

4477 i. As plaintiff—Former shareholder.]—A pltf. who has ceased to be a shareholder cannot maintain an action on behalf of himself & all other shareholders. Neither can he claim on behalf of himself & all shareholders of a selling co. prior to the date of the selling agreement & who transferred their shares pursuant to the agreement, as the directors of the selling co. were

the agents of the co. & not of the shareholders, & there was no privity between the shareholders as such & the directors. The fiduciary relation of the directors was to the co. No action could be maintained unless that co. was a party.—*CLARKSON v. DAVIES*, [1922] 3 W. W. R. 913; [1923] 1 D. L. R. 113.—CAN.

r. — Identity of interest — Policy holders—Different branches of insurance.]—Where a right of suit exists in a body of persons too numerous to be all made parties, the ct. will permit one or more of them to sue on behalf of all, subject to the restriction that the relief prayed is one in which the parties whom pltf. professes to represent have all of them an interest identical with that of pltf. But where a mutual insurance co. had established three distinct branches, in one of which, the waterworks branch, pltf. insured, giving his promissory note or

undertaking to pay \$168, & the co. made an assessment on all notes & threatened suit in the division ct. for payment of such assessment, whereupon pltf. filed a bill "on behalf of himself & the other policy holders associated with him as hereinafter mentioned," alleging the co. was about to sue him & the other policy holders in that branch, that large losses had occurred in the co. prior to the time of his effecting his insurance, & insisting that he & the other policy holders could be properly assessed only in respect of such losses as had arisen since they entered the co., & praying that the necessary inquiries might be made & accounts taken, alleging that the division cts. had not the machinery necessary for that purpose:—*Held*: according to the statements of the bill the policy-holders in the waterworks branch were not represented in the suit, & a demurrer on that ground filed by the co. was allowed with costs.—

Fontein Mines, Ltd. v. Mosely, [1911] A. C. 409, H. L.

4481. — Identity of interest—Ordinary & preference shareholders.]—LORD v. COPPER MINERS (GOVERNOR & Co. OF), No. 4079, ante.

4482. — — — Restraint of misapplication of deposits paid in application for shares.]—The prospectus of a joint-stock co. contained a statement that the deposits paid by persons applying for shares would be returned if no allotment were made. Pltfs. applied for shares, & paid the deposits thereon to the co.'s bankers, to the account of the co. No allotment of shares was ever made. Creditors of the co. brought actions against it, in which they threatened to attach the moneys in the co.'s account at the bankers. Pltfs. filed their bill, on behalf of themselves & all other the persons who had paid deposits on application for shares, against seven persons who alone had executed the memorandum & arts. of assocn., the creditors, & the bankers, alleging that the deposits had been paid upon a specific trust, viz. to be returned to the depositors if no allotment was made, & praying that the bankers might be restrained from paying the deposits to any person other than the depositors:—*Held*: (1) upon demurrer, no such specific trust had been constituted; (2) pltfs. had such a common interest with the other depositors as to entitle them to maintain a suit on behalf of themselves & those other depositors.—MOSELEY v. CRESSEY'S CO. (1865), L. R. 1 Eq. 405; 35 L. J. Ch. 360; 14 L. T. 99; 12 Jur. N. S. 46; 14 W. R. 246.

4483. — Quantum of interest immaterial.]—Pltf. having lost money by speculating in the shares of a joint-stock co., purchased five shares for the purpose of qualifying himself as a shareholder, & then filed a bill, on behalf of himself & the other shareholders, against the co. & other persons, impeaching certain transactions between them on the ground of fraud. The bill also impeached certain preliminary proceedings which had been taken for the purpose of winding up & reconstituting the co. After the bill was filed, the co. was wound up & reconstituted. Defts. put in answers which were excepted to for insufficiency, & while the exceptions were pending, they moved to take the bill off the file, or to stay proceedings:—*Held*: the small interest of pltf. was no objection to the bill, as it was filed on behalf of himself & other shareholders.—SEATON v. GRANT (1867), 2 Ch. App. 459; 36 L. J. Ch. 638; 16 L. T. 758; 15 W. R. 602, L. J.

Annotations:—*Refd.* Robson v. Dodds (1869), L. R. 8 Eq. 301. *Mentd.* Edmunds v. A.-G. (1878), 47 L. J. Ch. 345.

4484. As defendant—Action by company against class of shareholders.]—Upon an originating summons issued by a co. against one of its preference shareholders on behalf of the class to determine questions affecting the rights of that class, the ct. will not nominate such shareholder to represent

the class unless he has been previously nominated & selected for that purpose by a meeting of the preference shareholders.—MORGAN'S BREWERY CO. v. CROSSKILL, [1902] 1 Ch. 898; 71 L. J. Ch. 585; 10 Mans. 235.

Annotation:—*Fold.* Cyclists' Touring Club v. Hopkinson (1909), 79 L. J. Ch. 82.

SUB-SECT 4.—JOINDER OF PARTIES.

4485. Company—Action by minority of shareholders—Act of majority ultra vires.]—GREGORY v. PATCHETT, No. 4102, ante.

See, also, No. 3727, ante.

4486. — As plaintiff—Action by shareholder—Against solicitors of company.]—A shareholder brought an action against the solrs. of a limited co. to recover moneys alleged to have been fraudulently retained by the solrs. The co. was made a deft., but there was no allegation that it refused to sue as pltf. The defts. demurred, on the ground that the action ought to have been brought in the name of the co. The ct. allowed the demurrer, but granted pltf. leave to make the co. co-pltf. instead of deft., & reserved the question whether pltf. should pay defts.' costs of the demurrer.—DUCKETT v. GOVER (1877), 6 Ch. D. 82; 46 L. J. Ch. 407; *subsequent proceedings*, 25 W. R. 455.

Annotations:—*Expld.* Mason v. Harris (1879), 11 Ch. D. 97; Harben v. Phillips (1883), 23 Ch. D. 14. *Appld.* Hughes v. Pump House Hotel Co. (No. 2), [1902] 2 K. B. 485. *Refd.* Tryon v. National Provident Institution (1886), 16 Q. B. D. 678; Marshall's Valve Gear Co. v. Manning, Wardle, [1909] 1 Ch. 267. *Mentd.* Besley v. Besley (1888), 37 Ch. D. 648.

4487. — — — To enforce resolutions.]—(1) There is no right in a shareholder to vote by proxy independently of the contract between the shareholders, & the form & manner of voting by proxy prescribed in the arts. of assocn. must be strictly complied with, or the proxies will be a nullity.

(2) By art. 65 of a joint-stock co. votes of shareholders might be given either personally or by proxy. By art. 66 "the instrument appointing a proxy shall be in writing under the hand of the appointer . . . & shall be attested by one or more witnesses." By art. 68 any instrument appointing a proxy was to be in a form there given, at the end of which were the words, "Signed by the said —, in the presence of —." By a special resolution art. 68 was amended, proxies being allowed to be in a form set out which omitted the words "signed, etc." Art. 66 was never expressly repealed:—*Held*: unattested proxy papers were invalid.

(3) Shareholders suing on behalf of themselves & the other shareholders of a co.—other than defts.—to enforce resolutions passed at meetings of the co., are *prima facie* entitled to join the co. as pltfs.

THOMSON v. VICTORIA MUTUAL FIRE INSURANCE CO. (1881), 29 Gr. 56.—CAN.

4481 i. — — — Ordinary & preference shareholders.]—Where a numerous class of persons have a community of interest, it is sufficient, as a matter of pleading to name one of the class as party to represent the common interest. A railway co. having a fund in their hands which they were entitled to treat as revenue, declared a dividend out of it in favour of the ordinary shareholders, without providing for the payment of an arrear of dividend due on preference shares of the co. A bill was filed by one of the preference shareholders, on his own behalf, as well as on that of the other preference shareholders, to restrain the co. from

paying over the dividend so declared, without having regard to the right of such shareholders to be paid, in priority, the arrear due on their shares: & to that bill he named one of the ordinary shareholders, as deft., to represent the class. Some of the preference shareholders had acquired their shares, by transfer, after the arrear had accrued. Objections having been taken for want of parties:—*Held*: having regard to the object for which the bill was filed, the suit was properly constituted.—SMITH v. CORK & Bandon Ry. Co. (1870), 5 L. R. Eq. 65.—IR.

s. — Defendant's controlling interest to be alleged.]—Action by pltf. on behalf of himself & all other stockholders of a co. who should contribute,

claiming damages:—*Held*: not maintainable in this form in the absence of an allegation that deft. was in control of the major part of the stock at the time of action brought.—WEATHERBE v. WHITNEY (1897), 30 N. S. R. 49.—CAN.

PART III. SECT. 33, SUB-SECT. 4.

1. Company—As defendant—Liability under agreement for original defendant's debts.]—An action was brought against a provincial co. for damages for breach of contract. Subsequently to the alleged breach a co. formed under the same name under Dominion Companies Act had taken over the assets & liabilities of the provincial co. After defence was filed pltfs. obtained an order allowing them

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(4) If it appeared to the ct. that defts. were acting on an erroneous construction of their arts. & under an erroneous construction were intending to exclude from voting those who ought to vote, or intending to act on the resolution in a matter essential as regards the well-being of the co., I should say at once it would be the duty of the ct. to intervene on interlocutory motion to prevent defts. from acting in violation of the constitution of the co. in a matter where, until the co. met, their acting might create prejudice (COTTON, L.J.).—HARBEN v. PHILLIPS (1883), 23 Ch. D. 14; 48 L. T. 334; 31 W. R. 173, C. A.

Annotations:—As to (2) Refd. Briton Medical General & Life Assn. v. Jones (2) (1889), 61 L. T. 384. As to (4) Refd. Marshall's Valve Gear Co. v. Manning, Wardle, [1909] 1 Ch. 267. Generally, Mentd. Browne v. La Trinidad (1887), 37 Ch. D. 1; Trevor v. Whitworth (1887), 12 App. Cas. 409.

4488. ——— Impeaching resolutions for informality.]—The directors of the O. Co. were also directors of a subsidiary co. in which the O. Co. held practically the whole of the shares. In 1907 the directors, in exercise of the voting powers of the O. Co. in the subsidiary co., obtained the passing of resolutions whereby the arts. of assocn. of the subsidiary co. were altered so as to increase the fixed remuneration of the directors & also to give them a percentage of the net profits. In 1913 the auditors of the O. Co. drew attention to the fact that the receipt by the directors of remuneration in the capacity of directors of the subsidiary co. ought to be sanctioned by the shareholders. An extraordinary general meeting of the shareholders of the O. Co. was then convened by the directors with the object of passing special resolutions ratifying what had been done by the directors in 1907, authorising them to retain all remuneration received & to be received by them as directors of the subsidiary co. under its arts. as modified in 1907, & altering the arts. of the O. Co. by allowing its directors to receive remuneration as directors of subsidiary cos. without being accountable for the same, & to exercise the voting powers conferred by them in such cos. as they thought fit. The notice convening the meeting was accompanied by a circular. The notice set out the proposed resolutions, but neither the notice nor the circular gave particulars as to the amount, which was very large, of the remuneration which had been received by the directors in respect of the subsidiary co. The resolutions were passed by the requisite majority & subsequently confirmed. In an action by a shareholder, on behalf of himself & all the other shareholders of the O. Co., for a declaration that the resolutions were not binding on the ground of insufficient notice of the meeting at which they were passed, & for an injunction to restrain the co. & the directors from acting upon them, pltf. moved for an *interim* order. The motion was dismissed on the ground that pltf. had no right to sue on behalf of himself & the other shareholders without joining the co. as pltf. :—*Held*: (1) the action was maintainable by pltf.; (2) the notice did not give a sufficiently full & frank disclosure to the shareholders of the facts upon which they were asked to vote; & the resolutions were invalid & not binding upon the

co.—BAILLIE v. ORIENTAL TELEPHONE & ELECTRIC CO., LTD., [1915] 1 Ch. 503; 84 L. J. Ch. 409; 112 L. T. 569; 31 T. L. R. 140, C. A.

Annotation:—As to (1) Refd. Sidebottom v. Kershaw, Leese, [1920] 1 Ch. 154.

4489. ——— Joined as co-plaintiff—Application by defendant to strike out.]—DUCKETT v. GOVER, No. 4486, *ante*.

4490. ——— As defendant—No refusal by company to sue as plaintiff.]—DUCKETT v. GOVER, No. 4486, *ante*.

4491. ——— Member unable to obtain relief from company.]—MASON v. HARRIS, No. 4441, *ante*.

4492. ——— Action pending against directors—Majority of shareholders in favour of discontinuance.]—SILBER LIGHT CO. v. SILBER, No. 4449, *ante*.

4493. Directors—Of company wound up—As plaintiffs—Action by company under right transferred by old company.]—Where pltf. co. based its right of action against defts. on the ground that such right had passed by a deed transferring the property, estate, & effects of a co. which had been wound up :—*Held*: such right did not pass by the deed, nor could pltf. co. add as pltf. the directors of the old co.—NEW WESTMINSTER BREWERY CO. v. HANNAH (1876), 24 W. R. 899; 2 Char. Pr. Cas. 295.

Annotations:—Mentd. Dalton v. St. Mary Abbots, Kensington Grdns. (1882), 47 L. T. 349; Showell v. Winkup (1889), 60 L. T. 389.

See, generally, CHOSSES IN ACTION, Vol. VIII., pp. 479 et seq.

4494. ——— Action against company—No specific allegations against directors.]—In an action against a limited co. it is wrong to add as co-defts. directors against whom no specific allegations are made other than that they are directors.—CROPPER MINERVA MACHINES CO., LTD. v. CROPPER CHARLTON & CO., LTD. (1906), 23 R. P. C. 388.

4495. Shareholders—Matter affecting rights of all.]—MOCATTA v. INGILBY, No. 4461, *ante*.

4496. ——— Action to restrain calls—Transfer of shares before due date.]—An Act of Parliament, incorporating a co., enacted that no directors should be chosen, or other business transacted, at a meeting of proprietors of less than 1,000 shares; & that the compulsory powers to take lands for their undertaking should not be exercised until the whole capital was subscribed. Directors of the co. were chosen at a meeting of proprietors holding not more than about 300 shares for their own benefit, but holding also several thousand other shares, which they had subscribed for in order to procure the passing of the Act, signing a declaration that they held them in trust for the co. At a subsequent meeting of proprietors of less than 400 shares for their own benefit, but of several thousand of the shares held in trust, it was resolved that the trust shares should be transferred to the secretary, to be issued for the use of the co. The whole subscriptions, exclusive of the subscriptions in trust, amounted to much less than 1,000 shares. The directors subsequently made a call of £5 per share. After the call was made, but before the last day appointed for payment, pltf., who was a subscriber for fifty shares, transferred those shares to a purchaser. The co. brought an action against pltf. for the recovery of the amount of the call in respect of the fifty shares;

to add the Dominion co. as a party & to amend the statement of claim by alleging that the incorporation of the Dominion co. was obtained with the intention & for the purpose of having it take over the undertaking & all the assets & assume all the liabilities of

the provincial co., & such incorporation was granted subject to these conditions; that subsequently the Dominion co. did agree to assume & pay all the liabilities of the provincial co. including the liabilities arising under the agreement; that the Dominion co.

did take over the business, assets, etc., of the provincial co., & did actually assume the liabilities & did become & remained liable for all matters & things in the agreement. The provincial co. objected to the order on the grounds that there was no privity of

& the bill averred that pltf. could not, owing to the provisions of the Act, give the foregoing facts in evidence in support of his defence to the action :—*Held* : these circumstances gave pltf. no equity to sustain a bill for an injunction to restrain such action ; & the purchaser of the shares would have been a necessary party to such a bill, if it could have been sustained.

Semble : a person subscribing for shares in such a co., as a trustee for the co., is subject to the same liabilities in respect of such shares, as if he held the same for his own benefit.—*MANGLES v. GRAND COLLIER DOCK CO.* (1840), 10 Sim. 519 ; 2 Ry. & Can. Cas. 359 ; 9 L. J. Ch. 177 ; 4 Jur. 333 ; 59 E. R. 716.

4497. — Shareholders not in same position as representative parties—Whether as plaintiffs or defendants.]—A bill by some of the shareholders of a joint-stock bank, on behalf of themselves & all the other shareholders, except defts., charged the directors of the bank & others of defts. with fraudulent misapplication of the funds of the bank ; with having borrowed from third parties, who were also defts., moneys in the name of the bank, for private & improper purposes ; & with having, by their public officer, suffered judgment to be recovered against the bank, by such third parties for the amount of such advances, in order that the same might be recovered from the shareholders of the bank ; & that defts. made use of the proceedings under the judgment to enforce payment from the shareholders of a call of £3 per share, not warranted by the deed of assocn., & prayed that the debts & liabilities of the bank might be ascertained, & the assets applied in satisfying them, & an injunction issued to restrain process by defts., the third parties, against pltf. under the judgment. On demurrer :—*Held* : (1) certain shareholders of the bank, who had paid the call of £3 per share, & who were thereupon by express engagement with the bank relieved from proceedings under the judgment, were necessary parties to the suit ; & inasmuch as such parties, not being named as defts., must be regarded as pltf. under the general description of other shareholders, the suit was improperly framed on the ground of misjoinder.

(2) Where defts., the third parties, had aided in the misapplication of the funds in the manner stated, they might be properly made defts. to a suit by the *cestui que trust*, & a bill seeking relief both against such third parties & the directors of the bank was not multifarious.—*LUND v. BLANSHARD* (1844), 4 Hare, 9 ; 67 E. R. 540 ; *subsequent proceedings* (1845), 4 Hare, 290.

4498. — As defendants—Setting up title adverse to company.]—To a suit by the directors of a joint-stock co., on behalf of themselves & all other the shareholders, seeking to have the benefit of an agreement entered into by an agent of the co., it is not necessary that all the shareholders should be made parties. A person who sets up a title adverse to the co. may be properly made a deft. in such a suit, although he also sustains the character of a shareholder.—*TAYLOR v. SALMON* (1838), 4 My. & Cr. 134 ; 41 E. R. 53, L. C.

Annotations :—*Consd.* Wallworth v. Holt (1841), 4 My. & Cr.

619. *Refd.* *Mozley v. Alston* (1847), 1 Ph. 790 ; *Fawcett v. Laurie* (1860), 1 Drew. & Sm. 192. *Mentd.* *Carter v. Palmer* (1842), 8 Cl. & Fin. 657 ; *Nelthorpe v. Holgate* (1844), 8 Jur. 551 ; *Dale v. Hamilton* (1846), 5 Hare, 369 ; *Carlisle v. S. E. Rly.* (1850), 1 Mac. & G. 689 ; *Luddy's Trustee v. Peard* (1886), 33 Ch. D. 500.

4499. — Member of represented class—Dissatisfied with order—Order in favour of class.]—In an action commenced by a bondholder on behalf of himself & all other bondholders, pltf. obtained an order for a receiver. One of the bondholders represented by pltf., being dissatisfied with the order, applied for leave to appeal :—*Held* : the order having been made in favour of the class to which appct. belonged, & having been obtained by pltf., who represented him in the action, he could not appeal against it.

Semble : the proper course for the dissentient shareholder to pursue was to apply to the ct. below to be made a deft. in the action.—*WATSON v. CAVE* (No. 1) (1881), 17 Ch. D. 19 ; 44 L. T. 40 ; 29 W. R. 433, C. A.

Annotations :—*Refd.* *McHenry v. Lewis* (1882), 21 Ch. D. 202 ; *May v. Newton* (1886), 34 Ch. D. 347.

4500. — Desiring to take part in subsequent proceedings.]—*CONYBEARE v. LEWIS*, No. 4474, *ante*.

— *Representative actions.]—See* Subsect. 3, D., *ante*.

4501. Bondholder—To represent dissentient class—Dissentient member of class already a defendant—Not in representative capacity.]—Pltf., a bondholder of a railway co., sued on behalf of himself & all the other bondholders of the co. except B., who dissented from the course taken by pltf. in commencing the action. B. afterwards, upon his own application, was added as a deft. Then T., one of the bondholders, applied to be made a deft. in order that his interests & the interests of other dissenting bondholders might be represented :—*Held* : since B. was not added as a deft. in a representative capacity, & his consent to act in such capacity had not been obtained by pltf., T. was entitled to be added as a deft. for the purpose of representing the dissenting bondholders.—*FRASER v. COOPER, HALL & CO.* (1882), 21 Ch. D. 718 ; 51 L. J. Ch. 575 ; 46 L. T. 371 ; 30 W. R. 654.

Annotation :—*Refd.* *May v. Newton* (1886), 34 Ch. D. 347.

SUB-SECT. 5.—PLEADING.

See, generally, PLEADING.

4502. Description of company—Residence.]—A writ of summons described deft. co. as “now or late carrying on business in K. W. Street, in the City of London.” The co. had been completely registered, & No. 6, K. W. Street, London, was registered as its place of business. It afterwards discharged its secretary & clerks, & gave up its place of business, but no other place of business was taken or registered by it, & there was no means of serving the writ upon a director :—*Held* : the description of the residence of deft. was uncertain & insufficient under the Statute 2 Will. 4, c. 39.—*PILBROW v. PILBROW'S ATMOSPHERIC RY. CO.*

contract between pltf. & the Dominion co., & that there was no novation whereby pltf. could maintain the action against it, & contended that the amendments did not disclose a cause of action :—*Held* : the order, which was allowed in the exercise of a judicial discretion, should not be reversed. Questions between the different parties should be heard & decided in one suit & at one trial, & pltf. should be allowed to further amend to make

clear their causes of action against the Dominion co.—*WINNIPEG TRUSTEE CO. v. MANITOBA BRIDGE & IRON WORKS, LTD.*, [1922] 1 W. W. R. 178 ; 70 D. L. R. 178 ; 31 Man. L. R. 398.—CAN.

PART III. SECT. 33, SUB-SECT. 5.

a. *Description of company—Misnomer.]—*Defts., a co., were styled in the bill “The O. Co.” Certain other defts.,

alleged to be directors of this co., when brought up to be examined for discovery, denied all connection with it & refused to answer any questions relating to “The O. Co. of Toronto.” This latter name pltf.'s solr. stated to be the true corporate name of the co., intended to be described by the bill ; but there being no further evidence of this fact, an application to compel defts. to answer the questions put to them was refused.—*DICKEY v. ONTARIO*

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(1846), 3 C. B. 730; 4 Dow. & L. 450; 4 Ry. & Can. Cas. 683; 16 L. J. C. P. 11; 8 L. T. O. S. 163; 136 E. R. 292.

4503. — Description as corporation.]—It is sufficient to describe a co., party to an action by its name, without stating it to be a corp'n. or how it became one.—*WOOLF v. CITY STEAM BOAT Co.* (1849), 7 C. B. 103; 18 L. J. C. P. 125; 13 Jur. 456; 137 E. R. 42.

Annotation:—Reid. Williams v. Lords Comrs. of the Admiralty (1851), 11 C. B. 420.

4504. — Change of name while action pending.]—Where pending an action against a co., the name of the co. is changed by Act of Parliament, & a motion is afterwards made in such action, a suggestion should be entered of the change of name & the affidavits entitled in the new name.—*HEBBLETHWAITE v. LEEDS & THIRSK RY. Co.* (1851), 21 L. J. Ex. 37; 18 L. T. O. S. 78.

SUB-SECT 6.—SERVICE OF PROCESS.

4505. General rule.]—The only way in which a writ can be served on a co. is by leaving it at, or sending it by post to, the registered office of the co. It is not sufficient to serve it at an office which, though an office of the co., is not its registered

office.—*VIGNES v. SMITH (STEPHEN) & Co., LTD.* (1909), 53 Sol. Jo. 716.

4506. On former officers—Company no longer existing—Though not formally dissolved.]—A co., though not formally dissolved, had practically ceased to exist, & had no office or officers. The co., being made defts. in a suit, the ct. ordered that service of the bill on the late chairman & the secretary should be good service on the co.—*GASKELL v. CHAMBERS* (No. 1) (1858), 26 Beav. 252; 28 L. J. Ch. 385; 32 L. T. O. S. 188; 5 Jur. N. S. 52; 53 E. R. 895.

4507. On director—At head office.]—A clerk to pltf.'s solr. handed a writ to a director of deft. co. whom he happened to find at their head office:—*Held*: the writ had been properly served.—*WATSON v. SHEATHER SONS & Co., LTD.* (1886), 2 T. L. R. 473.

Annotation:—Expld. Wood v. Anderston Foundry Co. (1888), 36 W. R. 918.

4508. On solicitors — Service accepted.]—A motion was made under 1862 Act, s. 35, to rectify the register of members of a co. by the insertion therein of the name of appct. as the holder of certain shares. Correspondence had passed between the solrs. of the co. & the solrs. of appct. with reference to appct.'s claim to be a shareholder of the co., & the notice of motion had been served on the co.'s solrs., they accepting service on behalf of the co. in the usual manner. At the

WOOD PAVEMENT Co. (1873), 6 P. R. 93.—CAN.

b. Allegation of incorporation of plaintiff company—When necessary.]—In an action brought by a co., incorporated by letters patent under Canada Joint Stock Companies Act, 1877:—*Held*: the declaration was bad, for not alleging the incorporation of pltf's. by letters patent under the Act.—*WATERLOO ENGINE WORKS Co. v. CAMPBELL* (1883), 22 N. B. R. 503.—CAN.

c. — County court action.]—In an action in a county ct. by a co., it is sufficient to describe pltf's. as an incorporated co., & the mode of incorporation need not be stated.—*MCLAUGHLIN CARRIAGE Co. v. QUINN* (1905), 37 N. B. R. 86.—CAN.

d. Statement of cause of action.]—The summons issued against a corp'n. under 12 Vict., c. 39, s. 16, should state the cause of action truly: where the summons was to answer in a plea of "debt," & the declaration was in covenant, an interlocutory judgment was set aside.—*GILMORE v. LIVERPOOL, ETC., ASSURANCE Co.* (1871), Stevens N. B. Dig. 338, 1045.—CAN.

PART III. SECT. 33, SUB-SECT. 6.

e. On director — Officer within statute.]—The affidavit of service showed that the deputy sheriff had served R. a director of deft. co., the co. having no manager or agent, appointed pursuant to the statute, in that behalf:—*Held*: the expression "officer" covered a director, & the service was good.—*MCDONALD v. CONSOLIDATED GOLD LAKE Co.* (1902), 40 N. S. R. 623.—CAN.

f. On solicitor—Insurance company — Objection to service after acknowledgment of receipt.]—A fire insurance co.'s Dominion charter provided a method of legal service upon it, & the co. had also complied with the provisions of the British Columbia Fire Insurance Act for the appointment of an attorney on whom service might be effected:—*Held*: an execution could not be carried out against shares held by a judgment debtor in the co. without the service required by the Execution Act being made on the co. in either of the said methods, notwith-

standing the proviso in the British Columbia Fire Insurance Act, s. 48. The admission by letter by the co. of receipt of the documents did not prevent its subsequently objecting to the invalidity of the service, having regard to the necessity of protection of the shareholder.—*ROYAL BANK OF CANADA v. CANADA NATIONAL FIRE INSURANCE Co.* (1920), 3 W. W. R. 517.—CAN.

g. On officer — When plaintiff in action against company—President.]—The writ of summons in an action brought by pltf. against deft. co. was served upon pltf. as president of the co. No other service was made & no notice of the pendency of the action was given to any one connected with the co. or concerned in its affairs. No appearance was entered to the action & judgment was entered for pltf. for default of appearance. Resps. who were trustees for the bondholders, & had recovered judgment against the co., for a large amount, applied to pltf. for permission to use the name of the co. in an application to set aside the judgment recovered by him, & being refused obtained a summons for an order to set the judgment aside & for a stay of proceedings, & for leave to intervene & defend the action in the name of the co.:—*Held*: the judgment entered for pltf. was an abuse of the process of the ct., & it was properly set aside under Ord. 27, r. 14.—*HOLMES v. STEWART RY. Co.* (1899), 32 N. S. R. 395.—CAN.

h. — Secretary-treasurer.]—A judgment entered by pltf's. against deft. co., upon default, after service of the writ of summons upon one of pltf's., who was secretary-treasurer of the co., was set aside, upon the application of the holder of a majority of the shares of the co.:—*Held*: there was, in law, no service.—*CRAWFORD v. COLVILLE RANCHING Co.* (1912), 22 W. L. R. 50.—CAN.

k. — Outside jurisdiction — No representative competent to accept service in jurisdiction.]—Where a limited co. deft. has no representative, other than pltf., resident within the jurisdiction & competent for service, but has an officer resident outside the jurisdiction, service should be directed to that

officer.—*SUTHERLAND v. STRAWBERRY VALLEY STOCK & FARM PRODUCE Co., LTD.*, [1922] 3 W. W. R. 241; 69 D. L. R. 269.—CAN.

l. On person not duly qualified officer.]—In an action against a co., if the service of process was on, or the attorney entering appearance was authorised by, other than the duly qualified officers of the co., proceedings will be stayed without payment of costs.—*SPURR v. ALBERT MINING Co.* (1874), 2 Pug. 260.—CAN.

m. On person in employ of foreign company—Commercial agent.]—A person employed by a foreign railway co., which has no line of railway in the Province, such person acting merely as commercial agent to solicit orders for freight to be forwarded over the co.'s lines, is a person in the employ of the co., proper to be served with any process under marginal rule 100.—*GILLIS SUPPLY Co., LTD. v. CHICAGO, MILWAUKEE & PUGET SOUND RY. Co.* (No. 1) (1910), 16 B. C. R. 241.—CAN.

n. On agent — Attachment.]—Service on the agent of process to appear, in c. 97, R. S. (4th series), s. 26, means service on the co.'s agent of process requiring the co. to appear. Levy under the attachment under that chapter may be made before service on the agent.—*MERCHANTS' BANK v. STEEL Co. OF CANADA, LTD.* (1884), 5 R. & G. 258.—CAN.

o. — Collusion by agent with plaintiffs—Ignorance of proceedings.]—Pltf., obtained judgment by default against deft. co., the writ of summons having been served upon S. as agent of the co. Deft. co. applied on affidavit to set aside the judgment, & for leave to appear & plead, on the ground that S. had acted in collusion with pltf. & had never informed the co. that the writ of summons had been issued, or that he had been served with any process in the suit. An order having been made setting aside the default & allowing deft. co. to appear & plead:—*Held*: the affidavits being lengthy & contradictory, & the ct. being of opinion that justice could be more effectually done between the two parties after a trial, the order must be affirmed & the appeal therefrom dismissed.—*REYNOLDS v. GALLIHER GOLD*

hearing the co. did not appear:—*Held*: service on the solrs. of the co. was not sufficient; & no order could be made until the co. had itself been served at its registered office, or until it appeared.—*Re DENVER UNITED BREWERIES, LTD.* (1890), 63 L. T. 96.

4509. On local manager.—Applt. was a limited co. incorporated under the Cos. Acts & having a registered office in London. It carried on business in various parts of the country as grocer & provision merchant. A summons was issued against it for an offence under the Sale of Food & Drugs Acts, in a provincial town & served on the manager of its shop in that town. A solr. appeared on behalf of the co. before the justices to argue that the service was bad & then withdrew from the case:—*Held*: (1) the service was bad; every summons on a registered co. must be served in accordance with 1862 Act, s. 62; (2) applt. co. had not waived any irregularity in the service of the summons by instructing a solr. to appear in its behalf to argue solely such irregularity.—*PEARKS, GUNSTON & TEE, LTD. v. RICHARDSON*, [1902] 1 K. B. 91; 71 L. J. K. B. 18; 85 L. T. 616; 66 J. P. 119; 50 W. R. 286; 18 T. L. R. 78; 46 Sol. Jo. 87; 20 Cox, C. C. 96, D. C.

Annotation:—Generally, *Mentd. Smithies v. Bridge*, [1902] 2 K. B. 13.

4510. At office other than registered office.—*VIGNES v. SMITH (STEPHEN) & Co., LTD.*, No. 4505, *ante*.

Domicil of company—In relation to service of legal process.]—See PRACTICE & PROCEDURE, &, generally, Part II., *ante*.

MINING Co. (1886), 7 R. & G. 466; 8 C. L. T. 17.—CAN.

p. — In Scotland—*Chief office in England.*—Citation of a co., having its chief office at Liverpool, by leaving a copy for the co. at the office of their agents in Scotland, & citing personally two of the individual partners resident in Scotland was sustained.—*BISHOP v. MERSEY & CLYDE NAVIGATION STEAM Co.* (1830), 8 Sh. (Ct. of Sess.) 558; 5 Fac. Coll. 441.—SCOT.

q. At registered office—*Canadian Pacific Railway Company.*—*Held*: in an action against the Canadian Pacific Ry. Co., service of process against the co. must be effected at the co.'s office in Vancouver appointed pursuant to 44 Vict., c. 1, s. 9.—*JORDAN v. McMILLAN* (1901), 8 B. C. R. 27; 21 C. L. T. 192.—CAN.

r. — Whether applicable to un-registered company.—Service of a writ of summons upon a co. registered under the Cos. Act, 1862, must, under R. S. C., Ir., 1891, Ord. 9, r. 11, be effected, as provided by s. 62 of that Act, by leaving the same or sending it through the post in a prepaid letter, addressed to the co. at their registered office; but this does not apply to the case of a co. not registered, & have no registered office.—*O'NEILL v. ST. BRIGID'S WELL Co.*, [1895] 2 I. R. 442.—IR.

s. — Out of jurisdiction—*By post.*—Where defts. were a co. having a registered place of business in London & a branch establishment at Enniskillen, leave was given to issue the writ & serve it by sending it through the post in a prepaid letter addressed to the co. at their registered office.—*CAMPBELL v. GALT & Co., LTD.* (1905), 39 I. L. T. 43.—IR.

t. — County court proceedings.—The default procedure provided County Officers & Courts (Ireland) Act, 1877, s. 59, applies to a case in which defts. are a co., & the process prescribed by that sect. may be served on such defts. by leaving it at, or sending it by post to, the registered office of

the co., as provided by Companies (Consolidation) Act, 1908 (c. 69).—*NATIONAL GAS ENGINE Co., LTD. v. ESTATE ENGINEERING Co., LTD.*, [1913] 2 I. R. 474.—IR.

a. At branch office—*Registered office out of jurisdiction*—*London company with Irish branch.*—When deft. is a co. with a registered place of business in London, but having a branch established in Dublin, the proper mode of service is substituted service at the Dublin branch, & no order is necessary for the issue of the writ.—*MILWARD JONES & CAMERON v. FITZHENRY (M. & C. M.), LTD.* (1902), 36 I. L. T. 211.—IR.

b. — Copy of writ sent to registered office.—Where deft. was a co. registered under Companies Acts, 1862-1900, & having its registered office in London, but having its principal office & place of business in Ireland:—*Held*: on an *ex parte* application to substitute a service on the managing director at the office in Ireland, the proper practice is to issue a writ, & then apply to substitute service. The order giving leave to substitute service should direct service on the manager in Ireland, & should also order a copy of the order & writ to be sent by registered letter to the registered office of the co.—*GANDY BELT MANUFACTURING Co. v. CALLENDER'S PAPER MANUFACTURING Co.* (1905), 39 I. L. T. 94.—IR.

c. On company "doing business" within province—*Isolated transaction by agent.*—Pltf. sued deft. co. for an account incurred by P., who was engaged in negotiations for the sale of one of deft.'s engines, &, while so engaged, incurred the account in question. P. left the province, leaving the account unpaid & attachment proceedings were commenced against deft. co. under the provisions of Ord. 47, r. 6:—*Held*: as the evidence showed the agent to have been employed only for the one transaction & no further or other business was contemplated, this did not constitute "carrying on business"

SUB-SECT. 7.—RIGHT OF AUDIENCE.

4511. Chairman.—The ct. will not allow the chairman of a co. to move on its behalf.—*Re LONDON COUNTY COUNCIL & LONDON TRAMWAYS Co.* (1897), 13 T. L. R. 254, D. C.

4512. Managing director.—The managing director of a co. cannot appear as advocate to represent the co.—*SCRIVEN v. JESCOTT (LEEDS), LTD.* (1908), 53 Sol. Jo. 101.

4513. Officer or agent—*In county court.*—*KINNELL (CHARLES P.) & Co. v. HARDING, WACE & Co.*, No. 4429, *ante*.

SUB-SECT. 8.—AFFIDAVITS.

4514. Who may make—*Affidavit in support of petition in bankruptcy.*—When a petition for adjudication is presented by a joint-stock co., the provisions of Bkpcy. Act, 1861 (c. 134), s. 87, that proceedings for adjudication shall be by petition "on the oath of the petitioner," are satisfied by the oath of the officer of the co. most competent to speak to the facts which the petition alleges.—*Re CALTHROP* (1868), 3 Ch. App. 252; 37 L. J. Bcy. 17; *sub nom. Re CALTHROP, Ex p. CALTHROP*, 18 L. T. 166, 194; 16 W. R. 446, L. J.

Annotations:—*Mentd. Re Bristow, Ex p. Emanuel* (1868), 18 L. T. 222; *Re Turner, Ex p. Attwater* (1877), 5 Ch. D. 27; *Re Bowes, Ex p. Jackson* (1880), 14 Ch. D. 725.

4515. — Under Ord. 14, r. 1.—Where pltf. in an action is a corpn., & the writ has been specially indorsed under the above rule, the secretary of the corpn. cannot make an affidavit

within the province within the meaning of the order, & the writ & attachment with the service thereof must be set aside.—*HALIFAX HOTEL Co. v. CANADIAN FIRE ENGINE Co., LTD.* (1906), 41 N. S. R. 97.—CAN.

d. Dispensed with—*Company added as defendants*—*Directors & principal shareholders already before court.*—In an action by an execution creditor of a co. against shareholders to make them liable upon their shares for the amount unpaid thereon, pltf. sought also to recover from defts. money shown to be in their hands, which were really the property of the co.:—*Held*: (1) pltf. was entitled to judgment against the deft. for payment to him of such money, but the co. were necessary parties to the action, & their consent to being added as pltf. not having been filed as required by r. 324 (b), they should be added as defts.; (2) it was a proper case, under rr. 324 (c), 326, for dispensing with service upon the co., as defts. already before the ct. were directors & the principal shareholders in the co.—*JONES v. MILLER* (1893), 24 O. R. 268.—CAN.

PART III. SECT. 33, SUB-SECT. 7.

e. Chairman—*Managing director*—*County court.*—Though in the Supreme Ct. an incorporated co. can only be represented by its solr., & not by its chairman or managing director, yet in the county cts. it may be so represented, & will be bound by the defence filed by, & conduct at the trial of such officer.—*FIRST OF MAY MINING Co. v. CARIBOO GOLDFIELDS, LTD.*, 2 M. M. Cas. 292.—CAN.

PART III. SECT. 33, SUB-SECT. 8.

f. Defective affidavit—*Incorporation*—*Right to sue*—*Non-resident company.*—In an action brought by a non-resident co., an attaching order was obtained on an affidavit which did not show that pltf. were incorporated or had any right to sue by their incorporated name:—*Held*: the affidavit was bad, & the attaching order was set aside.

Sect. 33.—Actions and proceedings by and against companies: Sub-sects. 8, 9 & 10, A., B., C. & D.; sub-sect. 11.]

as to pltf.'s belief, on an application to sign judgment, within the rule.

The rule is not applicable to the case of a corpn. suing as pltf.—*BANK OF MONTREAL v. CAMERON* (1877), 2 Q. B. D. 536; 46 L. J. Q. B. 425; 36 L. T. 415; 25 W. R. 593, C. A.

Annotations:—Distd. Shelford v. Louth & East Coast Ry. (1879), 4 Ex. D. 317. *Refd. Re Wilson*, [1916] 1 K. B. 382.

See, now, R. S. C., Ord. 14, r. 1.

SUB-SECT. 9.—UNDERTAKINGS AND RECOGNISANCES.

4516. Undertaking as to damages—On ex parte application by company for injunction—Necessity for.]—An injunction ought not to be granted *ex parte* on the application of a limited co. without an undertaking as to damages from some responsible person.—*ANGLO-DANUBIAN, ETC., CO., LTD. v. ROGERSON* (1863), 3 New Rep. 185; 10 Jur. N. S. 87.

Annotation:—Mentd. Burko v. Rogerson (1866), 14 L. T. 780.

4517. ——— By whom given.]—*ANGLO-DANUBIAN, ETC., CO., LTD. v. ROGERSON*, No. 4516, *ante*.

4518. ———.]—The ordinary undertaking as to damages where pltf. obtains an injunction on an *ex parte* motion is properly given by pltf.'s counsel, although pltf. is a limited co.—*MANCHESTER & LIVERPOOL BANKING CO. v. PARKINSON* (1888), 60 L. T. 47.

4519. ——— Company in liquidation.]—*WESTMINSTER ASSOCN., LTD. v. UPWARD* (1880), 24 Sol. Jo. 690.

Annotation:—Distd. Rosling & Flynn v. Law Guarantee & Trust Co. (1903), 47 Sol. Jo. 255.

4520. ——— Company in liquidation—No application for security for costs.]—*ROSLING & FLYNN, LTD. v. LAW GUARANTEE & TRUST CO.* (1903), 47 Sol. Jo. 255.

4521. Recognisance—By whom given.]—*SOUTHERN COUNTIES DEPOSIT BANK, LTD. v. BOALER*, No. 4129, *ante*.

SUB-SECT. 10.—EVIDENCE.

A. In General.

4522. Production of books of company under subpœna—Subpœna addressed to secretary—Book not in his possession.]—The secretary of a co. was called upon to produce the books of his co. in obedience to a *subpœna duces tecum*. He did not produce them, & stated that, by a resolution passed by his directors subsequently to the service of the *subpœna* upon him, the books had been taken out of his custody:—*Held*: no writ of attachment for disobedience to his *subpœna* ought to issue against him.—*R. v. STUART* (1885), 2 T. L. R. 144.

Proof of consent of directors to a transfer of shares.]—*See Sect. 23, sub-sect. 5, B. (c), i., ante.*

Share certificate—As to title to shares.]—*See Sect. 18, sub-sect. 3, B., ante.*

—As to amount paid up on shares.]—*See Sect. 18, sub-sect. 3, C., ante.*

—*AVON STONE CO. v. DUNHAM* (1879), 18 N. B. R. 460.—CAN.

PART III. SECT. 33, SUB-SECT. 10.—A.

g. Proof of incorporation—Action

*on promissory note.]—*In an action brought by pltf. in their corporate name against defts. as indorsers of a promissory note, defts. pleaded no indorsement & want of presentment:—

Held: under these issues pltf. were not bound on the trial to prove their incorporation.—*BANK OF NOVA SCOTIA v. MORROW* 1875), 2 Pug. 460.—CAN.

Minutes of meetings.]—*See Sect. 30, sub-sect. 3, E., F., ante.*

Proof of resolution.]—*See Nos. 3795, 3860, ante.*

B. Interrogatories.

See, generally, DISCOVERY, INSPECTION & INTERROGATORIES.

C. Discovery.

See, generally, DISCOVERY, INSPECTION & INTERROGATORIES.

D. Admissibility.

4523. Acts & admissions of competent number of governing body.]—*RIDLEY v. PLYMOUTH GRINDING & BAKING CO., KINGSBRIDGE FLOUR MILL CO. v. SAME*, No. 4180, *ante*.

4524. ——— At meeting of shareholders.]—A shareholder in a co. applied to have his name removed from the register of members on the ground that he had been induced to become a shareholder by a material misrepresentation in a prospectus issued by the co. The only evidence of the untruth of the representation was a statement made by the chairman of the co. in a speech addressed by him to a meeting of shareholders:—*Held*: this statement was not admissible evidence against the co., inasmuch as the chairman, in making it, was not acting as the agent of the co. in a transaction between it & a third party, but was making a confidential report to his own principal.—*Re DEVALA PROVIDENT GOLD MINING CO.* (1883), 22 Ch. D. 593; *sub nom. Re DEVALA PROVIDENT GOLD MINING CO., LTD., Ex p. ABBOTT*, 52 L. J. Ch. 434; 48 L. T. 259; 31 W. R. 425.

Annotation:—Appld. Re Djambi (Sumatra) Rubber Estates (1912), 107 L. T. 631.

4525. Statement by chairman—At board meeting.]—*RIDLEY v. PLYMOUTH GRINDING & BAKING CO., KINGSBRIDGE FLOUR MILL CO. v. SAME*, No. 4180, *ante*.

4526. Statement by bank manager—As to practice of bank—In previous action.]—A bank manager had in a previous action by another pltf. given evidence of the practice of the bank in making loans to customers:—*Held*: the manager being a person authorised to make admissions on the part of the bank, his evidence might be read on the part of pltf. in this action so far as relevant to the matters now in question.—*SIMMONS v. LONDON JOINT STOCK BANK, LITTLE v. LONDON JOINT STOCK BANK*, (1890) as reported in 62 L. T. 427; *reversd. on other grounds sub nom. LONDON JOINT STOCK BANK v. SIMMONS*, [1892] A. C. 201, H. L.

Annotations:—Mentd. Baker v. Nottingham & Nottinghamshire Banking Co. (1891), 60 L. J. Q. B. 542; *Venables v. Baring*, [1892] 3 Ch. 527; *Bentinck v. London Joint Stock Bank*, [1893] 2 Ch. 120; *Thomson v. Clydesdale Bank*, [1893] A. C. 282; *Manchester Trust v. Furness*, [1895] 2 Q. B. 539; *Redfern v. Rosenthal* (1901), 85 L. T. 313; *Molyneux v. Hawtrey*, [1903] 2 K. B. 487; *Wenier v. Gill, Wenier v. Smith*, [1905] 2 K. B. 172; *Smith v. Prosser*, [1907] 2 K. B. 735; *Louth (Northern Division) Case* (1911), 6 O'M. & H. 103; *Fuller v. Glyn, Mills, Currie*, [1914] 2 K. B. 168.

See, generally, EVIDENCE.

SUB-SECT. 11.—ENFORCEMENT OF JUDGMENTS AND ORDERS.

See, generally, R. S. C., Ord. 42, r. 31; CORPORATIONS, Vol. XIII., pp. 426 et seq.

4527. Liability of members to creditors.]—The limited liability Acts have not changed the rights of the creditors nor the liability of the shareholders. They merely changed the remedy which the creditor previously had, of issuing execution against the shareholder, into a right to obtain satisfaction of his debt by a forced contribution.—*OAKES v. TURQUAND & HARDING, PEEK v. TURQUAND & HARDING, Re OVEREND, GURNEY & Co.* (1867), L. R. 2 H. L. 325; 36 L. J. Ch. 949; 16 L. T. 808; 31 J. P. 195; 15 W. R. 1201, H. L.

Annotations:—*Consd. Resso River Silver Mining Co. v. Smith* (1869), L. R. 4 H. L. 64; *Re Imperial Land Co. of Marseilles, Ex p. Jeaffreson* (1870), L. R. 11 Eq. 109; *Re Paraguassu Steam Tramroad Co., Black's Case* (1872), 8 Ch. App. 254; *Collins v. City & County Bank, Stone v. City & County Bank* (1877), 38 L. T. 9; *Stone v. City & County Bank, Collins v. City & County Bank* (1877), 3 C. P. D. 282. **Appld.** *Cree v. Somervail* (1879), 4 App. Cas. 648. **Consd.** *Re Hull & County Bank, Burgess's Case* (1880), 15 Ch. D. 507; *Cocksedge v. Metropolitan Coal Consumers Assocn.* (1891), 64 L. T. 826; *First National Reinsurance v. Greenfield*, [1921] 2 K. B. 260. **Refd.** *Ogilvie v. Currie* (1868), 18 L. T. 593; *Re London & Northern Insce. Corpn., Stace & Worth's Case* (1869), 4 Ch. App. 682; *Overend, Gurney v. Gurney* (1869), 4 Ch. App. 701; *Re Contract Corpn., Hudson's Case* (1871), L. R. 12 Eq. 1; *Re Hercules Insce., Pugh & Sharnan's Case* (1872), L. R. 13 Eq. 566. **Mentd.** *Re Cleveland Iron Co., Ex p. Stevenson* (1867), 16 W. R. 95; *Henderson v. Lacon* (1867), L. R. 5 Eq. 249; *Re Overend, Gurney, Ex p. Musgrave* (1867), 37 L. J. Ch. 161; *Re Universal Banking Corpn., Gunn's Case* (1867), 3 Ch. App. 40; *Downes v. Ship* (1868), L. R. 3 H. L. 343; *Kent v. Freehold Land & Brickmaking Co.* (1868), 3 Ch. App. 493; *Re Oriental Commercial Bank, Alabaster's Case* (1868), L. R. 7 Eq. 273; *Re Overend, Gurney, Barrow's Case* (1868), 3 Ch. App. 784; *Re Aberaman Ironworks, Peek's Case* (1869), 4 Ch. App. 532; *Re Estates Investment Co., Pawle's Case* (1869), 4 Ch. App. 497; *Re London & County General Agency Assocn., Hare's Case* (1869), 4 Ch. App. 503; *Re Warren's Blacking Co., Pentelow's Case* (1869), 4 Ch. App. 178; *Re General Provincial Life Assce., Ex p. Daintree* (1870), 18 W. R. 396; *Waterhouse v. Jamieson* (1870), L. R. 2 Sc. & Div. 29; *Re Empire Assce. Corpn., Challis's Case, Somerville's Case* (1871), 6 Ch. App. 266; *Re London & Mediterranean Bank, Wright's Case* (1871), 7 Ch. App. 55; *McEuen v. West London Wharves & Warehouses Co.* (1871), 6 Ch. App. 655; *Peck v. Gurney* (1871), L. R. 13 Eq. 79; *Re Blakely Ordnance Co., Brett's Case, Re Oriental Commercial Bank, Morris's Case* (1873), 8 Ch. App. 800; *Re Welsh Flannel & Tweed Co.* (1875), L. R. 20 Eq. 360; *Re Nassau Phosphate Co.* (1876), 2 Ch. D. 610; *Tennent v. City of Glasgow Bank* (1879), 4 App. Cas. 615; *Re Scottish Petroleum Co., MacLagan's Case* (1882), 51 L. J. Ch. 841; *Re Scottish Petroleum Co.* (1883), 23 Ch. D. 413; *Re Ystalyfera Co.* (1886), 2 T. L. R. 900; *Re London & Leeds Bank, Ex p. Carling, Carling v. London & Leeds Bank* (1887), 56 L. J. Ch. 321; *Re British Burmah Land Co.* (1888), 4 T. L. R. 631; *Re London Celluloid Co., Bayley & Hanbury's Cases* (1888), 36 W. R. 673; *Re Lennox Publishing Co., Ex p. Storey* (1890), 62 L. T. 791; *Re National Debenture & Assets Corpn.*, [1891] 2 Ch. 505; *Westmoreland Green & Blue Slate Co. v. Feilden* (1891), 7 T. L. R. 585; *Boaler v. Brodhurst* (1892), 8 T. L. R. 398; *Re Laxon* (2), [1892] 3 Ch. 555; *East Broken Hill Consols v. Mallaby-Deeley* (1895), 11 T. L. R. 465; *Hemp, Yarn & Cordage Co., Hindley's Case*, [1896] 2 Ch. 121; *Re Kent Coalfields Syndicate*, [1898] 1 Q. B. 754; *Ladies' Dress Assocn. v. Pulbrook* (1899), 68 L. J. Q. B. 871; *Re Trench & Tubeless Tyre Co., Bethell v. Trench & Tubeless Tyre Co.* (1899), 69 L. J. Ch. 97; *Re Yolland, Husson & Birkett, Leicester v. Yolland, Husson & Birkett* (1907), 77 L. J. Ch. 43; *Moosa Goolam Ariff v. Ebrahim Goolam Ariff* (1912), 28 T. L. R. 505; *Abram S.S. Co. v. Westville Shipping Co.*, [1923] A. C. 773.

4528. Injunction—Whether court will grant—Company resident out of jurisdiction—Effects within jurisdiction.]—An application was made for leave to serve in G., the writ in an action to restrain deft. from infringing pltf.'s registered trade mark. Deft. was a joint-stock co., having its registered office in G. & branches in L., M. & H., which last place was within a short distance of pltf.'s place of business. Pltf. deposed that deft. co. was supplying the goods of which he complained as infringing his trade mark from its places of business at M. & H., & proved the execution from M.

of an order given by one of pltf.'s own customers. He further deposed that it would be necessary to call in support of his case a considerable number of witnesses, all of whom were resident in England:—**Held:** (1) an injunction against the co. could be effectually enforced by sequestration of its business & effects; & therefore, in the event of an injunction being granted, there would be an efficient remedy; (2) in exercise of the ct.'s discretion, pltf. was entitled to an order for leave to serve the writ out of the jurisdiction.—*Re BURLAND'S TRADE MARK, BURLAND v. BROXBURN OIL Co.* (1889), 41 Ch. D. 542; 58 L. J. Ch. 591; 60 L. T. 586; 37 W. R. 470; 5 T. L. R. 433; 1 Meg. 215; 6 R. P. C. 482; *subsequent proceedings*, 42 Ch. D. 274.

Annotations:—*As to* (1) **Refd.** *Kinahan v. Kinahan* (1890), 45 Ch. D. 78. *As to* (2) **Refd.** *Kinahan v. Kinahan* (1890), 45 Ch. D. 78; *Collins v. North British & Mercantile Insce., Pratt v. North British & Mercantile Insce.*, [1894] 3 Ch. 228. **Generally, Mentd.** *Thompson v. Miller, Re Thompson's Trade Mk.* (1895), 13 R. P. C. 35.

— **Effect of amalgamation of companies.]**—*See* Sect. 37, sub-sect. 13, E. (f), *post*.

4529. — Remedy for breach—Sequestration—Form of order.]—*SPENCER v. ANCOATS VALE RUBBER Co., LTD.* (1888), 58 L. T. 363; 4 T. L. R. 681, C. A.

4530. Undertaking—Committee of directors—Grounds for granting or refusing.]—Having regard to the undertaking ["to make up H. Road to the satisfaction of the district surveyor"], & seeing that it involves the doing of a positive act requiring the expenditure of money & the doing of work & also that it is an undertaking by the co. & not the directors, though the directors are not morally justified in not carrying out the undertaking, I cannot make an order under Ord. 42, r. 31. So against the directors the application is refused, without costs, but without prejudice to any application that might be made against directors in the event of the co. not complying with the order (*JOYCE, J.*).—*A.-G. v. WHEATLEY & Co., LTD.* (1903), 48 Sol. Jo. 116.

Contempt of court—Liability of officer.]—*See* No. 3609, *ante*.

— **Liability of company.]**—*See* CONTEMPT OF COURT, ATTACHMENT & COMMITTAL, Vol. XVI., p. 49, Nos. 522, 523.

4531. Discovery in aid of execution—Examination of former director—Re company's means of satisfying—Ord. 42, r. 32.]—Where a judgment or order is obtained against a co. for the recovery or payment of money, an order may be made under the above rule upon a person who has been a director of a co., but has ceased to be so at the time of the making of the order, to attend to be examined as to debts owing to the co., & whether the co. has property or means of satisfying the judgment or order.—*SOCIÉTÉ GÉNÉRALE DU COMMERCE ET DE L'INDUSTRIE EN FRANCE v. FARINA (JOHANN MARIA) & Co.*, [1904] 1 K. B. 794; 73 L. J. K. B. 355; 90 L. T. 472; 52 W. R. 404; 20 T. L. R. 367; 48 Sol. Jo. 329, C. A.

4532. Consent judgment based on ultra vires contract.]—*GREAT NORTH-WEST CENTRAL RY. Co. v. CHARLEBOIS*, No. 4185, *ante*.

Stay of execution—In winding up.]—*See* Sect. 36, sub-sect. 13, D.; Sect. 37, sub-sect. 11, D.; Sect. 38, sub-sect. 9, *post*.

Priority of execution creditor—Over debenture-holders—Floating charge becoming fixed.]—*See* Sect. 34, sub-sect. 3, C. (e), iii., *post*.

— **In winding up.]**—*See* Sect. 36, sub-sect. 13, D.; Sect. 37, sub-sect. 11, D., *post*.

Sect. 33.—Actions and proceedings by and against companies: Sub-sects. 12 & 13, A. (a) & (b) i. & ii.]

SUB-SECT. 12.—COSTS.

See, generally, PRACTICE & PROCEDURE; SOLICITORS.

4533. On what scale—Solicitor & client—Company joined as defendant to claim to incumbrance on shares.—Where a co. is made a deft. to a bill by a pltf. claiming an incumbrance on shares of a shareholder also made a deft., the co. is entitled to costs as between party & party from pltf., & to the difference between such costs & costs as between solr. & client, out of the fund.—*CHARTERED MERCANTILE BANK OF INDIA, LONDON & CHINA v. DE JONGE* (1864), 9 L. T. 678.

4534. Out of what fund—Claim to incumbrance on shares.]—*CHARTERED MERCANTILE BANK OF INDIA, LONDON & CHINA v. DE JONGE*, No. 4533, *ante*.

4535. — Action by company for benefit of directors.]—*STUDDERT v. GROSVENOR*, No. 3830, *ante*.

4536. Liability of solicitors—Dissolution of defendant company—After setting down & before hearing.]—A solr. had originally authority to defend an action in the name of a co., but his authority was revoked by the dissolution of the co. shortly before the trial. The trial of the action was delayed owing partly to the state of the business of the ct. & partly to the pleadings being amended. The action was tried on the assumption that the co. was in existence, & judgment was given for pltf. Neither the solr. nor pltf. knew till after the trial that the co. had been dissolved; but on the day of the trial the solr. was informed that the co. had held its final meeting, & he took no steps to ascertain whether or not it had been dissolved. Upon motion by pltf. that the solr. might be ordered to pay his costs of the action as from the date of the dissolution of the co.:—*Held*: (1) the judgment was invalid against the co. for want of jurisdiction; (2) the solr. having originally authority to represent the co., was not liable for acting on that authority after it had been revoked by the dissolution of the co. until he knew or, by the exercise of due diligence, might have known of the dissolution; (3) on the day of the trial the solr. did not use due diligence in ascertaining whether or not the co. had been dissolved, & he ought to pay pltf.'s costs of the action after that date as between solr. & client.—*SALTON v. NEW BEESTON CYCLE CO.*, [1900] 1 Ch. 43; 69 L. J. Ch. 20; 81 L. T. 437; 48 W. R. 92; 16 T. L. R. 25; 7 Mans. 74.

Annotation:—As to (3) Dtd. Yonge v. Toynbee, [1910] 1 K. B. 215.

4537. Taxation—Ord. 65, r. 27 (38B)—Application of rule.]—The above rule, which provides that if, on the taxation of a bill of costs payable out of a fund or estate, real or personal, or out of the assets of a co. in liquidation, the amount of the bill is reduced by one-sixth, no costs shall be allowed to the solr. leaving the bill for taxation

for drawing & copying it, nor for attending the taxation, refers to something in the nature of administration for the benefit of a class of persons. The reference to the assets of a co. in liquidation does not apply to orders made in hostile litigation, but has come down from the period when cos. were wound up in the Ch. cts. & the reference to a fund or estate does not apply to a case where, as the result of an individual contract, a party has become entitled to be paid, if necessary, by means of the realisation of or enforcement of a charge against particular property. Where, therefore, a trustee of certain leases obtained a declaration that he was entitled to be indemnified out of the property in respect of his personal liability & his costs, charges, & expenses, with liberty to apply for the purpose of giving effect to the indemnity:—*Held*: the rule had no application to the case, the costs not being payable out of a "fund or estate" within its meaning.—*BUCHAN v. AYRE*, [1915] 2 Ch. 474; 85 L. J. Ch. 72; 113 L. T. 1151; 60 Sol. Jo. 45.

SUB-SECT. 13.—SECURITY FOR COSTS.

A. By Company as Plaintiff.

(a) In General.

4538. Time for application—After reply & notice of trial—At such times as court may direct—Ord. 65, r. 6.]—The old rule of the Ct. of Ch. that an application for security for the costs of an action must be made promptly is inconsistent with the above rule, that security for costs may be given "at such time or times as the ct. may direct," & must be taken to have been abrogated; & therefore, an application by deft. for security for the costs of an action brought against him by a limited co. may be made after reply & notice of trial.—*LYDNEY & WIGPOOL IRON ORE CO. v. BIRD* (1883), 23 Ch. D. 358; 52 L. J. Ch. 640; 48 L. T. 893.

Annotation:—Apld. Re Smith, Bain v. Bain (1896), 75 L. T. 46.

4539. Loss of right to—By waiver—Putting in answer—Knowledge of company's financial position.]—Deft., sued by a limited co., which had called up & expended all its capital, received notice in Apr., by a report of the directors, that it had no funds to meet a bill which had been drawn on the co. by its manager, & that they recommended an issue of new shares with a preferential dividend. On May 4, notice of an extraordinary general meeting for May 12, was given, at which meeting resolutions were passed enabling directors to borrow a large sum of money. Deft.'s extended time for answering expired on May 7, & on May 4 he took out a summons, whereupon he obtained on May 8 a week's further time; & on May 15 he filed his answer. On the same day, though at what hour of the day did not appear, he received notice from the directors that the attempt to raise the money had failed:—*Held*: deft. had not, by putting in his answer, waived his right of calling upon pltf. co. to give security for costs, under 1862 Act, s. 69.

A. filed a bill against B., the registered holder

PART III. SECT. 33, SUB-SECT. 13.—A. (a).

h. Time for application—Costs of appeal—Proceedings for appeal perfected—Limit of amount of security.]—*STAR MINING & MILLING CO., LTD., LIABILITY v. BYRON N. WHITE CO. (FOREIGN)* (No. 2), (1906), 13 B. C. R. 234; 41 S. C. R. 377.—*CAN.*

k. — After ascertaining state of company's assets—Waiver of right to security—Delay.]—In an action where

pltf. is a co. deft., before applying for security for costs, is justified in waiting till he is in possession of facts sufficient to show that the assets of the co. will not be enough to pay the costs, & in the meantime he does not waive his right to security by taking a step in the action.—*SOUTHLAND FROZEN MEAT & PRODUCE EXPORT CO. v. NELSON BROTHERS* (1895), 13 N. Z. L. R. 704.—*N.Z.*

l. Company having ceased to exist

—Improper use of company's name.]—An application for an order for security for costs was made on the ground that pltf. had no corporate existence, & that their name was being used by one C., who was insolvent:—*Held*: (1) there was nothing to warrant the conclusion that this action was really brought for the benefit of any other than pltf.; (2) the question, whether pltf. had or had not ceased to be an existing corp., having been raised upon the pleadings, could not be raised

of 1,000 shares in a co., & against the co. & their secretary, for specific performance of an alleged contract by B. to transfer the shares to A., & for an injunction to restrain the co. from transferring the shares to any one other than to A. The co. thereupon filed a bill against A. & B., praying for declarations that the alleged contract was fraudulent & void, & that A. & B. were trustees of the shares for the co.:—*Held*: the second suit was not so strictly in the nature of a cross suit to the first, that A. was deprived of the right of calling upon the co. to give security for costs.—*WASHOE MINING CO. v. FERGUSON* (1866), L. R. 2 Eq. 371; 14 L. T. 590; 14 W. R. 820.

Annotation:—*Folld. City of Moscow Gas Co. v. International Financial Soc.* (1872), 7 Ch. App. 225.

4540. In cross suit—Action for specific performance of contract to transfer shares—Counter action by company alleging contract fraudulent.]—*WASHOE MINING CO. v. FERGUSON*, No. 4539, *ante*. See, also, Nos. 4550, 4554, *post*.

(b) *When Ordered.*

i. *Property, Business or Residence out of Jurisdiction.*

4541. Company domiciled outside jurisdiction—Branch business within.]—A co. resident in France, but having a branch business in England, carried on in leasehold premises, upon which they had stock-in-trade to the value of £12,000, besides plant, horses, & vans worth about £1,200, & having also a large amount of English book-debts, appealed from an order. Resps. applied for security for the costs of the appeal, upon the ground that applt. co. was resident out of the jurisdiction, & that the nature of the English assets was moveable and fluctuating:—*Held*: there could be no reasonable doubt that the available assets in this country of applt. co. would be found amply sufficient to satisfy any possible costs of the appeal, &, therefore, an order for security for the costs ought not to be made.—*Re APOLLINARIS CO.'S TRADE MARKS*, [1891] 1 Ch. 1; 63 L. T. 502; 39 W. R. 309, C. A.

4542. — Compulsory winding-up petition—Petitioner's debt admitted.]—A foreign co. presented a petition for the compulsory winding up of an English co., which was in voluntary liquidation, & the whole of whose assets had been taken possession of by debenture-holders:—*Held*: although the debt to petitioning co. was admitted, it must give security for costs.—*Re ALABAMA PORTLAND CEMENT CO., LTD.* (1909), 25 T. L. R. 691.

4543. Company resident & carrying on business outside—Cross action—Claim not arising out of same transaction.]—An agreement had been entered into in 1904 between an insurance co. carrying

on business within the jurisdiction & another insurance co. which was a foreign co. carrying on business & residing out of the jurisdiction whereby the latter agreed to reinsure a certain proportion of fire risks undertaken by the former in certain specified parts of the world. The agreement provided that quarterly accounts were to be rendered by the parties. Such accounts had been delivered & balances paid down to the first quarter of 1908. The balance found due to the first-named co. in respect of the second quarter of 1908 not having been paid by the foreign co., an action was instituted against it by the first-named co., claiming payment of the said balance & subsequent balances shown to be due on the quarterly accounts, & claiming further that, if necessary, an account might be taken & that judgment might be entered for pltf. for the amount found due on such accounts. The foreign co. then brought a cross action against the first named co. asking for inspection of all original documents & vouchers connected with all transactions in which pltf. were interested under the agreement of 1904; that all accounts between the two cos. might be reopened on the ground of errors having occurred; for an account, & for an order of payment to it of any moneys found due after the said accounts had been reopened & taken:—*Held*: present pltf., the foreign co., ought to be treated not as deft. setting up a claim arising out of the same transaction as that out of which an action against it arose, by way of defence to that action, but as pltf. bringing an independent action to reopen settled accounts on the ground of mistake, & an order for security for the costs of the cross action should be made against them.—*NEW FENIX COMPAGNIE ANONYME D'ASSURANCES DE MADRID v. GENERAL ACCIDENT, FIRE, & LIFE ASSURANCE CORPN., LTD.*, [1911] 2 K. B. 619, 80 L. J. K. B. 1301; 105 L. T. 469, C. A.

Annotation:—*Refd. Maatschappij voor Fondsenbezit v. Shell Transport & Trading Co.*, [1923] 2 K. B. 166.

ii. *Inability of Company to pay.*

See 1908 Act, s. 278.

4544. Company in liquidation—Plant sold—Operations ceased.]—A motion, under Joint-Stock Companies Act, 1857 (c. 14), s. 24, that a limited co. might give security for costs, on an affidavit that the co. had ceased all operations, that proceedings had been taken to wind it up, that the plant had been sold, & that the co. was "insolvent & unable to pay its debts already incurred," was refused, the ct. not feeling satisfied that the assets of the co. would be insufficient to pay deft.'s costs.—*CAILLAUD'S PATENT TANNING CO., LTD. v. CAILLAUD* (1859), 26 Beav. 427; 28 L. J. Ch.

& determined on an application for security for costs.—*PORT ROWAN & LAKE SHORE RY. CO. v. SOUTH NORFOLK RY. CO.* (1889), 13 P. R. 327.—CAN.

m. Company lodging reclaiming note—Whether a pursuer.]—*SINCLAIR v. GLASGOW & LONDON CONTRACT CORPN., LTD.* (1904), 6 F. (Ct. of Sess.) 818.—SCOT.

PART III. SECT. 33, SUB-SECT. 13.—A. (b) i.

4541 i. Company domiciled outside jurisdiction—Branch business within.]—Security for costs ordered where the insolvent pltf. co., though incorporated in the Province, was registered in England, & had its directory & place of business there, & the parties using the name of the co. in the suit were not

in the Province.—*CAPE BRETON CO., LTD. v. DODD* (1878), R. E. D. 326.—CAN.

4541 ii. — — —.]—Summons for security for costs from pltf., a co. incorporated in U.S.A. & having its head office in S. The co. owned a steamer running between S. & V., & had an office in V. managed by a freight & passenger agent, who devoted his whole time to the business of the co. in V., & who was paid a salary by the co. Rent & all office expenses were paid by the co., which was not licensed or registered in B. C.:—*Held*: the co. was a foreign co. within Companies Act, s. 144, & was bound to give security for costs.—*ALASKA S.S. CO. v. MACAULAY* (1900), 7 B. C. R. 338.—CAN.

n. — — — Small assets within.]

—When a pltf. co. is described in the statement of claim as having its head office out of, & a branch office within, the jurisdiction, deft. is *prima facie* entitled, under King's Bench Act, r. 978, to a praecipe order for security for costs. Such order should not be set aside by reason of the co. having, within the jurisdiction, assets consisting only of some office furniture of small value & premiums of insurance from time to time paid into the branch office for transmission to the head office.—*CANADIAN RAILWAY ACCIDENT CO. v. KELLY* (1909), 16 Man. L. R. 608.—CAN.

PART III. SECT. 33, SUB-SECT. 13 — A. (b) ii.

o. Company in liquidation—Liability of receiver to give security.]—Pltf., a co., became insolvent pending

Sect. 33.—Actions and proceedings by and against companies: Sub-sect. 13, A. (b) ii., (c) & (d), B. & C.]

357; 33 L. T. O. S. 71; 5 Jur. N. S. 259; 7 W. R. 172; 53 E. R. 963.

*Annotation:—*Dbtd. Southampton, etc. Steam Boat Co.'s Official Liquidators v. Rawlins (1863), 2 New Rep. 544.

4545. — After submission to arbitration.]—An indictment by the B. Co. virtually against the rival C. Co. for conspiracy, was removed into this ct., & referred to an arbitrator, who was to award what was to be done by the parties. During the pendency of the reference, the B. Co. was ordered to be wound up.—*Held*: the C. Co. was entitled to a rule to revoke the submission, unless security was given for future costs by the B. Co.—*Re* METROPOLITAN SALOON OMNIBUS CO. (1860), 1 L. T. 294.

4546. — No assets collected under winding up —All undisputed shares fully paid-up.]—Where a bill was filed on behalf of a limited co., which was in course of winding up, to impeach certain mtge. securities on the ground that they were executed when the co. was in a state of hopeless insolvency, & it appeared that no assets had been collected under the winding up, & that all the shareholders whose purchase was undisputed had fully paid up their shares, an order was made, on the motion of defts., under Joint Stock Companies Act, 1857 (c. 14), s. 24, that the co. give security for costs.—*SOUTHAMPTON, ISLE OF WIGHT, & PORTSMOUTH IMPROVED STEAM BOAT CO., LTD. (OFFICIAL LIQUIDATORS) v. PINNOCK* (1863), 11 W. R. 978.

4547. — Affidavit by defendant's solicitor—No assets if company unsuccessful.]—In a suit by the liquidators of a limited co., which was being wound up:—*Held*: an affidavit by deft.'s solr. that pltf. would not, if deft. succeeded, have any assets for the payment of deft.'s costs, was sufficient ground, in the absence of any evidence to the contrary, for ordering pltf. to give security for costs.—*SOUTHAMPTON, ETC., STEAM BOAT CO. (OFFICIAL LIQUIDATORS) v. RAWLINS* (1863), 3 New Rep. 544; *sub nom.* ISLE OF WIGHT & SOUTHAMPTON STEAM BOAT CO., LTD. (OFFICIAL LIQUIDATORS) v. RAWLINS, 9 Jur. N. S. 887; *sub nom.* SOUTHAMPTON, ISLE OF WIGHT, & PORTSMOUTH IMPROVED STEAM BOAT CO., LTD. (OFFICIAL LIQUIDATORS) v. PINNOCK, 11 W. R. 978.

4548. — No evidence that assets insufficient—Affidavit as to assets—Counter affidavit as to two shillings composition in the pound.]—*GENERAL HORTICULTURAL CO., LTD. v. WATSON* (1887), 4 T. L. R. 13.

4549. — Prima facie evidence.]—Under 1862 Act, s. 69, a judge may require security for costs to be given by a pltf. co. if there is reason to believe that, if deft. be successful in his defence, the assets of the co. will be insufficient to pay his costs:—*Held*: where a co. is in liquidation, this fact, in the absence of evidence to the contrary, gives sufficient reason to believe that if deft. be successful in his defence the assets of the co. will be insufficient to pay his costs.—*PURE SPIRIT CO. v. FOWLER* (1890), 25 Q. B. D. 235; 59 L. J. Q. B. 537; 63 L. T. 559; 38 W. R. 686; 6 T. L. R. 390, D. C.

4550. — Cross suit.]—A limited co. which was in liquidation, having been made deft. to a

bill for foreclosure, subsequently filed a bill against the mtgee., seeking to impeach the validity of the mtge., & also praying that, if the mtge. should be held valid, it might be declared to be a security for only a part of the amount claimed by the mtgee., that the co. might be at liberty to redeem on paying what should be found due, that the mtgee. might be restrained from selling, & that a receiver might be appointed:—*Held*: this was not so strictly a cross suit to the foreclosure suit as to exempt the co. from giving security for costs.

Semble: even if it had been strictly a cross bill, the co., being a limited co. in liquidation, would have been required to give security for costs.—*CITY OF MOSCOW GAS CO. v. INTERNATIONAL FINANCIAL SOCIETY, LTD.* (1872), 7 Ch. App. 225; 41 L. J. Ch. 350; 26 L. T. 377; 20 W. R. 394, L. J.

*Annotations:—*Folld. *Pure Spirit Co. v. Fowler* (1890), 25 Q. B. D. 235. *Refd.* *New Fenix Compagnie Anon. D'Assce. De Madrid v. General Accident Fire & Life Assce. Corpn.*, [1911] 2 K. B. 619.

4551. — Amendment by plaintiffs raising fresh case.]—An action was commenced by a limited co. which was in course of liquidation. Defts. put in a defence counterclaim & demurrer & subsequently obtained an order for inquiries. After this, & about ten months after the original statement of claim had been delivered, pltf. obtained an order to amend, & made amendments raising a fresh case likely to require a great mass of additional evidence. Defts. thereupon applied to have security for costs which was refused in chambers but no certificate that he did not desire the case to be further argued was applied for:—*Held*: as a new case which would cause a great increase of expense had been raised by the amendment, security for costs ought to be given.—*NORTHAMPTON COAL, IRON & WAGGON CO. v. MIDLAND WAGGON CO.* (1878), 7 Ch. D. 500; 38 L. T. 82; 26 W. R. 485, C. A.

*Annotations:—*Consd. *Pure Spirit Co. v. Fowler* (1890), 25 Q. B. D. 235. *Refd.* *General Horticultural Co. v. Watson* (1887), 4 T. L. R. 13. *Mentd.* *Holloway v. Chesterton* (1881), 30 W. R. 120.

4552. — Voluntary liquidation—Business sold—No assets undoubtedly available—Character of liquidation must be regarded.]—*NATIONAL BANK OF WALES v. COLLINS* (1894), 38 Sol. Jo. 186.

4553. — Action remitted to county court.]—Where upon the application of defts. under County Courts Act, 1888 (c. 43), s. 66, a case is remitted for trial in the county ct. upon the failure of pltf. to provide, when ordered, full security for defts.' costs, or to satisfy a judge of the High Ct. that they have cause of action fit to be presented in the High Ct., the judge of the county ct. to which the case has been remitted may, when pltf. is a limited co. & it appears that it will be unable to pay the costs of defts. if unsuccessful, order pltf. to give security for costs under 1908 Act, s. 278.—*PLASYCOED COLLIERIES CO., LTD. v. PARTRIDGE, JONES & CO., LTD.* (1911), 104 L. T. 807; 55 Sol. Jo. 481, D. C.

4554. Winding-up petition presented.]—Where a co. registered under 1862 Act, was pltf. in a suit to set aside a policy on which deft. in the suit had already sued the co. in an action at law, which was still pending, the ct. refused to order the co. to give security, although at the time of the application there was a petition to wind

an action at law for calls, & the Ct. of Ch. appointed a receiver to wind up their affairs, & authorised him to continue the action. An application was made to a judge in chambers to compel pltf. or the receiver to give

security for costs:—*Held*: the application should have been made to the Ct. of Ch., but that in any event neither pltf. nor the receiver could be ordered to give security.—*PROVINCIAL INSURANCE CO. v. GOODERHAM* (1878), 7 P. R.

283.—CAN.

*p. Company unable to pay costs—If action unsuccessful.]—*In an action brought by a co. to recover £57 for unpaid calls on shares allotted to deft.:—*Held*: inasmuch as the liability to

up the co. under which it was afterwards wound up.—**ACCIDENTAL & MARINE INSURANCE CO. v. MERCATI** (1866), L. R. 3 Eq. 200; 15 L. T. 347; *sub nom. Re ACCIDENTAL & MARINE INSURANCE CORPN.*, 15 W. R. 88.

Annotation:—**Reid**. *Maatschappij voor Fondsenbezit v. Shell Transport & Trading Co.*, [1923] 2 K. B. 166.

4555. — By plaintiff—Security not necessarily confined to future costs—If applied for promptly.—Security for costs, where pltf. co. has become bkpt. or has filed a petition for liquidation, is not necessarily confined to future costs, but may, when applied for promptly, be extended to costs already incurred in the suit.—**BROCKLEBANK v. KING'S LYNN S.S. CO.** (1878), 3 C. P. D. 365; 47 L. J. Q. B. 321; 38 L. T. 489; 27 W. R. 94.

Annotations:—**Consd.** *Re Carta Para Mining Co.* (1881), 19 Ch. D. 457; *Rhodes v. Dawson* (1886), 16 Q. B. D. 548. **Reid**. *Cowell v. Taylor* (1885), 31 Ch. D. 34.

(c) Amount.

4556. Sufficient—1857 Act, s. 24—£100.—Where a limited co. was pltf.:—**Held**: a bond for £100 was sufficient security for costs within the above sect.—**AUSTRALIAN S.S. CO., LTD. v. FLEMING** (1858), 4 K. & J. 407; 32 L. T. O. S. 28; 6 W. R. 589; 70 E. R. 170.

4557. — Probable amount of costs.—Upon an application under 1862 Act, s. 69:—**Held**: security given by a limited co. is not confined to £100, but must be for an amount equal to the probable amount of costs payable.—**IMPERIAL BANK OF CHINA, INDIA & JAPAN v. BANK OF HINDUSTAN, CHINA & JAPAN** (1866), 1 Ch. App. 437; 35 L. J. Ch. 678; 14 L. T. 611; 12 Jur. N. S. 493; 14 W. R. 811, L. JJ.

Annotations:—**Consd.** *Dominion Brewery v. Foster* (1879), 77 L. T. 507. **Reid**. *Accidental & Marine Insce. v. Mercati* (1866), 15 L. T. 347.

4558. — 1862 Act, s. 69—Probable amount of costs.—Security for costs required to be given by a pltf. co., under the above sect. must, as that sect. provides, be "sufficient"—neither illusory nor oppressive—having regard to the probable costs likely to be incurred by deft.—**DOMINION BREWERY, LTD. v. FOSTER** (1897), 77 L. T. 507; 42 Sol. Jo. 133, C. A.

See, now, 1908 Act, s. 208.

4559. Costs of defendant's answers—Liberty to apply for further security.—On an application by defts. in a suit by a co. in liquidation, the judge ordered security sufficient to cover the costs of defts.' answers, with liberty to renew their application for further security when their answers had been put in. On appeal:—**Held**: the matter was one of discretion; apart from this, this course adopted was convenient & proper.—**WESTERN OF CANADA OIL, LANDS & WORKS CO. v. WALKER** (1875), 10 Ch. App. 628; 45 L. J. Ch. 165; 23 W. R. 738, L. JJ.

Annotations:—**Reid**. *Costa Rica Republic v. Erlanger* (1876), 3 Ch. D. 62; *Pure Spirit Co. v. Fowler* (1890), 63 L. T. 559.

4560. Whether confined to future costs.—**BROCKLEBANK v. KING'S LYNN S.S. CO.**, No. 4555, *ante*.

(d) Refund after Payment out of Court.

4561. Action dismissed—Payment out to defendant's solicitors—Judgment reversed on appeal.—An action being dismissed at the hearing, with costs, a sum of money which had been paid into ct. as security for defts.' costs was ordered to be paid out to the solrs. for defts. in part payment of defts.' costs. The judgment was reversed by

Ct. of Appeal, & the costs ordered to be paid by defts. Pltf. asked for an order against defts.' solrs. for repayment by them:—**Held**: the ct. had no jurisdiction on the appeal to order defts.' solrs. to refund the money, the solrs. not being present.

Semble: nor could such an order have been made if they had been served with notice of the application.—**LYDNEY & WIGPOOL IRON ORE CO. v. BIRD** (1886), 33 Ch. D. 85; 55 L. J. Ch. 875; 55 L. T. 558; 34 W. R. 749; 2 T. L. R. 722, C. A.

Annotations:—**Consd.** *Hawkins Hill Consolidated Gold-Mining Co. v. Want, Johnson* (1893), 62 L. J. Q. B. 505; *Hood & Barrs v. Crossman & Prichard*, [1897] A. C. 172. **Reid**. *Re Smith, Bain v. Bain* (1896), 75 L. T. 46. **Mentd.** *Re Faure Electric Accumulator Co.* (1888), 40 Ch. D. 141; *Metropolitan Coal Consumers' Assocn. v. Scrimgeour*, [1895] 2 Q. B. 604; *Re Sale Hotel & Botanical Gardens Co.*, *Hesketh's Case* (1897), 77 L. T. 681; *Re Olympia*, [1898] 2 Ch. 153; *Cross v. Mutual Reserve Life Insco.* (1904), 2 T. L. R. 15; *Omnium Electric Palaces v. Baines* [1914] 1 Ch. 332.

4562. Judgment for plaintiffs—Payment out to receivers—Judgment reversed on appeal.—On Mar. 19, 1898, an action was commenced in the Q. B. Div. by the C. Corpn., Limited, against H. & Co., Limited, when judgment was given in favour of H. & Co., Limited. On Feb. 24, 1899, in an action on behalf of the debenture-holders against the C. Corpn., Limited, a receiver was appointed, & on Mar. 9, 1899, he obtained leave to prosecute an appeal in the above action against H. & Co., Limited. By order of the Ct. of Appeal, the receiver was required to pay the sum of £200 into ct. as security for the costs of the appeal. On July 13, 1899, the Ct. of Appeal reversed the decision of the Q. B. Div. & ordered £200 to be paid out to the receiver. On appeal to the House of Lords the judgment of the Q. B. Div. was restored, & the C. Corpn., Limited, ordered to pay the costs of the proceedings both in the cts. below & in the House of Lords.

On an application by H. & Co., Limited, being debenture-holders in the C. Corpn., Limited, in the above debenture-holders' action that the receiver might be directed to pay to them £200 paid out to him by order of the Ct. of Appeal on account of the costs ordered to be paid to them under the above order of the House of Lords:—**Held**: the application must be refused.—**Re GRIFFITHS CYCLE CORPN., LTD., DUNLOP PNEUMATIC TYRE CO., LTD. v. GRIFFITHS (JOHN) CYCLE CORPN., LTD.** (1902), 85 L. T. 776; 46 Sol. Jo. 229, C. A.

B. By Company as Defendant.

4563. Company in liquidation—Made defendants to interpleader proceedings instituted by sheriff.—A co. in liquidation, although made deft. to the issue, may be ordered to give security for costs in interpleader proceedings instituted by a sheriff.—**TOMLINSON v. LAND & FINANCE CORPN.** (1884), 14 Q. B. D. 539; 53 L. J. Q. B. 561, C. A.

Annotations:—**Apld.** *Maatschappij voor Fondsenbezit v. Shell Transport & Trading Co.*, [1923] 2 K. B. 166. **Reid**. *Rhodes v. Dawson* (1886), 16 Q. B. D. 548.

4564. — Delivering counterclaim in debenture-holder's action.—**STRONG v. CARLYLE PRESS** (1893), 37 Sol. Jo. 357.

C. By Liquidator.

4565. Assets insufficient to meet costs.—**FREEHOLD LAND & BRICKMAKING CO. v. SPARGO**, [1868] W. N. 94.

Annotation:—**Reid**. *Pure Spirit Co. v. Fowler* (1890), 63 L. T. 559.

pay costs would only arise in the event of deft. being successful in the action, & as under those circumstances the

probable financial condition of the co. would not be equal to paying the costs of the action, pltf's. should give security

for costs under Cos. Act, 1862 (c. 89), s. 69.—**TRUFFAULT CYCLE CO. v. DRURY** (1897), 31 L. T. 157.—**IR.**

Sect. 33.—Actions and proceedings by and against companies: Sub-sect. 13, C. & D.]

4566. In compulsory winding up.]—Where an action is brought by the liquidator of a co. which is being compulsorily wound up, he cannot be required to give security for costs.—*UNITED PORTS INSURANCE CO. v. HILL* (1870), L. R. 5 Q. B. 395; 39 L. J. Q. B. 227; 23 L. T. 14; 18 W. R. 980.

Annotations:—Apld. *Cowell v. Taylor* (1885), 31 Ch. D. 34; *Rhodes v. Dawson* (1886), 16 Q. B. D. 548.

4567. On misfeasance summons.]—The ct. has no jurisdiction to require the liquidator of a co. which is in the course of being wound up, to

give security for the costs of an application against the directors of the co. for misfeasance under 1890 (Winding Up) Act, s. 10. But an order for payment of costs by the liquidator personally, will be made in a proper case.—*Re STRAND WOOD CO., LTD.*, [1904] 2 Ch. 1; 73 L. J. Ch. 550; 90 L. T. 800; 53 W. R. 69; 11 Mans. 291, C. A.

Annotation:—Reid. *Rainbow v. Kittoe*, [1916] 1 Ch. 313.

D. In Winding up.

On petition.]—See Sect. 36, sub-sect. 3, F. (h), *post*.

On appeal against order.]—See Sect. 36, sub-sect. 8, E. (d), (e); sub-sect. 18, H., *post*.

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